



2. The brief facts of the case are that, the appellant-dealer deals in processing of cashew kernels from cashew nuts which are scheduled goods under the OET Act. In its business the appellant-dealer maintains purchase, sale and stock registers so also the purchase invoices and sale bills. The appellant-dealer had filed self-assessed returns for the tax period from 01.04.2012 to 31.03.2012 as prescribed u/s.9(1) of the OET Act. On receipt of a verification report dtd.13.09.2013 submitted by the ASTO in connection with purchase of goods from outside the State of Odisha it was learnt that Entry Tax was not paid for which the learned DCST initiated proceeding u/s.10 of the OET Act against the appellant-dealer by issuing notice in form E-32. In response to the notice the authorized representative of the appellant-dealer appeared and produced the books of account before the learned DCST for the above tax period which were fully examined. During assessment, the appellant-dealer was confronted with the contents of the verification report. The ASTO had cross verified the interstate purchases and sales effected by the appellant-dealer in VATIS checkgate module vis-à-vis the periodical returns filed for the period under assessment and found that the appellant-dealer had purchased cashew nuts valued at Rs.11,76,672.00 from Kerala to Odisha but had not paid Entry Tax on purchase of such goods from outside the State. On confrontation the authorized representative of the appellant-dealer stated before the learned DCST that they had made finished goods out of raw cashew nuts purchased from outside the State and paid Entry Tax on sale of finished goods. But the learned DCST was

not convinced with the contention of the authorized representative of the appellant-dealer on the ground that as per Sl. No.20 of Part-II of the schedule under OET Act the appellant-dealer is liable to pay entry tax @ 2% on such purchase of scheduled goods from outside the State of Odisha. It was also noticed by the learned DCST that the appellant-dealer had effected intrastate sale of cashew kernel amounting to Rs.2,57,250.00 during the period under assessment but had not deposited entry tax within due date. Accordingly, the learned DCST completed the assessment to the best of judgment determining the gross turnover as well as taxable turnover at Rs.14,33,922.00 including purchase and sale transactions. The learned DCST computed Entry Tax payable at Rs.28,678.44 by levying tax @ 2% on the TTO determined. As the appellant-dealer had deposited Entry Tax of Rs.5,145.00 through challan, the learned DCST calculated the balance tax payable at Rs.23,533.00 after allowing such deduction of payment already made. The learned DCST also imposed two times penalty amounting to Rs.47,066.00 u/s.10(2) of the OET Act. Besides, the learned DCST also calculated interest of Rs.925.00 u/s.7(5) of the OET Act for delayed payment of admitted tax amounting to Rs.5,145.00. Thus, the learned DCST raised total demand of Rs.71,524.00 which the appellant-dealer was supposed to pay.

3. Being aggrieved by the order of the learned DCST, the appellant-dealer preferred an appeal before the learned JCST who confirmed the order of the learned DCST. Being further aggrieved by the order of the learned JCST the appellant-dealer has preferred the second appeal.

4. The appellant-dealer has come up with the second appeal on the grounds that the assessment u/s.10 of the OET Act is not based on the facts and realities of the case; the appellant-dealer had made purchase of raw cashew nuts from out of State but not the packaged cashew nuts as mentioned in Sl. No.20 of Part-II of the schedule of goods of OET Act for which the appellant-dealer is not liable to pay entry tax on the goods purchased; that the OET schedule Part-II Sl. No.20 includes dry fruits, jam, potato chips, packaged cashew nuts and pickles which are ready to eat and no raw material is included in Sl. No.20 for manufacturing of finished goods; that the appellant-dealer is a manufacturer and had paid Entry Tax on sales. An item cannot be taxed twice but the assessing officer had calculated GTO and TTO by adding purchase of raw material and sale of finished goods by imposing tax thereon; that the appellant-dealer had duly produced and submitted the purchase account, sale account, stock account and manufacturing account at the time of hearing and had a single invoice of outside purchase. There is no inside purchase for which the question of separate account of outside State and inside State is meaningless; that both the fora below have not used basic concept of OET Act and have not gone through the papers submitted by the appellant-dealer.

Cross objection has been filed by the Revenue supporting the impugned order.

5. Due to non-appearance of the appellant-dealer the appeal is heard exparte but on merit.

6. Heard learned Standing Counsel for the respondent-Revenue. Perused the orders of both the fora

below, the grounds appeal and the materials available on record. From the materials available on record it is seen that the appellant-dealer failed to provide any documentary evidence in support of its claim that there was earlier payment of tax on the scheduled goods on which the learned DCST had taxed. The contention of the appellant-dealer is that the dealt item is not packaged cashew nuts which is not coming under the Sl. No.20 of Part-II of the scheduled goods of OET Act. But its claim is not justified because raw cashew nuts is dry fruit itself. The appellant-dealer also failed to substantiate its claim in its written argument. The imposition of penalty is proper. However, when two times penalty was imposed levy of interest was not warranted. In view of such discussion it is necessary to remand the case to the learned DCST for necessary computation by deleting interest but it is undesirable to interfere with the rest part of the impugned order. Hence it is ordered.

7. The appeal is allowed in part and the impugned order is modified to the extent indicated above. The matter is remanded to the learned DCST for necessary computation by deleting the interest levied which is to be completed within a period of three months from the date of receipt of this order in view of the aforesaid observation. The cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-  
(A.K. Dalbehera)  
1st Judicial Member

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