

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 38(V)/2017-18

(Arising out of order of the Id.JCST (Appeal), Sambalpur Range, Sambalpur, in
Appeal No. AA.10/JSG/VAT/2016-17,
disposed of on dtd.28.02.2017)

Present: Sri S. Mohanty
2nd Judicial Member

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

.... Appellant

-Versus-

M/s. Odisha Construction,
Dist. Jharsuguda.

... Respondent

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

For the Respondent : None

Date of Hearing: 10.05.2018 *** Date of Order: 11.05.2018

ORDER

State has assailed the order of the First Appellate Authority/Joint Commissioner of Sales Tax (Appeal) (in short, FAA/JCST) in First Appeal Case No. AA.10/JSG/VAT/2016-17 dtd.28.02.2017 whereby the FAA deleted the penalty as per provision u/s.42(5) of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) imposed by the Assessing Officer, Jharsuguda Circle, Jharsuguda (in short, AO).

2. The laconic facts giving rise to the present appeal are : on the basis of Audit Visit Report (AVR) submitted by Audit team, STO, tax audit unit, Sambalpur Range, Sambalpur, assessment proceeding u/s.42(4) of the dealer's unit for the tax period 01.04.2013 to 31.03.2015 was taken up by the Sales Tax Officer, Jharsuguda Circle as AO. Taking cognizance of the allegations in the AVR and in confrontation of the same with the dealer, on verification of his books of accounts and connected documents, the AO calculated the tax due of the dealer at Rs.84,632/-. In addition to that, penalty u/s.42(5) to the extent of twice of the tax due was also imposed. Thus, total tax demand raised to Rs.1,69,264/-

3. In first appeal preferred by the dealer, the FAA confirmed the assessment to the extent of balance tax due but deleted the penalty relying on decision of the Hon'ble Court in **M/s. Hindustan Steel Ltd. Vrs. State of Odisha in (1970) 25 STC 211 (SC)**.

4. Being dissatisfied with the decision of the First Appellate Authority, State has preferred this appeal with the contention like, *mens rea* is not a condition for imposition of penalty and in view of the decision of Hon'ble Court in **M/s. Jindal Stainless Ltd. Vrs. State of Orissa and Others (2012) 54 VST Page 1** and the observation made by the Hon'ble Court in **Union of India Vrs. Dharmendra Textiles**, penalty imposed by the STO should be restored in the case in hand.

5. The moot question to be decided here is, whether the demand and penalty imposed u/s.42(5) of the impugned order by the FAA in the case in hand is wrong. Keeping in view the short question involved in this case, the elaborate discussion on the allegation of AVR is not found necessary, hence not repeated. The impugned order as it revealed, the FAA has cited the decision in *M/s. Jindal Stainless Steel Ltd. (supra)* and the ratio therein i.e. penalty should not be imposed unless party acted deliberately in defiance of law and then deleted the penalty. Learned FAA has also held that, in case of mis-match in the return between the selling dealer and purchasing dealer relating to the ITC, revised return is required to be filed as per Sec.33 sub section 4 of the OVAT Act. Here in this case, the mis-match in ITC between the dealers is due to clerical mistake. The dealer is found to have paid tax but it is paid after the assessment is over. There is no new disclosure by the dealer after receipt of the audit notice. The dealer has not suppressed any transaction and all transactions are duly entered in his books of account. There was wrong committed in calculation of ITC. In **Shree Krishna Electrical Vrs. State of Tamil Nadu & others (2009) 23 VST 249**, the Hon'ble Court has held that, when there was no suppression but correct disclosure of the transaction in the books of account, in that event, non-payment of tax does not attract the penalty. In consideration of the facts in the case in hand, I am of the view that,

the FAA has not committed any illegality by taking lenient view by deleting the penalty imposed by the AO. Accordingly, it is ordered.

The appeal preferred by the State is dismissed as of no merit.

Dictated and Corrected by me,

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

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