BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 53 (ET) of 2017-18

(Arising out of order of the learned JCST, Jajpur Range, Jajpur Road, in Appeal No. AA- 554 CUIII (ET)/14-15, disposed of on 25.03.2017)

Present: **Shri G. Sharma, Chairman**

M/s. Visa Bao Ltd.,
Kalinga Nagar Industrial Complex,
Jakhapura, Jajpur ... Appellant

-Versus-

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

For the Appellant : Sri P.K. Jena, Advocate
For the Respondent : Sri N.K. Rout, Addl. S.C. (CT)

Date of hearing: 27.10.2025 *** Date of order : 01.11.2025

O R D E R

Challenging the legality and propriety of order dated 25.03.2017 passed by the Joint Commissioner of Sales Tax, Jajpur Range, Jajpur Road (hereinafter referred to as 'First Appellate Authority') in Appeal No. AA- 554 CUIII (ET)/14-15, this appeal has been filed by M/s. Visa Bao Ltd. (hereinafter referred to as 'Dealer').

2. The brief facts relevant for disposal of this appeal run thus–

The Dealer is engaged in manufacturing of High Carbon Ferro Chrome for sale. Basing on Audit Visit Report (AVR), the Sales Tax Officer, Jajpur Circle, Jajpur Road (hereinafter referred to as 'Assessing Authority') initiated the assessment proceeding u/s. 9C of

the Odisha Entry Tax Act, 1999 (in short, 'OET Act') for the period 01.04.2011 to 31.03.2013. The Assessing Authority taking into consideration the allegations raised in the AVR completed the assessment holding the Dealer liable for payment of ET on the capital goods imported from outside the country. Consequently, he raised additional tax demand of ₹94,64,898.00 including penalty on the Dealer after allowing due credit of tax already paid for the period under dispute. Being aggrieved with the order of assessment, the Dealer preferred first appeal before the learned First Appellate Authority. The First Appellate Authority confirmed the assessment and dismissed the appeal in *ex parte*, hence this appeal.

3. The State filed cross-objection.

4. Learned Counsel appearing on behalf of the Dealer submitted that due process of law has to be followed for collection of ET on imported goods, but the Assessing Authority has not adopted proper manner for such collection of ET as per the provisions of law so also the First Appellate Authority has mechanically confirmed the demand raised by the Assessing Authority in *ex parte* order without applying judicial mind. He further submitted that the Assessing Authority while completing the assessment besides levying ET on the imported goods, imposed penalty @ 200% of the tax demand, which is unlawful in view of the decisions of the Hon'ble Apex Court and liable to be deleted. He fairly pleaded that as per the ratio laid down by the Hon'ble High Court of Orissa the Dealer is liable to pay the interest of ₹8,95,609.00 @ 9% on the delayed payment of ET as per the calculation furnished in the written submission. Accordingly, the learned Counsel urged for direction to the authorities below for deletion of penalty and collection of ET as per settled law by modifying the impugned order. To buttress the argument, learned Counsel relied on the decisions of the Hon'ble

Apex Court in the case of ***Jindal Stainless Ltd. & another v. State of Haryana & others***, **AIR 2016 SC (Weekly) 5617**; and ***State of Kerala & others v. Fr. William Fernandez Etc.***, **[2018] 57 GSTR 6 (SC)**; and decision of the Hon'ble High Court of Orissa in the case of ***Shree Bharat Motors Ltd. & others v. Sales Tax Officer & others***, **[2023] 115 GSTR 163 (Orissa)**.

5. Per contra, learned Addl. Standing Counsel (CT) appearing for the State supported the orders of the Assessing Authority and First Appellate Authorities on the ground that the Dealer is liable to pay ET in view of the verdict of Hon'ble Apex Court upholding levy of ET on the goods purchased from outside State/country. He further submitted that as the statute mandates penalty, there is no question of proving *mens rea* for such imposition, and thus, imposition of penalty is potentially valid as per settled law. He argued that the authorities below went wrong in not imposing interest as per the statutory provision. Therefore, the learned Addl. Standing Counsel (CT) pleaded to modify the order of the First Appellate Authority on this score.

6. On perusal of record, it transpires that the present assessment proceeding u/s. 9C of the OET Act relates to the period 01.04.2011 to 31.03.2013, which was completed on 21.11.2009 by the Assessing Authority basing on the AVR, making the Dealer liable to pay ET on capital goods imported from outside the country besides penalty. In appeal, the First Appellate Authority confirmed the assessment in *ex parte*. Before this forum, the Dealer basically prayed for quashing of penalty imposed by the authorities below on the ground that levy of ET on the goods imported from outside the country was not settled till the decision of the Hon'ble Apex Court in the case of ***Fr. William Fernandez*** cited supra, for which the Dealer did not pay ET on the same. Furthermore, the Dealer has already discharged the ET liability

on imported goods by 16.02.2018 in phased manner. The fact remains that levy of ET on imported goods from outside the country was in fluid stage and pending for decision in the different Hon'ble High Courts including Hon'ble Apex Court and finally the Hon'ble Apex Court settled the law in the case of ***Fr. William Fernandez*** cited supra holding the dealers are liable to pay ET on such imported goods. In the case of ***CCE, Vishakhapatnam-III v. Andhra Pradesh Paper Mills Ltd.***, reported in **2015 (319) ELT 554 (SC)**, the Hon'ble Apex Court have been categorically observed that when conflict of judicial opinion existed, penalty should not be imported. Having regard to the aforesaid dictum of the Hon'ble Apex Court, this forum is of the humble opinion that levy of two times penalty on the tax due by the Assessing Authority and confirmed by the First Appellate Authority is not sustainable in law and liable to be deleted.

As regards levy of interest, as candidly admitted by the Dealer to pay the interest, it is settled principles of law that liability to pay interest arises by operation of law, and thus, levy of interest is automatic when the Dealer fails to discharge the liability to pay due tax in time. Therefore, in my humble opinion, payment of interest shall be computed by the Assessing Authority as per the provision of law while issuing demand notice afresh by deleting penalty as observed in the preceding paragraph. Accordingly, the matter requires to be remanded to the Assessing Authority for the above reasons.

7. In the result, the appeal filed by the Dealer stands allowed and the impugned order of the First Appellate Authority confirming the assessment for the period under dispute is hereby modified to the extent of deletion of penalty and levy of interest. The matter is remanded to the Assessing Authority for computation of tax liability of the Dealer afresh as per law keeping in view the observations made supra within a

period of three months from the date of receipt of this order. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman