

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL,  
CUTTACK.**

**S.A.No.135(ET) of 2014-15.**

(Arising out of the order of Ld.DCST(Appeal)Bhubaneswar Range,  
Bhubaneswar, in First Appeal No.AA-108111110000078,  
disposed of on dated 31.05.2014.)

**Present:- Shri G.C.Behera & Shri S.K.Rout & Shri S.R.Mishra,**  
Chairman 2<sup>nd</sup> Judicial Member Accounts Member-III

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

. . . Appellant

**- V e r s u s -**

M/s. Jalan Infortech Pvt. Ltd.,  
At/P.O. Plot No.463, Saheed Nagar,  
Bhubaneswar

. . . Respondent.

For the Appellant

. . . Mr.D.Behura,SC(CT)

For the Respondent

. . . Mr.N.K.Das, Advocate.

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Date of Hearing : 03-08-2023

Date of Order:02-09-2023.  
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**ORDER**

The present appeal preferred U/s.17(1) of the Odisha Entry Tax Act, 1999 is at the behest of the State Appellant in assailing the impugned First Appeal Order passed by the Learned Deputy Commissioner of Sales Tax (Appeal), (hereinafter referred to as Ld. FAA) Bhubaneswar Range, Bhubaneswar, in deleting the extra tax liability of the dealer assessed U/s.9C of the OET Act for the tax period from 1.4.2005 to 31.10.2008 by the Learned Assessing Authority (hereinafter referred to as Ld. AA) Bhubaneswar II Circle, Bhubaneswar.

2. Being aggrieved by the impugned order passed by the Ld. FAA, the State has preferred the present appeal before this forum on the following grounds.

i. The order passed by the Ld. FAA is unjust and improper.

- ii. The determination of purchase value for levy of entry tax by the Ld. FAA is wrong in as much as that the same is not in accordance with the provisions of Section 2(j) of the OET Act.
  - iii. For the purpose of levy of entry tax the FAA should have considered the sale value of such scheduled goods received by the dealer on stock transfer basis from its out-State branches instead of treating the STN value as the “purchase value”.
  - iv. The deletion of penalty by the Ld. FAA is also unjustified as the same is mandatory in nature as per Sec. 9C(5) of the OET Act.
3. Per contra the dealer respondent has filed cross objection defending the order passed by the Ld. FAA. In stating so, the dealer-respondent has claimed that since the goods were purchased centrally by the out State branches which have borne the freight and other incidental charges, the STN Value has rightly been adjudged as the “purchase value” by the Ld. FAA for levy of entry tax. Accordingly the dealer respondent has contended for non-intervention in the order passed by the Ld. FAA.
  4. Besides, the dealer-respondent has raised a new issue challenging the validity of the entire proceedings on the ground that since the Audit Visit Report (AVR) was not submitted within seven days from the date of completion of Audit, the entire proceeding based on such audit is vitiated.
  5. Heard the case. Gone through the relevant records/documents produced.
  6. Before delving into the merits of the rival contentions, it would be apposite to deal with the maintainability issue of the proceedings as raised by the dealer respondent. On examination of the case record, it is evident that the Audit was completed by the STO (Audit) on dt.9.7.2010 and the AVR was submitted on dt.15.7.2010 which is well within the statutory period of seven days as per Rule 11(5) of the OET Act. Accordingly, it is found that the averment of the dealer-respondent in this score is not based on fact for which the same is dismissed.
  7. In course of the present proceedings the learned counsel for the State has reiterated the stand taken in the grounds of appeal and has

challenged the impugned order passed by the Ld. FAA being contrary to the provisions of Section 2(j) of the OET Act. He has averred that since the dealer has effected receipt of goods otherwise than by way of purchase, the Ld. A.A. has correctly derived the corresponding “Purchase Value” of such goods which is in conformity to the provisions of law. He has further submitted that the enhancement of the purchase value to the tune of 15% by the Ld. A.A. is entirely reasonable and in tune with the actual variation between the purchase value and sale price in an average and thus pleaded for restoration of the order passed by Ld.A.A..

8. Per Contra, learned counsel of the dealer-respondent has submitted that the enhancement of the STN value (which is also the purchase value) by the Ld. A.A. is highly excessive and arbitrary. He further stated that the determination of “Purchase Value” by the Ld. FAA is on correct stance as the freight and other incidental charges were borne by the out-State branches of the company and accordingly pleaded for non-interference in the order passed by the Ld. FAA.

9. Now coming to the crux of the dispute, the same is found to be based on applicability of Section 2(j) of the OET Act since the dealer respondent has admittedly received the stocks from out State branches other than by way of purchase on stock transfer basis. Sec. 2(j) of the OET Act reads as under

“Purchase Value” means the value of scheduled goods as ascertained from original invoice or bill and includes insurance charge, excise duties, countervailing charges, sales tax, (value added tax or tax as the case may be turnover tax) transport charges, freight charges and other charges incidental to the purchase of such goods:

**Provided that** where purchase value of any scheduled goods is not ascertainable on account of non-availability or non-production of the original invoice or bill or when the invoice or bill produce is proved to be false or if the scheduled goods are (acquired) or obtained otherwise than by way of purchase, then the purchase value shall be the value or the

price at which the scheduled goods of like kind or quality is sold or is capable of being sold in open market;

10. Going by the above definition, the Proviso to Section 2(j) clearly mandates that when the goods are (acquired) or obtained otherwise than by way of purchase, the purchase value shall be the corresponding “sale price” of such goods at the time of entry into the local area. As such, it is the sale price, which is relevant. Perusal of the order of assessment passed by the Ld. AA, it is noticed that the corresponding “sale price” of such goods was determined by way of addition of 15% as the same could neither be worked out nor could be provided by the dealer.

11. In this context, reliance is placed on the decision of the Hon’ble High Court of Karnatak (2008) 11 VST 267 (Kar) in case of M/s. Voltas Limited Vrs. State of Karnatak, in which it was decided that “ while the petitioner does not bring on record materials with regard to the prevailing market price of the goods which has entered the local area, the assessing authority is justified in adding certain percentage to the stock and proceed to levy entry tax.” In the circumstance of the case and considering the fact that the dealer failed to provide the prevailing market price, enhancement of 15% on the STN value is considered to be reasonable.

12. Thus, considering the above said provisions of law, the determination of the corresponding “purchase value” of the STN price by the Ld. A.A. appears to be entirely reasonable. The Ld. A.A. is found to have very correctly appreciated the law and facts in proper perspective for which we find it justified for complete restoration.

13. As regards, the penalty instead U/s.9C(5) of the OET Act by the Ld. AA, we also find the same is in conformity to the provisions of law which being mandatory in nature warrants restoration.

14. In view of the aforesaid discussion, we find that the impugned order passed by the Ld. FAA is not in conformity to the provisions of law and as such, the same is liable to be set-aside and that the order passed by the Ld. A.A. is to be restored.

15. In the result, the appeal filed by the State Appellant is allowed in full and the order passed by the Ld. FAA is set-aside and that of the order of the Ld. AA is restored. Cross objection filed by the respondent is disposed of accordingly.

Dictated and corrected by me,

**(S.R.Mishra)**  
Accounts Member-II.

**(S.R.Mishra)**  
Accounts Member-II.  
I agree,

**(G.C.Behera)**  
Chairman  
I agree,

**(S.K.Rout)**  
2<sup>nd</sup> Judicial Member.