

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 70(ET)/2016-17

(Arising out of order of the 1d. JCST (Appeal), Bhubaneswar Range, Bhubaneswar, in Appeal No. AA-ET)108221422000205/BH-II, disposed of on dtd.18.04.2016)

Present: Sri S. Mohanty
2nd Judicial Member

M/s. Signature Sales Pvt. Ltd.,
19, Satyanagar,
Bhubaneswar.

... Appellant

-Versus-

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

.... Respondent

For the Appellant : Mr. D.S. Jethi, Advocate

For the Respondent : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

Date of Hearing: 08.05.2018 *** Date of Order: 08.05.2018

ORDER

The present second appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, FAA/JCST) in First Appeal Case No. AA-ET)108221422000205/BH-II dtd.18.04.2016 in confirming the order of assessment passed by the Assessing Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, AO) for the assessment period from 01.04.2011 to 31.03.2013 u/s.9C of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. On the detection of purchase suppression against a single bill to the tune of Rs.24,500/- during audit visit, the audit visit report was submitted against the assessee-dealer. Basing the said Audit Visit Report, the AO initiated proceeding u/s.9C of the OET Act for the tax period 01.04.2011 to 31.03.2013 of the dealer's unit. Finding the allegation to be proved, the AO treated the same amount as purchase suppression. Adding 10% profit margin to it, he determined the sale suppression and then imposing entry tax with penalty, he calculated the tax due. He further imposed interest and penalty for non-filing of return in time. The order was challenged by the dealer before the FAA, whereby

the 1^d.JCST (Appeal) as FAA did not interfere with the assessment order. As a result, the demand of tax remained unchanged.

3. Being dissatisfied, the dealer challenged the impugned order before this Tribunal and *inter alia* contended that, the initiation of proceeding is hopelessly barred by limitation and there was no purchase suppression by the dealer. It is also contended that, the materials under the alleged bill were used by the dealer in the business premises which were not a purchase for sale and that is why the dealer has not claimed any ITC on it.

4. It is pertinent to mention here that, in second appeal under VAT Act bearing No. 144(V)/2016-17 disposed of by this Bench today it is held that, the purchase suppression is not established and the demand of tax and penalty against the purchase suppression is deleted. However, the interest and penalty imposed for delay furnishing of return is confirmed. Once it is hold that, the goods purchased by the dealer used for his personal consumption, then it is not exigible to entry tax. The decision in this tax appeal depends on the decision in VAT appeal. Where in VAT appeal the tax demand is deleted, in consequence thereof, the tax demand and penalty under ET Act are also deleted. Accordingly, it is ordered.

The demand of entry tax and penalty as against the allegation of purchase suppression is deleted and the assessment order is accordingly modified to the extent of confirmation of interest and penalty imposed for delay furnishing of return. The tax appeal is accordingly allowed in part.

Dictated and Corrected by me,

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

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