

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

**S.A. No. 90 (VAT) of 2016-17
&
S.A. No. 44 (ET) of 2016-17**

(Arising out of orders of the learned JCST (Appeal), Sundargarh Range, Rourkela in Appeal Nos. AA V 26 of 2009-10 & AA V 13 (ET) of 2009-10, disposed of on 30.01.2016)

Present: **Shri G.C. Behera, Chairman**

M/s. Sachdeva Steels,
Vedvyas, Rourkela ... Appellant

-Versus-

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

For the Appellant : Sri S.K. Agarwal, Advocate
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl. SC (CT)

Date of hearing : 27.02.2023 *** Date of order : 24.03.2023

ORDER

Both the appeals relate to the same party and for the self-same period, but under different Acts. Therefore, they are taken up for disposal in this common order for the sake of convenience.

2. Dealer assails the orders dated 30.01.2016 of the Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (hereinafter called as 'First Appellate Authority') in F A No. AA V 26 of 2009-10 & AA V 13 (ET) of 2009-10 reducing the assessment orders of the

Asst. Commissioner of Sales Tax, Rourkela II Circle, Panposh (in short, 'Assessing Authority').

3. The facts of the cases, in brief, are that –

M/s. Sachdeva Steels trades in iron and steel goods. The assessments relate to the period 01.04.2005 to 30.06.2008. The Assessing Authority raised tax and penalty of ₹41,310.00 in assessment proceeding u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') basing on the Audit Visit Report (AVR). Similarly, the Assessing Authority raised tax and penalty of ₹1,67,427.00 u/s. 9C the Odisha Entry Tax Act, 1999 (in short, 'OET Act').

Dealer preferred first appeal against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹33,591.00 under the OVAT Act and to ₹1,27,258.00 under the OET Act, thereby allowing the appeals in part. Being aggrieved with the orders of the First Appellate Authority, the Dealer prefers these appeals. Hence, these appeals.

The State files cross-objections.

4. The learned Counsel for the Dealer submits that the First Appellate Authority went wrong by disallowing the ITC without taking into account regarding payment of tax against purchase bill of SRIN dealer as per the Notification dated 13.03.2009 issued by the Commissioner of Commercial Taxes, Odisha.

Regarding freight charges under the OET Act, the learned Counsel for the Dealer submits that in no circumstances more than 2% freight charges should be added. He further submits that the First Appellate Authority ought to have deleted the penalty as per the ratio decided by the Hon'ble Apex Court in the case of *Sree Krishna Electricals v. State of Tamil Nadu and another*, reported in [2009] 23 VST 249 (SC).

5. On the other hand, learned Standing Counsel (CT) for the State submits that the First Appellate Authority and the Assessing Authority have rightly passed the orders and the same require no interference in appeal. He further submits that to take the benefit of ITC, the Dealer is required to produce supporting tax invoice. As regards addition of freight charges in ET proceeding, he submits that the First Appellate Authority has adopted the best judgment principle to decide the freight charges, which warrants no interference. He further submits that the word 'shall' shows that the penalty is mandatory and the decision relied on by the Dealer is not applicable to the present facts and circumstances of the case. He relies on the decisions in cases of *Union of India v. Dharmendra Textile Processors*, [2008] 18 VST 180 (SC); *Guljag Industries v. Commercial Tax Officer*, 9 VST 1 (SC); and *Jindal Stainless Ltd. v. State of Orissa*, [2012] 54 VST 1 (Orissa).

6. Heard the rival submissions and carefully gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. It transpires from the assessment order under the OVAT Act that the Assessing Authority found that the Dealer has committed wrong adjustment to get benefit of ITC of ₹13,770.00. So, he disallowed the same and raised tax and penalty of ₹41,310.00. The First Appellate Authority allowed ITC of ₹2,573.00 basing on the tax invoice and reduced the tax liability to ₹33,591.00.

7. It transpires from the order of the First Appellate Authority that he disallowed the ITC of ₹11,197.00 being purchased from a SRIN dealer against Bill No. 562 dated 24.03.2006. The Commissioner of Commercial Taxes, Odisha vide Notification dated 13.03.2009 conferred to the concerned authority to allow ITC in absence of tax invoice as per proviso to Section 20(6) of the OVAT Act. So, the First Appellate Authority ought to have allowed the ITC of ₹11,197.00 under the OVAT Act to the Dealer.

8. As regards the proceeding under the OET Act, the Assessing Authority determined the GTO of ₹70,20,38,891.39 by adding the freight and incidental charges. He determined the TTO of ₹17,36,31,346.00 after deduction of ET suffered goods. He assessed ET @ 1%, which came to ₹17,36,312.00. The Dealer has already paid ET of ₹16,80,503.00. So, the Dealer is liable to pay the balance tax of ₹55,809.00 besides twice penalty. The First Appellate Authority reduced the freight charges to 3% against 5% charged by the Assessing Authority, which resulted in reduction of tax to ₹42,419.00. So, he raised the ET of ₹1,27,258.00 with twice penalty.

9. The First Appellate Authority reduced the freight charges to 3% against 5% levied by the Assessing Authority. The Dealer has taken a ground in appeal that in no circumstances more than 2% freight charges should be added. He has not filed any document to support such contention. The order of the First Appellate Authority reveals that the invoice of the Dealer does not include the transportation charges. The impugned order further reveals that the Dealer had no knowledge about the transportation charges. On such circumstances, the First Appellate Authority adopted best judgment principle in adding 3% freight charges, which calls for no interference in appeal.

10. The Dealer has relied on the decision of the Hon'ble Apex Court in the case of *Sree Krishna Electricals* cited supra, wherein Hon'ble Apex Court have been pleased to observe as follows :-

“That, however, since the items were found incorporated in the appellant's account books though it had not included them in its turnover, penalty could not be imposed merely because the exemption claimed by the appellant was disallowed.”

Section 9C(5) of the OET Act provides that an amount equal to twice the amount of tax assessed under sub-section (3) or (4) shall be imposed by way of penalty in respect of any assessment completed under

the said sub-section. The word 'shall' shows that the imposition of twice penalty is mandatory in nature. So, the decision relied on by the Dealer is not applicable to the present case.

11. On the foregoing discussions, I am of the considered view that the First Appellate Authority went wrong in not accepting the purchase bill to allow the ITC under the OVAT Act, which is contrary to Notification of the Commissioner of Commercial Taxes, Odisha, for which the same is not sustainable in the eyes of law. With regard to ET proceeding, the First Appellate Authority added 3% freight charges & twice penalty thereof, which is as per law and the same calls for no interference in appeal. Hence, it is ordered.

12. In the result, the appeal under the OVAT Act is allowed and the order of the First Appellate Authority is set aside. The matter is remanded to the Assessing Authority for computation of tax liability as per law keeping in view the observations made above. But, the appeal under the OET Act is dismissed and the order of the First Appellate Authority stands confirmed. Cross-objections are disposed of accordingly.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

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(G.C. Behera)
Chairman**