

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

**S.A. No.258(V) of 2016-17**

(Arising out of the order of the learned  
Addl.CST(Appeal), Central Zone, Odisha, Cuttack in  
Appeal Case No. AA-120(V)/JCST/CUI/10-11  
disposed of on 17.08.2016)

Present: **Shri S.K. Rout, 2nd Judicial Member**  
&  
**Shri B. Bhoi, Accounts Member-I**

M/s. Tide Water Oil Co (India) Ltd.,  
At-Rudrapur, Po- Pahal,  
Cuttack, TIN-21571200448.

..... Appellant.

**-Versus -**

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

..... Respondent.

For the Appellant : : Mr. P.K. Agarwal, Advocate.

For the Respondent : : Mr. S.K. Pradhan, Addl. S.C.(C.T.)

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**Date of Hearing : 21.11.2023 \*\*\* Date of Order: 20.12.2023**  
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**O R D E R**

The dealer-assessee has preferred this second appeal assailing the order dated 17.08.2016 of the Additional Commissioner of Sales Tax(Appeal), Central Zone, Odisha, Cuttack (in short, 'Id. FAA') passed in Appeal Case No. AA-120(V)/JCST/CUI/10-11 allowing the appeal in part and reducing the demand to ₹2,84,642.00 concerning to the assessment passed under Section 42 of the Odisha Value Added Tax Act, 2004 (in

short, 'OVAT Act') by the Joint Commissioner of Sales Tax, Cuttack I Range, Cuttack, (in brevity, referred to as ld. assessing authority).

2. M/s. Tide Water Oil Co (India) Ltd., At-Rudrapur, Po-Pahal, Cuttack, TIN-21571200448 was assessed under Section 42(4) of the OVAT Act for the tax period from 01.01.2007 to 30.11.2008 basing on the Audit Visit Report. The credit notes claimed for ₹7,58,390.00 were rejected in assessment for non disclosure of the same in returns and non production of the connected bills to that effect. On this account the ld. assessing authority has enhanced the GTO and TTO by ₹10,00,000.00. Further, the ld. assessing authority has taxed free gifts worth ₹6,27,212.00 received by the dealer-assessee from the selling dealers during the material period. The ld. assessing authority completed the assessment by virtue of best judgment raising demand of ₹3,25,922.00 including penalty of ₹2,17,281.00. The ld. FAA disagreed with the ld. assessing authority with regard to levy of tax on ₹6,27,212.00 claimed as free gifts received from outside the State of Odisha with ld. assessing authority having not substantiated the free gifts to have been sold away. The ld. FAA deleted the enhancement of ₹10,00,000.00 added to the GTO and TTO and has confined to addition of ₹7,58,390.00 claimed as credit notes in absence of production of any evidence in the first appellate stage. Accordingly, the ld. FAA made the dealer liable to pay tax ₹2,84,642.00 including penalty of ₹1,89,761.00.

3. The dealer-assessee being not satisfied with the order of the ld. FAA preferred second appeal before this forum endorsing grounds of appeal. The dealer-assessee is in challenge of

disallowance of credit notes issued to the customers amounting to ₹7,58,390.00. It is submitted that the Id. FAA has levied tax on credit notes without giving reasonable opportunity of being heard to the dealer-assessee. Imposition of penalty is also rebutted.

The State has filed cross objection supporting the order of the forums below.

4. The orders of the forums below along with the materials on records are gone through. The issues agitated in the grounds of appeal are also looked into. The dealer-appellant protests disallowance of credit notes worth ₹7,58,390.00 in the forums below stating that there was no reasonable opportunity advanced for production of the connected bills/documents in support of the claim of credit notes. This contention taken by Mr. P. K. Agrawal, Id. Advocate representing the dealer-assessee is not considerable on the pretext that even at the stage of second appeal hearing at this forum, there were no evidence/ documents in support of the alleged credit notes adduced whereupon, this forum would be obliged to consider the issue in question. Hence, the contention taken by the dealer-appellant befits no merit. As to levy of penalty, the decision of **the Hon'ble of High Court of Odisha in STREV No.69 of 2012 dated 05.07.2022** delivered in case of State of Odisha Vs M/s Chandrakanta Jayantilal, Cuttack and Another is relevant which in Para 14 of the said decision is quoted as under:-

“It will be straightway noticed that the very wording of Section 42(5) indicates that once an assessment is completed under Section 42(4) of the OVAT Act, the penalty leviable under Section 42(5) automatically follows. There is no discretion in the STO unlike the penalty imposable under Section 43(2) of the OVAT Act. This was what explained by this Court in M/s National Aluminium Company Limited (Supra).”

In view of the above settled principle of law as to levy of penalty under Section 42(5) of the OVAT Act, the forums below are justified in levy of penalty. Under this backdrop, we find no justification to interfere in the order of the Id.FAA.

5. Under the above eventuality, the second appeal filed by the dealer-appellant is dismissed and the order of the Id.FAA is upheld.

Dictated & Corrected by me

**Sd/-**  
**Bibekananda Bhoi)**  
**Accounts Member-I**

**Sd/-**  
**(Bibekananda Bhoi)**  
**Accounts Member-I**

**I agree,**

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