

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

S.A.No. 89(V)/2013-14

(From the order of the Id.DCST (Appeal), Balasore Range, Balasore,
in Appeal No. AA-238/MB 2006-2007 (VAT), dtd.08.03.2013,
confirming the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

M/s. Friends Syndicate,
Prop. Sanjay Kumar Agarwalla.

... 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 : 01.05.2006 to 31.05.2006)

Date of Hearing: 19.11.2018

Date of Order: 19.11.2018

ORDER

When a proceeding u/s.34(3) of the Odisha Value Added Tax Act, 2004 initiated by the Assessing Officer/Sales Tax Officer, Mayurbhanj Circle, Baripada (in short, AA) when penalty of Rs.3,600/- was imposed and thereafter the first appeal preferred by the aggrieved dealer before the First Appellate Authority/Deputy Commissioner of Sales Tax, (Appeal), Balasore Range, Balasore (in short, DCST) is dismissed, the order of the FAA became impugned in this second appeal before this Tribunal.

2. The appellant-dealer was prosecuted for non-filing of return from tax period 01.05.2006 to 31.05.2006 in time. Showcause notice was issued to the learned STO and in the proceeding when the

dealer failed to assign any sufficient reason for non-filing of return in time, the Id.STO imposed penalty invoking penalty u/s.34(3) of the OVAT Act to the tune of Rs.3,600/-.

3. The order was challenged by the dealer before the FAA, who in turn, also confirmed the order of the STO thereby, the penalty imposed remained as it was. This led the dealer to file this present appeal on the following grounds. The order of the fora below is without application of mind. Proper opportunity of being heard was not provided to the dealer by the FAA and the penalty as arisen, there is no *mens rea* behind delay filing of the return. So, the penalty imposed should be reversed.

4. The appeal is heard ex-parte since the appellant-dealer himself did not choose to contest the appeal.

5. Gone through the impugned order and the grounds of appeal. It is undisputed that, there was delay in filing return by the dealer. The only plea filed by the dealer is, there was sufficient cause for the dealer for delay filing of the return. As per the impugned order, the dealer could not furnish any document of his illness. However, it is found that, the dealer has found the Xerox copies of the certificate issued by a medical practitioner showing his illness. The authenticity of the Xerox copy of the document is vehemently disputed by the learned Addl. Standing Counsel, Mr. Pradhan. In absence of the original certificate and without proof of the same, it is unsafe to accept the said document to be genuine. Moreover, if the certificate was there with the dealer, he should have or could have file same before the AA or before the FAA. There is no restriction for production of the evidence at the stage of second appeal but non-production of the same before the fora below and withholding the same for long period for no reason, cast doubt on the genuineness of the document, which leads to bona-

vide question of fair play by the dealer. Thus, it is held that, the dealer has miserably failed to explain the delay in filing return. Consequently, it is held that, the penalty imposed by the fora below calls for no interference. Accordingly, it is ordered.

The appeal sans merit and hence dismissed.

Dictated and Corrected by me,

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

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