

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.
S.A.No. 107(ET)/2019**

(Arising out of order of the Id.Addl. CST(Appeal), Central Zone,
Odisha, Cuttack, in First Appeal Case No. AA-02-CUIC/2016-17,
disposed of on dtd.21.08.2019)

P R E S E N T :

**Smt.Sweta Mishra
2nd Judicial Member**

M/s. TTK Prestige Limited,
At- Professorpara, Dist. Cuttack. Appellant

-Versus-

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

For the appellant : Mr. G.S. Mohanty, Advocate
For the respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.04.2012 to 31.03.2014)

Date of Hearing: 24.09.2021 *** Date of Order: 30.09.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), Central Zone, Cuttack, Odisha (in short, FAA/Addl.CST) passed in First Appeal Case No. AA-02-CUIC/2016-17 dtd.21.08.2019 in which order of assessment was confirmed for the assessment period from 01.04.2012 to 31.03.2014 U/s.9(C) of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. The brief facts of the case are that :

The dealer in the instant case is a limited company engaged in the trading of pressure cooker, gas stove, nonstick

wares, water purifier and electrical home appliances of “Prestige” brand. The dealer-appellant has been assessed to a tax demand of Rs.19,30,878/- including penalty for the period 01.04.2012 to 31.03.2014 basing upon the finding of the Tax Audit Report submitted by the learned DCST, Cuttack-I City Circle, Cuttack.

3. Being aggrieved with the order of assessment, the dealer-appellant preferred first appeal before the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), Central Zone, Cuttack, Odisha, who in turn, dismissed the appeal and the assessment order was confirmed.

4. Being further aggrieved with the order of the learned FAA/ACST, Central Zone, Cuttack, the dealer knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the ld.FAA/ACST is illegal, arbitrary and in contravention of law and hence needs to be quashed.

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

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned First Appellate Authority. He has vehemently argued that, both the assessment order and appeal order are contrary to law and facts on record. The dealer appellant is registered under the Companies Act, 1956. During the period under appeal, the learned FAA without applying his mind, confirmed the order of assessment only following the foot prints of the Assessing Officer, which is not only arbitrary but also amounts to double taxation, which is strictly prohibited under the Constitution of India, hence the order should be quashed. In the instant case, the appellant

company is a branch of M/s. TTK Prestige Ltd., which corporate office situated at Bangalore in the State of Karnataka. Therefore, they receive the aforesaid products from their corporate office on stock transfer basis. During the period under consideration, the appellant company is only liable to pay Odisha Entry Tax Act, u/s.2(j) of the OET Act i.e., “in relation to proviso of Sec.2(j) of the OET Act, the purchase value shall be determined on the basis of the sale value excluding VAT. In this regard the clarification dtd.21.04.2018 of the Id.Commissioner of CT and GST, Odisha, is enclosed herewith for perusal and necessary records”. When under the OVAT Act the Revenue did not raise any objections of collecting tax under OVAT Act on the distribution of free goods for sales promotions, then under such circumstances, question does not arise at all about the imposition of tax and penalty under Odisha Entry Tax Act only because there is no such sales proceeds of the goods under consideration as per the proviso u/s.2(j) of the OET Act. At the same time, the dispute raised by the forums below in connection with the warranty replacements of goods under consideration, it is submitted that, in the case of the warranty replacement, no further sales proceeds has been taken place. Therefore, question also does not arise at all for imposition of tax and penalty under OET Act. The learned Advocate for the dealer has cited two case laws of Hon’ble Orissa High Court as follows :

“Taxes are the life blood of any Government, but it cannot be overlooked that such blood is taken from the arteries of the tax payer and therefore, the transaction is to be accomplished in accordance with the principles of justice and goods conscience. Tax authorities would do well to keep these accepts in mind, while adjudicating any matter.” (Larsen Toubro Limited Vrs. State of Orissa & Others (1998) 111 STC 75)

AND

“Government Central or State, can not be permitted to play dirty games with the citizens of this country to coerce them in making payments which the citizens were not legally obliged to make.” (Chowhan Machinery Mart Vrs. State of Orissa (2009) 19 VST 178 (Ori).

The learned Advocate for the dealer has prayed before this Tribunal to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing learned Addl. Standing Counsel, Mr. Pradhan for the State argued that, the grounds raised in the appeal petition in the appeal filed by the dealer-appellant are misconceived and liable to be dismissed in toto. The learned FAA has rightly confirmed the order of the learned DCST on the basis of the factual position and as per the provision of law. The dealer neither appeared before the learned FAA nor produced the documentary evidence to substantiate his claim. Hence, in the absence of proper documentary evidence, the learned FAA has rightly confirmed the order of the ld.DCST as per the facts and circumstances of the case. Hence, the grounds taken by the dealer in this regard is devoid of fact and law, may be rejected. The penalty u/s.9(c)(5) of the OET Act, 1999 is statutorily mandated. Learned DCST has rightly imposed penalty u/s.9(C)(5) of the OET Act, which is rightly upheld by the learned FAA. The order of the learned FAA is crystal clear which is self explanatory and requires no further interference. So, the learned Addl. Standing Counsel has prayed before this Tribunal to dismiss the appeal filed by the dealer-appellant and to confirm the order of the learned FAA.

8. Heard the learned Advocate, Mr. G.S. Mohanty appearing on behalf of the dealer and learned Addl. Standing Counsel, Mr. S.K. Pradhan on behalf of the State. Gone through the grounds of appeal submitted by the dealer and cross objection filed by the State-respondent, the impugned orders of appeal and assessment and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion that, the points raised by the learned Advocate for the dealer is quite genuine and satisfactory and this is a fit case, where the matter should be remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer as per provision of law. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the learned First Appellate Authority is hereby set-aside. The matter is remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer as per provision of law after giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated and Corrected by me,

Sd/-
(Sweta Mishra)
2nd Judicial Member

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