

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

S.A.No. 358/2007-08

(From the order of the Id.ACST, Koraput Range, Jeypore,
in Appeal No. AA (KOI) 19/2004-05, dtd.29.03.2007, confirming
the assessment order of the Assessing Officer)

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

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

.... Appellant

-Versus-

M/s. Parbati Distributors,
Jeypore.

... Respondent

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

(Assessment Period : 06.12.2002 to 31.03.2003)

Date of Hearing: 29.11.2018 *** Date of Order: 29.11.2018

ORDER

The only question to be decided in this appeal is: Whether the authority below is right in confirming the order of the learned Sales Tax Officer/Assessing Authority, Koraput-I Circle, Jeypore (in short, STO/AA) thereby imposing penalty on the dealer u/s.9-B(3)(a)(ii) of the Odisha Sales Tax Act, 1947 (in short, OST Act) for the reason that, the dealer has by mistakenly collected tax on sale of first point tax paid goods and reflected the same in his regular return. It is the AA, on scrutiny of the return of the dealer for the assessment period 06.12.2002 to 31.03.2003 found that, the dealer has collected OST @8% on sale of medicines and disclosed the same in his GTO. However, the goods are first point tax paid goods and as per law it was

not exigible to tax on sale inside the State. The extra tax and surcharge collected by the dealer to the tune of Rs.10,943/- which was added to the GTO by the dealer was considered to be an illegality committed by dealer. It was treated as collection of amount by way of tax in excess of the amount payable by him as tax under the Act and then the authority imposed penalty of Rs.2,500/- in addition to the tax and surcharge of Rs.10,943/- thereby, the total demand on the dealer raised to Rs.13,443/-.

2. The matter was carried before FAA by the dealer with a plea that, the dealer was innocent. He has no evil design to collect extra tax. It is simply with an impression that, he has collected tax under the OST Act and paid the same to the taxing authority showing the amount in his regular return. The FAA in consideration of the dealer's plea deleted the penalty as imposed by the AA.

3. Being aggrieved with such deletion of penalty, State has come up with this second appeal. The plea of the State in this appeal are : the appellant has wrongly collected tax on the goods which were levied with tax on the first point of purchase and when the dealer purchased the same it carries the character of first point tax paid goods. So there was no scope further for the instant dealer to collect tax on sale of such goods inside the State. However, because the dealer has collected the tax in that case his action is violative of Sec.9-B(a)(ii) of the OST Act.

4. The appeal is heard ex-parte since the dealer did not turn up to the notice of the hearing of this appeal.

5. As narrated above here in this case, the dealer was dealing with medicines, which are first point tax paid goods. As such he was not required to collect any further tax on subsequent sale of goods inside the State. But the dealer has mistakenly collected tax and

shown the same in his return. It is not the case that, the dealer has collected excess amount to enrich himself. Such collection by the dealer is nothing but amounts to enrich the taxing authority and it was a bona-fide mistake by the dealer. The provision under which the dealer has been penalized reads as follows :

9-B. Collection of tax by dealer –

- (a) Where any person –
xxx xxx xxx xxx
- (ii) being a registered dealer realizes any amount by way of tax in excess of the amount payable by him as tax under this Act.

the Commissioner may, notwithstanding anything contained in this Act, direct that such person shall pay in the prescribed manner, by way of penalty, a sum not exceeding thrice the amount so realized by such person”.

The bare reading of the provision above, as it revealed, when the dealer was found to have collected excess amount than the exact tax amount, then he should be penalized. Here the dealer has not collected any excess amount but simply he has collected the tax and deposited the tax before the taxing authority, which should not have been collected or deposited. In that view of the matter, it is believed that, the order of the FAA suffers no illegality and the dealer is not found guilty u/s.9-B(a)(ii).

In the result, it is held that, the appeal sans merit, hence dismissed.

Dictated and Corrected by me,

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

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(S. Mohanty)
2nd Judicial Member

