

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

***S.A.No.213(ET) of 2018***

(Arising out of the order of the learned JCST,  
Bhubaneswar Range, Bhubaneswar in First Appeal Case  
No. AA(ET)-108111011000005/BHII/09-10, disposed of  
on 31.12.2012)

Present: **Shri G.C. Behera, Chairman**  
&  
**Shri B. Bhoi, Accounts Member-II**

M/s. Millenium Products & Services,  
Nayapalli, Bhubaneswar. ... Appellant.

**-Versus -**

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

For the Appellant : :Mr. A.K. Mahapatra, Ld. Advocate  
For the Respondent: :Mr. D. Behura, ld. S.C.(C.T.)

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Date of Hearing: 02.05.2023 \*\*\* Date of Order : 16.05.2023  
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**ORDER**

M/s. Millenium Products & Services, Nayapalli, Bhubaneswar  
TIN-21811108554 prefers this second appeal against the first appeal order  
dated 31.12.2012 passed by the Joint Commissioner of Sales Tax,  
Bhubaneswar Range, Bhubaneswar (in short, 'learned FAA') in First Appeal  
Case No. AA(ET)-108111011000005/BHII/09-10 confirming the order of  
assessment passed U/s.9 C of the OET Act by the learned Sales Tax Officer,  
Bhubaneswar-II Circle, Bhubaneswar (in short, 'learned 'STO') raising  
demand of ₹3,91,767.00 including penalty of ₹2,61,178.00 levied U/s 9 C(5)  
of the OET Act.

2. The facts in brief are as below:-

The dealer-appellant deals in fuel purifier and air cleaner on wholesale and retail sale basis effecting purchases from outside the state of Odisha. The dealer was assessed U/s. 9C of the OET Act for the assessment period from 1.4.2005 to 31.01.2007 basing on the Tax Audit Report. The dealer-appellant during the year under assessment had effected purchases of fuel purifiers and air cleaner to the tune of ₹65,29,451.96. There was no entry tax paid on the above purchases. The Id. Assessing Authority charged entry tax @2% on ₹65,29,451.96 which calculated to ₹1,30,589.00 and penalty levied of ₹2,61,178.00 U/s. 9C (5) of the OET Act. The first appeal as preferred by the assessee before the Ld. FAA resulted in no cost and the order of assessment was confirmed.

3. The dealer-appellant being not satisfied with the order passed in the first appeal filed second appeal at this forum. Mr. A.K. Mahapatra appearing on behalf of the dealer-appellant contends that levy of entry tax on purchases of fuel purifier and air cleaner treating the same as 'Machinery and Equipments' is bad in law and not maintainable in the eyes of law. In addition, it is argued that imposition of penalty U/s. 9C (5) of the OET Act is illegal and arbitrary. The learned Counsel appearing on behalf of the dealer-appellant submitted a copy of the judgment of the Hon'ble High Court of Odisha passed in STREV No.8 of 2023 in case of M/s Glamour, Cuttack Vs. State of Odisha and contends that the present case is in the ratio of the aforesaid judgment.

4. The Revenue filed the cross objection. It is averred that the entry 'Machinery and Equipments' includes two different category of goods in as much as equipments is altogether a different category even if used in the machinery or for running of machinery. As per the Hon'ble Madras High Court, since the entry included both machinery and

equipments and goods purchased and sold by the appellant normally fall within the category of equipments. Therefore, taxed @2% on the purchase value of the equipments is justified. It is also submitted that the penalty levied U/s. 9C (5) of the OET Act is statutorily mandated. Accordingly, levy of penalty by the Id. Assessing Authority and the same being confirmed by the Ld.FAA is justified.

5. The rival submissions are heard. The assessment order, first appeal order, grounds of appeal and the materials on record are perused at length. Here lays the facts primarily on issue whether fuel purifier and oil purifier which are brought in from outside the state of Odisha are schedule goods exigible to 2% of entry tax in terms of Entry No.9 in Part-II of the Schedule to OET Act. In this connection, on perusal of the first appeal order it is brought out that the entry Sl. 9 appearing in Part-II of the schedule to the OET Act which contains 'Machinery and Equipments' clearly encompass within its ambit all the machinery as well as equipments. In the present case, it cannot be denied that the goods purchased and sold by the appellant are equipments to be fitted in machinery running on oil fuel for the purpose of purifying oil as well as air. In other words, to secure the objective of purification of air, machineries running on oil fuel have to be equipped with the equipments purchased and sold by the appellant. Analyzing thus, it can be safely concluded that the goods purchased and sold by the appellant come under the category of 'equipments' for the purpose of purification of air and oil.

6. Going through the relevant Entry No.9 of Part-II of the Scheduled goods, it is evident that machinery and equipments including earthmovers, excavators, bulldozers and road-rollers and spare parts and components used in manufacture, mining, generation of electricity, or for execution of work contract or for any other purpose are subject to entry tax @ 2%. In the present context, it is told for certain that, as opined by

the learned Counsel representing the Revenue, Entry 9 of Part-II of the Schedule specifies 'Machinery and Equipments' as declared goods exigible to entry tax @2%. Since the Entry includes both machinery and equipments and the goods purchased and sold by the dealer-appellant normally fall within the category of equipments, it cannot be held that those are not scheduled goods. The decision cited supra in case of M/s. Glamour, Cuttack Vrs. State of Odisha is not applicable to the present fact and the circumstances of the case.

7. With the above discussion, we are inclined to hold that the contention of the learned Counsel of the dealer-appellant asserting fuel purifier and oil purifier as not declared goods is not tenable and the order of the Id. FAA confirming the order of the Id. Assessing Authority is upheld.

8. It is, therefore, ordered that the appeal filed by the dealer-appellant is dismissed and the order of the Ld. FAA is confirmed. Cross objection filed is accordingly disposed of.

Dictated & Corrected by me

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

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

**I agree,**

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