

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

**S.A. No. 50 (ET) of 2020**

(Arising out of order of the learned JCST (Appeal), CT&GST Territorial Range, Bhubaneswar in Appeal No. AA- 261/OET/BH-IV/2019-20, disposed of on 29.06.2020)

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

M/s. Modern Winding & Electrical,  
Plot No. 94, Bapuji Nagar, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri Subhasis Panda, Advocate  
For the Respondent : Sri D. Behura, S.C. (CT)

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Date of hearing : 18.04.2023 \*\*\* Date of order : 03.05.2023  
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**ORDER**

Dealer is in appeal against the order dated 29.06.2020 of the Joint Commissioner of Sales Tax (Appeal), CT&GST Territorial Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A No. AA- 261/OET/BH-IV/2019-20 confirming the assessment order of the Sales Tax Officer, Bhubaneswar-IV Circle, Bhubaneswar (in short, 'Assessing Authority').

2. The facts of the case, in brief, are that –

M/s. Modern Winding & Electrical carries on business in execution of electrical and civil works contract. The assessment relates to the period 01.10.2015 to 30.06.2017. The Assessing Authority raised tax

and penalty of ₹1,84,317.00 in assessment proceeding u/s. 9C of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') on the basis of Audit Visit Report (AVR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the demand and dismissed the appeal. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers the appeal. Hence, the appeal.

The State files cross-objection supporting the impugned order of the First Appellate Authority confirming the order of assessment to be just and proper in the facts and circumstances of the case.

3. The learned Counsel for the Dealer submits that ET of ₹30,754.00 was inadvertently deposited under VAT, which should have been adjusted under OET Act by the Assessing Authority. He further submits that the materials purchased from local area should not have been levied with ET. He further submits that he has submitted seven numbers of challan showing deposit of ET, which requires due examination for adjustment. So, he prays for remand of the proceeding to the Assessing Authority for the interest of justice.

4. Per contra, the learned Standing Counsel (CT) for the State submits that the Assessing Authority and the First Appellate Authority rightly passed the order and the same requires no interference in appeal. He further submits that the Dealer fails to discharge in furnishing the required documents at the time of assessment and also in appeal. The Dealer wants to linger the proceeding by filing various documents at a belated stage to make the mockery of justice. So, he submits that the matter should not be remanded to the Assessing Authority for adjudication afresh.

5. Heard the rival submissions and gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on

record. The order of assessment reveals that the Dealer had submitted 10 nos. of challan for verification. Out of ten challans, two challans relates to the VAT instead of ET, three challans relates to prior to the assessment period and five challans were found in order. So, the Dealer is liable to pay tax of ₹61,439.00 besides twice penalty of ₹1,22,878.00. In appeal, the First Appellate Authority confirmed the order of assessment.

6. The Dealer claims that he had purchased materials like sand, soil, morrum, chips, metal and bajuri etc. for an amount of ₹35,21,435.00 from the local area and no ET is payable on the same. Proviso to Section 3(2) of the OET Act provides that no tax shall be levied under this Act on the entry of scheduled goods into a local area, if it is proved to the satisfaction of the Assessing Authority that such goods have already been subjected to entry tax or that the entry has been paid by any other person or dealer under this Act. So, it is crystal clear that the Dealer has to prove that the scheduled goods purchased by him have already suffered ET.

The Dealer further claims that the Assessing Authority did not provide sufficient opportunity to him to furnish all the material documents. It appears that the assessment was completed on 06.05.2019. The appeal order was passed on 29.06.2020. The Dealer also fails to produce the relevant documents before this forum to consider its claim on this score.

7. The Dealer further claims that the Dealer had deposited ET of ₹90,079.00 through different challans along with quarterly returns. The Dealer had produced seven numbers of challans including two challans of VAT payment of ₹30,754.00 inadvertently. He further claims that he had moved the appropriate forum for adjustment of payment made under VAT inadvertently. The Dealer shall produce all the documents relating to payment of ₹30,754.00 before the Assessing Authority for due examination and acceptance of the claim of payment in accordance with law.

As the matter has been remanded for verification of challans relating to ET payment and though the Dealer has not filed any document before this forum relating to the payment of ET on the scheduled goods purchased locally, so I feel it proper to extend an opportunity to the Dealer to produce the relevant documents regarding payment of ET on locally purchased goods (sand, bajuri, etc.).

8. The Assessing Authority shall verify the challans if the Dealer had deposited the ET amount inadvertently under VAT regime and payment of ET on the locally purchased goods like sand, chips, bajuri etc., then he will complete reassessment as per law. Accordingly, the Assessing Authority shall impose the penalty as per law basing on reassessment. Hence, it is ordered.

9. Resultantly, the appeal stands allowed in part and the impugned order of the First Appellate Authority is hereby set aside. The matter is remanded to the Assessing Authority for assessment afresh as per law keeping in view the observations made supra within a period of three months from the date of receipt of this order. The Dealer is instructed to appear and produce all the material evidences before the Assessing Authority for the aforesaid claims without fail or else the assessment order shall be allowed to stand. Cross-objection is disposed of accordingly.

**Dictated & Corrected by me**

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

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(G.C. Behera)  
Chairman**