

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 98(ET)/2017-18

(From the order of the Id. JCST (Appeal), Cuttack-II Range, Cuttack, in
Appeal No. AA/17/OET/CUII/2016-17/108131713000022,
dtd.19.06.2017, modifying the assessment order
of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

State of Odisha represented by the
Commissioner of Sales Tax,
Orissa, Cuttack.

.... Appellant

-Versus-

M/s. Bengal Tools Ltd.,
Dist. Cuttack.

.... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)
For the Respondent : Mr. A. Mishra, Advocate

(Assessment period : 01.04.2012 to 31.03.2014)

Date of Hearing: 02.02.2019 *** Date of Order: 02.02.2019

ORDER

Revenue has called the order of learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack (in short, FAA/JCST) in question in this second appeal, whereby and wherein the FAA has reduced the tax due and penalty as imposed by Assessing Authority, Sales Tax Officer, Cuttack-II Circle, Cuttack (in short, AA/STO) in an assessment u/s.9C(3) of the Odisha Entry Tax Act, 1999 (in short, OET Act) of the assessee-dealer covering tax period from 01.04.2012 to 31.03.2014.

2. The facts in brief giving rise to this appeal are : On the basis of Audit Visit Report (AVR), the dealer M/s/ Bengal Tools Ltd.,

Gopalpur, Cuttack engaged in trading of power tillers and spare parts was subjected to assessment u/s.9C(3) of the OET Act. The dealer effects receipt of Power tillers and spare parts through branch transfer from it's Head office in West Bengal and engaged in inter-state as well as intra-state sale of goods. The AA in consideration of the AVR, levied tax @1% against the value of Power tillers and 2% against the value of spare parts and finally calculated the tax due from the dealer at Rs.16,33,915/-. In addition to that, penalty u/s.9C(5) of the OET Act was levied at Rs.32,67,830/-. As a result, the total tax due from the dealer was raised to Rs.49,01,745/-.

3. The dealer challenged the order of assessment before the FAA, who in turn, re-considered the allegations in AVR as against the return filed by the dealer and then re-determined the GTO and TTO. On re-determination of the TTO, the FAA taxed the Power tillers @1% and the spare parts @2% and thus the total tax payable was calculated at Rs.27,42,060.24. The dealer having paid tax at Rs.27,38,686/-, the tax due from the dealer was calculated at Rs.3,374.24. In addition to tax due, penalty i.e. twice of the tax due was levied, resulting the total demand calculated at Rs.10,123/-.

4. Since the demand reduced before the FAA, State being aggrieved preferred this appeal. The main contention of the State is the order of the FAA is cryptic. The FAA has accepted the return of the dealer. The determination of the spare parts components is wrong and the levy of tax is also erroneous.

5. The appeal is heard with cross objection from the side of the dealer. In the cross objection, the dealer has contended that, since Power tiller and spare parts fall under the Entry Sl.No.37 of Schedule-I of the Entry Tax Act, the goods are exigible to tax @1% only. However,

there was wrong calculation of tax by the AA, as he imposed tax @2% on the Power tiller.

6. The substantive question of law and facts for decision in this appeal are : (i) What should be the exact rate of tax against the Power tiller and spare parts, the goods dealt by the dealer (ii) Whether the FAA has committed wrong in calculation of the TTO and the tax due.

7. At the outset, learned Addl. Standing Counsel argued that, the branch transfers document of the dealer do not disclose the correct amount of freight. So this is a fit case where provision u/s.2(j) of the OST Act should have applied to determine the purchase value for the purpose of imposition of entry tax. This question relates to the fact like, whether the goods received through branch transfer and the documents against those transfers are not sufficient to determine the purchase value which includes the freight charges. This aspect was not raised by the two authorities below and is also not dealt by both the authorities below. Similarly, this question was not raised in the grounds of appeal by the State here in this second appeal. So, there is no scope in the hands of the Tribunal to go into the submission of the learned Addl. Standing Counsel, Mr. Pradhan.

So far as the wrong calculation of GTO and TTO, it is found that, as per the impugned order the Audit team has given a figure of the value of tractor and value of spare parts, whereas the FAA has determined the worth of Power tiller and spare parts separate from the AVR basing on the books of account and connected documents. The FAA has not accepted the sale value of goods disclosed by the dealer as well as in the AVR, but it is found that, the FAA has imposed tax @2% on spare parts and tax @1% on Power tillers. The Entry Sl.No.37 as per the Rate chart reads as follows :

“37. Agriculture machinery, i.e. pump sets, tractor and power tiller [combined harvested] etc. and components/accessories thereof”

If we go by the Entry Serial as above, then the only conclusion is, the Power tiller as well as the spare parts thereof, fall under the one category of components and accessories thereof as per the schedule category exigible to tax @1%. In course of the argument, it remained undisputed by both the parties that, both the goods dealt by the dealer is exigible to tax @1%. If that be, there is no escape from the conclusion that, the calculation made by both the authorities below is erroneous and in consequence thereof, the assessments by both the authorities below also fails to withstand in th eye of law. In that view of the matter, it is held that, it is a fit case to be remanded back to the AA for re-determination of the tax liability by imposing tax @1% on both i.e. Power tiller and spare parts. While remanding it is made clear that, the AA cannot go beyond the limited question like determination of TTO and imposition of tax @1% only. From the discussion above, it is hereby ordered.

The appeal is allowed. The impugned order is set-aside. The order of the AA is also set-aside as well. The matter is remitted back to the AA with a direction for re-computation of tax liability as per the observation above. The parties are directed to appear before the AA and to take instruction accordingly, whereas the AA is instructed to complete the assessment within a period of four months thereafter.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member

