

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

S.A.No. 123(V)/2017-18

&

S.A.No. 153(V)/2017-18

(Arising out of order of the Id.JCST (Appeal), Jajpur Range, Jajpur Road, in Appeal No.AA.395 KJB/2013-14, disposed of on dtd.29.04.2017)

Present: Sri S. Mohanty
2nd Judicial Member

S.A.No. 123(V)/2017-18

M/s. D.R. Patnaik,
College Road, Joda,
Dist. Keonjhar.

... Appellant

-Versus-

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

.... Respondent

S.A.No. 153(V)/2017-18

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

.... Appellant

-Versus-

M/s. D.R. Patnaik,
College Road, Joda,
Dist. Keonjhar.

... Respondent

For the dealer : Mr. L.N. Sahoo, Advocate
For the State : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

Date of Hearing: 09.05.2018 *** Date of Order: 10.05.2018

ORDER

Both the appeals are arisen out of the same order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Jajpur Range, Jajpur Road (in short, FAA/JCST), involved with common question of law and facts, both are taken up together and decided by this common judgment.

2. The brief fact of the case are :

The assessee-dealer was subjected to audit assessment u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) basing on Audit Visit Report with the allegation of escapement of turnover against sale of trucks and tippers worth of Rs.71,61,340/- exigible to tax @12.5%. The Assessing Officer confirmed the Audit Visit Report, assessed the tax due calculated to Rs.8,95,167.50. Penalty was imposed to the tune of twice of the tax due and as such the total demand raised to Rs.26,85,503/-.

The dealer challenged the assessment order before the FAA in First Appeal Case No. AA.395 KJB/2013-14 wherein and whereby the FAA accepted the plea of the dealer to the extent that the dealer has sold 20 numbers of old vehicle as scrap for an amount of Rs.53,97,340/- and 5 numbers of old vehicles in running condition for Rs.17,64,000/- and then re-determined the tax liability imposing tax @12.5% on the 5 numbers of vehicle and taxed @4% on the vehicles sold as scrap. On re-determination of the escapement of turnover, tax was calculated in two tax slabs mentioned above and the total tax due with penalty became Rs.13,09,181/-.

3. **Contention of the dealer in Appeal No.123(V)/2017-18:**

Imposition of penalty as imposed by both the forums below is challenged by the dealer as wrong and illegal with the contention that, the dealer had disclosed the sale of vehicles duly in his books of account. So for such bonafide mistake, the dealer should not be burdened with penalty.

4. **Contention of the dealer in Appeal No.153(V)/2017-18:**

State has challenged the impugned order with the contentions like the FAA has illegally allowed 20 numbers of vehicle as scrap exigible to tax @4% instead of 12.5% as per law.

5. In view of the rival contentions/grounds in appeal, following questions are framed for decision in this appeal:

(i) Whether the FAA was wrong in accepting the plea of the dealer that, 20 numbers of vehicles sold by him are to be treated as scrap to be taxed @4% instead of 12.5% ?

(ii) Whether the FAA was wrong in imposing penalty when there was disclosure of details of the goods/vehicles in the return filed by the dealer ?

6. On perusal of the impugned order it is found that, the FAA has taken into consideration of the affidavit filed by the dealer before him stating therein the running condition of 5 numbers of vehicles with registration numbers and condition of other 20 numbers of vehicles with registration nos. which were sold as scrap. Both the authorities below have not directed their investigation from the registering authority to ascertain whether the vehicles were in running condition by the time of sale or not ? However, in absence of that, the FAA has accepted the affidavits filed by the dealer and in accordance to that he taxed the vehicle in running condition @12.5% and the vehicles treated as scrap @4%. The tax slab is not disputed. The only dispute is the vehicles sold as scrap were if in running condition or not ? This is a matter of subjective satisfaction by AA or the FAA, which is an extended forum of assessment. The finding on this question needs no interference without any reliable materials placed before this Tribunal. Hence, I am constrained to accept the view taken by the FAA. In the result, it is held that, the tax slab as adopted by the FAA against the goods sold by the dealer are confirmed. The claim of the State is not sustainable.

7. The claim of the dealer is imposition of penalty in this case is illegal, since the dealer had disclosed the fact of all the vehicles in his books of account in support of his claim. The dealer has placed reliance on many of the authorities and argued that, when there is no intentional latches on the part of the dealer and when the act of the dealer is bona-fide, the dealer should not be burdened with penalty. Law is no more *res integra* in view of the provision u/s.42(5) of the OVAT Act that, in the event there is escapement of tax or under-assessment of tax, imposition of penalty is a must. In **M/s. Jindal Stainless Ltd. Vrs. State 54 VST Page 1**, it is held that :- “we are of the considered view that Section 42(5) of the OVAT Act authorizing imposition of penalty equal to twice the amount of tax assessed under Section 42 rule (3) or (4) of the OVAT Act is constitutionally valid. It is not arbitrary, unreasonable, oppressive, or hit by Article 14 in any way ultra vires the Constitution of India. Be it is the authoritative pronouncement it only can be said that hardly there is any scope to interfere with the findings of court below on the imposition of penalty.

In the wake of above it is ordered.

The appeal preferred by the State as well as the appeal preferred by the dealer both are dismissed as of no merit. The cross objection from the rival sides are also disposed of accordingly.

Dictated and Corrected by me,

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

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