

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

S.A.No. 127(ET)/2016-17

(From the order of the Id.DCST (Appeal), Balasore Range, Balasore, in
Appeal No. AA-165/BA-2008-09 (ET), dtd.26.09.2016,
modifying the assessment order of the Assessing Authority)

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

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

.... Appellant

-Versus-

M/s. Kalia Enterprises,
Dist. Balasore.

... Respondent

For the Appellant : Mr. S.K. Pradhan, ASC (CT)
For the Respondent : None

(Assessment period : 2004-05)

Date of Hearing: 02.08.2018 Date of Order: 02.08.2018

ORDER

Revenue as appellant has challenged the sustainability of the order of the learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (in short, FAA/DCST) in First Appeal Case No. AA-165/BA-2008-09 (ET) dtd.26.09.2016, whereby the FAA has deleted the entry tax as determined by the Assessing Authority/Balasore Circle, Balasore (in short, AA).

2. In the case in hand, the instant dealer M/s. Kalia Enterprises, Januganj, Balasore was subjected to assessment u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act) for the period 2004-05 and in course of the assessment, Id.AA found that, the

dealer had effected purchase of raw materials amounting to Rs.16,635/- and sold finished products amounting to Rs.22,304/-. However, in the assessment under OST Act, the AA determined the GTO of the dealer at Rs.3,00,000/- and imposed tax on him. Consequent to the imposition of tax under OST Act, the dealer was also asked to pay entry tax i.e. at Rs.6,000/- @2% as against the goods purchased.

3. Being aggrieved with such assessment and demand of tax, the dealer preferred first appeal, whereby the learned FAA vide impugned order deleted the demand of tax on the plea that, the determination of tax liability under OST Act was deleted by the FAA.

4. When the tax due as determined by the AA was deleted, Revenue being aggrieved has filed this Second Appeal before this forum. It is contended by the Revenue that, since the dealer was a manufacturer and dealing with schedule goods, he is liable to pay entry tax. As such the order of FAA is not sustainable.

5. The appeal is heard ex-parte in absence of the dealer. Learned Addl. Standing Counsel, Mr. Pradhan advancing argument on behalf of the Revenue submitted that, even though the dealer is assessed under the OST Act, still he is liable to pay tax under OET Act. So, the FAA has gone wrong in deleting the tax liability under OET Act basing the order of OST Appeal.

In the case in hand, the dealer was originally assessed u/s.12(4) of the OST Act. In that assessment, the authority found that, the dealer had effected raw materials amounting to Rs.16,625/- and has sold the finished products amounting to Rs.22,305/- during the period of assessment. Since the dealer had not paid any tax, the GTO was determined at Rs.3,00,000/- and accordingly tax under OST Act was

imposed. Consequent to the liability under OST Act, the dealer was also held liable under OET Act and was asked to pay entry tax at Rs.6,000/-.

6. The dealer had challenged the order before the FAA against the levy of tax under OST Act. The order of the FAA as it revealed, the FAA has deleted the entire tax liability on many grounds. One of them is, the assessment was barred by limitation. It is not the case that, the FAA under OST Appeal has deleted the enhancement but the FAA had deleted the entire liability. So, necessarily the liability under OET Act is consequential and has got direct and proximate relationship with the liability under OST Act. Once the liability under OST Act is deleted and is not challenged by the Revenue before the higher forum, then it can safely be said that, the dealer's liability under OET Act also accordingly be deleted. Thus, it is held that, the impugned order suffers from no illegality, particularly when the Revenue has failed to appraise that, how they have accepted the order of FAA in OST Appeal as mentioned above. So the impugned order calls for no interference. Accordingly, it is ordered.

The appeal preferred by the Revenue is dismissed as of no miert.

Dictated and Corrected by me,

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

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(S. Mohanty)
2nd Judicial Member

