



2. The brief facts of the case are that :

The appellant is a dealer in trading of industrial equipments, welding rods, electrodes, welding machines and its spare parts, hardware goods, electrical goods etc. on wholesale and retail basis. For the purpose of business, it purchases schedule goods within the State as well as from outside the State of Odisha. In regular course, its business was audited by a team of the C.T. Department on dt.20.07.2009 for the tax periods from 01.04.2005 to 20.07.2009. After examining all the facts, the audit team submitted their report that, the dealer has not added transportation and freight charges in purchase value of schedule goods and has paid entry tax @1% in stead of 2% on Rs.7,95,486.14. Basing on the said audit report, the Assessing Officer had initiated assessment proceedings u/s.9 C of the OET Act for the period from 01.04.2005 to 31.07.2009. At the assessment stage, on examination of return figures along with books of accounts, the Assessing Officer found that, the dealer has disclosed total purchase of schedule goods at Rs.14,24,94,948.53, out of which Rs.6,17,08,307.45 relates to tax suffered purchase within the State and balance Rs.8,07,86,641.08 being the taxable turnover. Accordingly, the dealer had admitted entry tax payable at Rs.8,70,226/-. On confrontation of the allegations made in the audit report, the dealer had stated before the learned Assessing Officer that, due to ignorance of law, he has not included the transportation and freight charges in purchase value. So, the learned Assessing Officer has estimated such expenses at Rs.14,59,530/- as per the audited financial statement and added to the return figures. Similarly, regarding wrong classification of tax rate, the dealer stated before the Assessing Officer the same reason. So, the learned Assessing

Officer has rectified the purchase value Rs.7,95,486.14 @2% instead of 1%. Accordingly, the learned Assessing Officer has determined the Gross Turnover at Rs.14,39,54,478.53. After allowing deduction of Rs.6,23,25,390.53 towards purchase of tax suffered goods within the State, the Taxable Turnover has been determined at Rs.8,16,29,088/-. Tax payable has been computed at Rs.9,23,689.69 i.e. @1% on Rs.7,08,89,206.40 and 2% on Rs.1,07,39,881.60. He has adjusted tax payment of Rs.86,408/- and tax payable has been arrived at Rs.8,37,281.69. At the same time, the learned Assessing Officer has levied penalty Rs.16,74,563.38 u/s.9C(5) of the OET Act and passed the assessment order raising total demand at Rs.25,11,845/-.

3. Being aggrieved by the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Joint Commissioner of Sales Tax, Koraput Range, Jeypore, who in turn, dismissed the appeal and confirmed the order of assessment and the demand raised by the LAO remained unchanged.

4. Being further aggrieved with the order of the learned FAA/JCST, Koraput Range, Jeypore, the dealer knocked the door of this Tribunal by way of filing of second appeal with the contention that, the order passed by the Id.FAA/JCST is illegal, arbitrary and in contravention of law and hence needs to be quashed.

5. Cross objections has been filed by the State-respondent in this case.

6. Despite due service of notice on the dealer, for reasons best known to him, he neither engaged a counsel nor anybody on his behalf remained present before this Tribunal on the schedule date of hearing. This Tribunal, therefore, left with

no other alternative except to hear the argument of Mr. D. Behura, learned Standing Counsel appearing on behalf of the State and to dispose of the matter on ex-parte basis.

7. Perused the assessment order as well as first appeal order, all the materials available in the record, grounds of appeal submitted by the dealer-appellant. During the course of hearing, Mr. Behura, Standing Counsel for the State argued that, the order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer, which is not sustainable in the eyes of law. The learned Assessing Officer and learned FAA have rightly completed assessment/appeal basing on the statutory provisions under the Act and Rules. The dealer has failed to provide any documentary evidence of F.O.R. delivery by the seller. The Hon'ble Apex Court has stayed the part which actually forbids the State to levy collect tax and penalty. So, it is imperative on the part of the State to impose penalty in this case. Besides that, as per Sec.9C(5) penalty is mandatory in nature. So, the order of the learned FAA is justified. Hence, the grounds taken by the dealer-appellant are liable to be rejected in toto. The learned Standing Counsel has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA

8. Heard the learned Standing Counsel, Mr. D. Behura on behalf of the State in absence of participation of the dealer in hearing of this appeal. Gone through the grounds of appeal, the impugned orders of appeal and assessment and arguments of the learned Standing Counsel at the time of hearing. The dealer has not adduced any evidence on his behalf nor has he appeared before this Tribunal to substantiate the grounds of appeal filed by him. No reasonable excuse is also explained by the dealer. It is

also observed that the dealer neither participated himself nor through his counsel and no documentary evidence was produced before this Tribunal. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, we are of the considered opinion that, the argument advanced by the learned Standing Counsel is quite genuine and satisfactory. Accordingly, it is ordered.

The appeal filed by the dealer is dismissed. The order of the learned First Appellate Authority is hereby confirmed. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated and Corrected by me,

Sd/-  
(Sweta Mishra)  
2<sup>nd</sup> Judicial Member

Sd/-  
(Sweta Mishra)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(A.K. Das)  
Chairman

I agree,

Sd/-  
(S. Mishra)  
Accounts Member-II