

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

**S.A. No. 11 of 2015-16**

(Arising out of the order of the learned JCST, Angul Range,  
Angul, in First Appeal case No. AA-138/DL/06-07  
disposed of on 30.12.2014)

**P r e s e n t: Shri G.C.Behera, Sri. S.K.Rout & Shri M.Harichandan,  
Chairman. Judicial Member-II Accounts Member-I.**

M/s.Tatra Udyog Ltd.,  
Southbalanda, Talcher, Angul. ... Appellant.

**- V e r s u s -**

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

For the Appellant ... Mr.K.R.Mohapatra, Adv.  
For the Respondent ... Mr.M.L.Agarwal, SC

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Date of hearing: **19.10.2022** \* \* \* Date of Order: **31.10.2022**  
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**O R D E R**

In this appeal, the dealer challenges the order dated 30.12.2014 passed by the learned Joint Commissioner of Sales Tax, Angul Range, Angul ( in short, ACST/FAA) in first appeal case No.AA/138/DL/06-07 thereby confirming the order of assessment dated 21.01.2006 passed by the learned Sales Tax Officer, Dhenkanal Circle, Angul (in short, STO/AO) under Section 12(4) of the OST Act for the period 2002-03 raising a demand of Rs.27,99,764.00.

2. The fact of the case is that the dealer is M/s.Tata Udyog Limited, South Balanda, Talcher, Angul having DL NO.4087 is engaged in trading of earth moving machineries i.e. Dumper, Spare parts, Accessories and effects purchase transfer from the branches situated at Tamilnadu and Bangalore on the basis of 'F' declaration forms. During course of assessment, the learned assessing officer found that the dealer

has purchased dumper, spare parts and accessories to the tune of Rs.4,74,50,014.74 from outside the State of Odisha. Such purchase/received stocks relates to spare parts and accessories of dumper valued at Rs.1,10,84,307.74. He further found that the dumper and its spare parts are classified as earth moving machinery under the OST Act. The dealer has disclosed GTO at Rs.4,29,30,323.06 inclusive of sales tax collected at Rs.31,49,902.80 and surcharge collected at Rs.4,06,634.77. During course of assessment, it was found by the learned assessing officer that the dealer has collected sales tax at the appropriate rate of 8% as the dumper has been classified as earth moving machinery as per Entry Sl. No.64 of List 'C' of OST Rate chart which reads "Earth moving machineries i.e. bulldozers, crawlers, shovels, wheeled loaders, scrappers, dumpers, tippers, motor grades but excluding trucks". As per Rule 3(1) of the OET Rules "goods specified in Part III of scheduled to the act shall be exigible to tax at the same rate as notified by the Govt. under the sales tax act for such goods subject to the maximum of 12%. Since dumper has been classified as earth moving machinery, it cannot be treated as motor vehicle as per entry No.2 of Part III of schedule. So the claim towards set off by the dealer while filing the return under the OST Act being not correct was rejected. So the learned assessing officer determined the entry tax payable @2% on dumper as per entry Sl.No.9 of Part II of schedule and no set off was permissible under Rule 19 of OET Rules.

3. Being aggrieved with such assessment, the dealer preferred first appeal before the learned JCST, Angul Range, Angul who confirmed the order of assessment.

4. Again being dis-satisfied with the order of the first appellate authority/JCST, Angul Range, Angul, the dealer has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection has been filed in the instant case by the state respondent.

6. Heard the contentions and submissions of both the parties in this regard. Learned Counsel appearing for the dealer appellant contended that the assessing officer has wrongly calculated the ET @2% on the entire purchase value considering the transaction of goods falling under entry serial No.9 of Schedule-II of the entry tax Act and disallowed the claim of set off of entry tax. Further contention on behalf of the dealer appellant is that the learned first appellate authority confirmed the demand as assessed by the STO under Section 12(4) of the OST Act without allowing the dealer appellant for set off of the entry tax as provided under Rule-18(1) of the ET Rules which is not maintainable in the eye of law.

7. Per contra, learned Standing Counsel for the revenue supported the orders of fora below stating that both the fora below have rightly passed orders basing on the statutory provisions under the Act and Rules and that sufficient opportunity have already been afforded to the dealer appellant to render natural justice.

8. From the rival contentions of the parties, the sole question that emerges for adjudication is whether the dealer appellant is entitled for set off?

On this score, the contention of the dealer appellant is that set off should be allowed as per Rule 18 of the OET Rules as he claims the goods to be motor vehicles and not machinery. On perusal of the case record, it becomes quite evident that the goods have been brought by way of branch transfer. So, as per the provisions of Section 3 read with provision of Section 2(j) of the Act, the appellant is liable to pay tax on sale of goods. The set off of entry tax is allowable under the OST Act as per the clause (b) of Note 1 appended to taxable list vide F.D. Notification No.14687-CTA-37/2001 (pt).F. dtd.31.03.2001 issued under Section 5(1) of the OST Act which is as follows:

“Note-1-(b) The amount of tax payable in respect of goods specified in Part III of the Schedule to the Odisha Entry Tax Act, 1999... shall be reduced by the amount of Orissa Entry Tax paid on such goods under Orissa Entry Tax Act, 1999 and the rules made there under.”

Note 2 : The set off tax as provided in Note 1 above shall be regulated subject to the following conditions.

(ii) The amount of set off claimed against payment of tax under the Orissa Entry Tax Act, 1999 shall be limited to the OST payable on sale of such goods.”

Such fact is to be read along with the provisions of the OET Act i.e. Section 3(3) , proviso to 2(j), Section 4 and Rule 3(1) and Rule 18 of the said Act. So the harmonious reading of aforesaid provisions contained in the OST Act and the OET Act coupled with terms of the Finance Department Notification leads to conceive that as much entry tax is paid by the dealer at the time of entry of the vehicles into the local area, the same amount is recouped by way of set off against sales tax payable.

The ET has to be recouped by way of addition in the sale price and subsequently equivalent amount of entry tax has to be availed as set off from the “sale price” (defined in Section 2(h) of the OST Act read with proviso 2(j) of the OET Act.)

That for better appreciation of the modality of the calculation of tax and set off under the Act should be as follows:

Sales price of the goods sold	‘A’
Entry tax on the above	‘B’
Total sale price	‘C’ (A+B)
Sales tax @ prescribed u/s.5(1)	‘D’
Surcharge u/s 5A @10 on ‘D’	‘E’ (10% of ‘D’)
Total sales tax payable	‘F’ (D+E)
Less : Entry Tax paid	‘B’
Net tax liability under the OST Act	‘G’ (F-B)

Such method and mode of calculation is in conformity with what has been set at rest by the Hon'ble Supreme Court in the case of Commissioner of Commercial Taxes Vrs. Bajaj Auto Ltd., (2017) 97 VST 24 (SC). The Hon'ble Apex Court has been pleased to hold as follows:

“ 20.. Section 5 of the OST Act provides for rate of sales tax. Section 5A of the OST Act levies surcharge on the dealer which is nothing but an additional tax. Therefore, on a plain reading of the provisions under the OST Act as well as under the OET Act, a dealer is not entitled for reduction of the amount of entry tax from the amount of tax payable before the levy of surcharge under Section 5A of the OST Act. A harmonious reading of Rule 18 of the Rules as well as sections 4,5, 5A of the OST Act reveals no conflict or inconsistency—

21. Section 5A of the OST Act is self contained provision and the surcharge, as already seen above, is leviable at the specified per centum of tax payable under the OST Act. Tax payable under the OST Act is independent of the provisions of OET Act. The assessment or quantification or computation of surcharge shall have to be made in accordance with the provisions of the OST Act.

22. Thus, on a conjoint reading of Section 5 of the OST Act, Section 4 of the OET Act and Rule 18 of the Rules, we are of the considered opinion that the amount of surcharge under Section 5A of the OST Act is to be levied before deducting the amount of entry tax paid by a dealer.”

In view of the above analysis, coupled with the settled position of law, to our considered view, the matter should be remanded back to the learned assessing officer for reassessment and set off as per law.

9. In the result, the appeal is allowed in part and the case is remanded back to the learned assessing officer for reassessment and set off in accordance with law as per the observations made above which is to be done within a period of three months of receipt of this order after

giving a reasonable opportunity to the dealer of being heard. Accordingly, the cross objection is disposed of.

Dictated and Corrected by me,

Sd/-

**(Shri S.K.Rout)**  
**Judicial Member-II**

Sd/-

**(Shri S.K.Rout)**  
**Judicial Member-II**

**I agree,**

Sd/-

**(Shri G.C.Behera)**  
**Chairman**

**I agree,**

Sd/-

**(Shri M.Harichandan)**  
**Accounts Member-I**