

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,  
CUTTACK.**

**S.A.No. 23(ET)/2017-18**

(From the order of the Id.JCST (Appeal), Sundargarh Range, Rourkela,  
in Appeal No. AAV.30 ET of 2012-13, dtd.29.12.2015, confirming the  
assessment order of the Assessing Officer)

**Present: Sri S. Mohanty  
2<sup>nd</sup> Judicial Member**

M/s. Hiralal Company & A.N. Trading,  
J.J.-18, Civil Township,  
Rourkela, Dist. Sundargarh. ... Appellant

**-Versus-**

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

For the Appellant : None  
For the Respondent : Mr. S.K. Pradhan, ASC (C.T.)

(Assessment Period : 01.02.2010 to 31.03.2011)

---

Date of Hearing: 20.11.2018 Date of Order: 20.11.2018

---

**ORDER**

This appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (in short, FAA/JCST) in First Appeal Case No. AAV.30(ET) of 2012-13 dtd.29.12.2015 in confirming the order of assessment passed by the learned Sales Tax Officer/Assessing Authority, Rourkela-II Circle, Panposh (in short, STO/AA) for the assessment period from 01.02.2010 to 31.03.2011 u/s.10 of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. In nutshell, the facts giving rise to the present appeal are :  
Consequent upon re-opening of the assessment invoking u/s.43 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) for the tax

period 01.02.2010 to 31.03.2011 relating to the dealer's unit, proceeding u/s.10(1) of the OET Act was also initiated for the self-same tax period basing the self-same allegations by the AA. The escaped assessment under examination being proved in the proceeding u/s.43 of the OVAT Act, GTO and TTO of the dealer were re-determined and the escaped turnover was assessed at Rs.5,13,791/-. Consequently, the GTO and TTO was determined in the proceeding u/s.10(1) of the OET Act, which resulted in imposition of tax of Rs.10,687/-. Penalty u/s.10(2) over the same at Rs.21,374/- was added and thereby the total demand raised to Rs.32,061/-.

3. In appeal before the Id.JCST, at the instance of the dealer, the appellate authority vide impugned order also passed a consequential order by re-determining the tax liability basing the escapement established in VAT appeal before the FAA.

When the matters stood thus, the dealer has challenged the impugned order in this appeal with the contentions like, the determination of escapement of turnover is erroneous and imposition of penalty is illegal. Besides, it is also contended that the order of the FAA was passed ex-parte. So, the dealer has not availed the opportunity of being heard.

4. The appeal is heard with cross objection from the side of the State. In the cross objection, State has supported the findings of the FAA.

5. Here in this appeal, the facts admitted are, there was re-opening of the assessment under VAT proceeding as well as under OET proceeding, the AA has determined the escaped turnover at Rs.5,13,791/-. In accordance to that, VAT was imposed and the entry tax liability was consequential to that additional VAT. In appeal, the FAA reduced the escaped turnover of Rs.73,565/- and re-determined

the liability under VAT Act. In a similar fashion the connected Entry Tax Act was also decided accepting the escaped turnover at Rs.73,565/-. Thereafter, the dealer has preferred appeal before this Tribunal. The order passed by the FAA under OVAT Act was challenged in S.A.No.135(V)/2017-18 and it was decided on dtd.28.06.2018. The present appeal is the consequence to the order passed in VAT. The order passed by this Tribunal in Second Appeal No. 135(V)/2017-18 mentioned above is reportedly not questioned by either side before the higher forum. In that event, the irresistible conclusion is, the escapement of turnover as decided and accepted by the parties i.e. at Rs.73,565/- is the basis to calculate the entry tax liability. If that be, the impugned order being suffered from no illegality needs no interference. Accordingly, it is ordered.

The appeal be and same is dismissed as of no merit.

Dictated and Corrected by me,

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member