

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

S.A. No.99 (ET) of 2014-15

(Arising out of the order of the learned JCST,
Sambalpur Range, Sambalpur in Appeal No AA-
I/BGH/ET/2012-13, disposed of on 31.03.2014)

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

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

-- Vrs--

M/s. Konark Enterprises,
Cinema Road, Bargarh,
TIN-21621700698. Respondent.

For the Appellant: : Mr. S.K. Pradhan, AS.C.(CT)
For the Respondent: : Mr. A.K. Poddar, Advocate.

Date of Hearing : 28.08.2023 *** Date of Order: 27.09.2023

ORDER

The State is in appeal against the first appeal order dated 31.03.2014 passed by the Joint Commissioner of Sales Tax, Sambalpur Range, Sambalpur (in short, 'ld. FAA') in First Appeal Case No. AA-I/BGH/ET/2012-13 in deleting the penalty imposed under Section 9-C(5) of the OET Act by the Sales Tax Officer, Bargarh Circle, Bargarh (In short, 'STO) for tax period 01.04.2007 to 30.06.2011.

2. The summary of the case in hand is that M/s Konark Enterprises, Cinema Road, Bargarh, TIN-21621700698 deals in cotton yarn in hank only. On the recommendations contained in the Audit Visit Report for initiation of proceeding under Section 9-C of the OET Act, the learned STO completed the assessment raising demand of ₹64,41546.00.00 which includes penalty of ₹42,94,364.00 for the tax period from 01.04.2007 to 30.06.2011. In the first appeal as preferred by the dealer-assessee, the ld. FAA confirmed tax demand of ₹21,47,182.00 and deleted the penalty of ₹42,94,364.00 imposed under Section 9-C(5) of the OET Act.

3. The State being not satisfied with the order of ld.FAA preferred second appeal holding that imposition of penalty is mandatory as per provision of Section 9-C(5) of the OET Act. It is provided that “without prejudice to any penalty or interest that may have been levied under any provisions of this Act, an amount equal to twice the amount of the assessed under sub-Section (3) or (4) shall be imposed by way of penalty in respect of any assessment completed under the said sub-sections”. The State has relied on the decision of the Hon’ble High Court of Odisha in case of **M/s. Jindal Steel** reported in 54 VST Page 1 which provides that where the penalty is mandatory mensrea cannot be a ground to waive penalty. The Hon’ble Apex Court in case of **Dharmendra Textile** reported in 18 VST Page 180

observes that when the Statute mandates penalty, there is no need of proving the mensrea. Accordingly, deletion of penalty by the ld. FAA has been strongly protested by the State.

4. The dealer-assessee has filed cross objection. Mr. A.K. Poddar, ld. Advocate who represents the dealer-assessee submits that cotton yarn in hank is not a scheduled good amendable to entry tax in the ratio of the judgment of the Hon'ble High Court of Odisha in case of ***M/s. Krishna Textile Agency Vs. State of Odisha*** reported in STREV No.94 of 2010. Accordingly, it is pleaded that levy of entry tax on cotton in yarn by the ld. STO is not tenable in law and thus, question of imposition of penalty doesn't arise.

5. Having heard submissions of both the parties coupled with the orders of the forums below and the grounds of appeal vis-a-vis the decision of the Hon'ble High Court of Odisha referred to above, we are of the opinion that cotton yarn in hank is not a scheduled good eligible to entry tax. The Hon'ble High Court of Odisha as per the decision cited supra holds that cotton yarn in hank is not the same as waste cotton or cotton and therefore is not subject to the OET Act and exigible to entry tax at 1%.

6. In view of the above discussion and in keeping with the decision of the Hon'ble Court, it is of the opinion that the cotton yank in hank purchased by the dealer-assessee from outside the

local area being not a scheduled good is not eligible to entry tax. This being the provision of law, the order of assessment passed by the ld. STO in the instant case levying entry tax on cotton yarn in hank is not sustainable. Thus, the appeal filed by the State merits no consideration and is hereby dismissed. The orders of the forums below are therefore, quashed. Excess tax paid, if any, be refunded to the dealer-assessee as per provision of law. Cross objection is disposed of accordingly.

Dictated and corrected by me.

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

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

I agree,

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

I agree,

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