

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

***S.A.No.227(ET) of 2013-14***

(Arising out of the order of the learned DCST, Jajpur  
Range, Jajpur Road, in First Appeal Case No. AA-415  
KJB(ET) 13-14, disposed of on 31.12.2013)

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

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

... Appellant.

**-Versus -**

M/s. Baa Commercials,  
Joda, Keonjhar.

... Respondent.

For the Appellant :

: Mr. S.K. Pradhan, Id. ASC.(C.T.)

For the Respondent:

: Mr. D.R. Mohapatra, Id. Advocate

-----  
Date of Hearing : 17.05.2023

\*\*\*

Date of Order : 22.05.2023  
-----

**O R D E R**

This second appeal has been filed by the Revenue against the order of the Deputy Commissioner of Sales Tax, Jajpur Range, Jajpur Road (In short, called Ld FAA) passed in First Appeal Case No.AA-415 KJB (ET) 13-14 allowing the first appeal in full thereby rendering the tax and penalty arising out of assessment order U/s.9C of the OET Act to Nil demand.

2. The facts in nutshell are that M/s. Baa Commercials, Joda, Keonjhar, TIN-21291405951 is engaged in trading of Iron ore effecting purchases within the state of Odisha. The dealer-respondent

was assessed U/s.9C of the OET Act for the tax period from 01.07.2008 to 31.03.2012 on the basis of Tax Audit Report raising demand of ₹3,91,284.00 including penalty of ₹2,60,856.00. On being aggrieved, the dealer-respondent preferred first appeal before the Id.FAA. The demand as well as the penalty as levied at assessment was reduced to Nil in the first appeal. The State being not satisfied with the order of the Id.FAA went for second appeal before this forum endorsing the grounds of appeal to the effect that the Id.FAA has erred in deletion of tax and interest raised at the assessment stage. It is submitted that as per Section 3(1) and Section 3(2) of the OET Act, the dealer-respondent in the present case is liable to pay entry tax and penalty.

There is no cross objection filed by the dealer-respondent.

3. Gone through the order of assessment, first appeal order, grounds of appeal and the materials on record. On perusal of the assessment order, it is revealed that the dealer-respondent is found to have purchased 6898.330 MT of Iron ores from M/s Shree Gurukripa Ores Private Limited, Nayagarh, P.O.-Dubuna, Keonjhar, a manufacturing concern of Iron ore and fines at an amount of ₹1,29,13,673.76. The selling dealer, M/s. Shree Gurukripa is said to have not collected entry tax on the said scheduled goods from the dealer-respondent. The learned Assessing Authority basing on the recommendation of the Audit Visit Report levied entry tax @1% on the

above purchase value of the scheduled goods adding 1% of freight charges and computed to tax and penalty of ₹3,91,428.00. The Id.FAA held that provisions of sub-section 1 of Section 26 obligate the manufacturer to collect entry tax from the buyers on the sale of finished products. Here the manufacturer has not discharged the statutory obligation as required under Section 26(1) of the OET Act by not collecting the tax from the appellant. Moreover, Section 26(6) of the OET Act provides for imposition of penalty upon a manufacturer for contravention of the provision of Section 26(1) of the OET Act. With the above enabling provisions of the OET Act, the Id.FAA allowed the first appeal in full and the tax and penalty levied at assessment U/s.9C of the OVAT Act reduced to Nil.

4. Under the above facts and in the circumstances, it is felt expedient to go through the provisions of section 26(1) of the OET Act. It is provided as under:-

**Manufactures to Collect and pay tax:-**

“(1)Notwithstanding anything contained in this Act, every manufacturer of scheduled goods who is registered under the VAT Act shall in respect of sale of its finished products effected by it to a buying dealer or person, either directly or through an intermediary, shall collect by way of tax an amount equal to the tax payable on the value of such finished products under Section-3 of this Act by the buying

dealer of person in prescribed manner and shall pay the tax so collected into Government Treasury.”

It is also provided in sub section(6) of Section 26 of the OET Act as under:-

“If any manufacturer contravenes the provisions of sub-section (1) or sub-section (2), the Assessing Authority may, after giving him an opportunity of being heard, impose on him by an order in writing, a penalty not exceeding twice the amount of tax required to be collected and paid by him.”

Under the above clear and explicit provisions of the OET Act, it is amply clear that it is the manufacturer who is mandated under the Act to collect entry tax from the buyers on the sale of its finished products and to pay into the Govt. Treasury. In not collecting tax as due from the buyers and depositing thereof into Govt. Treasury, the manufacturer is incumbent upon under law for penal action as envisaged under sub-section (6) of Section 26 of the OET Act. The buying dealer cannot be attributed to pay entry tax U/s.3(1) of the OET Act. Initiation of proceeding U/s.9C of the OVAT Act rather ought to have been contemplated against the manufacturer instead of the buyer. We are, therefore, constraint to accept the averments of the learned Counsel of the Revenue and the order passed in the first appellate state is quite substantive and appropriated by law.

5. Under the above backdrop, it is ordered that the appeal filed by the Revenue is dismissed and the order of the ld. FAA stands confirmed. Excess tax paid, if any, be refunded to the dealer as per the provision of the law.

Dictated & corrected by me.

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

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

**I agree,**

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