

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 310(V)/2017-18**

(Arising out of order of the Id.JCST (Appeal), Bhubaneswar  
Range, Bhubaneswar, in First Appeal Case No.  
AA/106221722000149, disposed of on dtd.30.08.2017)

**Present: Smt. Sweta Mishra  
2<sup>nd</sup> Judicial Member**

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

-Versus-

M/s. The Ink,  
Bhubaneswar. .... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)  
For the Respondent : None

(Assessment Period : 04/11 to 03/13)

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Date of Hearing: 23.04.2021 \*\*\* Date of Order: 23.04.2021

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**ORDER**

This 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/106221722000149 dtd.30.08.2017 in reducing the assessment order passed by the learned Sales Tax Officer/Assessing Authority, Bhubaneswar-II Circle, Bhubaneswar (in short, STO/AA) for the assessment period from 04/11 to 03/013 u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The brief facts of the case are that :

In the instant case the dealer is engaged in processing of flex banner and printer. The audit assessment u/s.42 of the OVAT Act, 2004 was completed earlier for the impugned period under assessment on dt.22.11.2014 raising an extra tax demand of Rs.2,670/- (including penalty as per provision laid down u/s.42(5) of the OVAT Act). But in course of scrutiny of assessment order, the AG (Odisha) has observed that, in the course of assessment tax rate was taken @4% and 5% for selling of flex banner and printer instead of @13.5%, which is unspecified items under Schedule-B, Part-III. Considering as per the allegation lodged by AG Audit (Odisha), the learned Assessing Authority determined the tax liability of Rs.12,14,772/- which includes penalty only.

3. Being aggrieved with the order of assessment, the dealer-appellant preferred first appeal before the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar, who in turn, allowed the appeal in part and the assessment was reduced to Rs.2,670/-.

4. Being dis-satisfied with the order of the learned FAA/JCST (Appeal), the State-appellant has knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the ld.FAA/JCST (Appeal) is unjust, improper and not based on facts and law.

5. No cross objection has been filed by the dealer-respondent in this case.

6. Despite affixture service of hearing notice on the dealer, for reasons best known to it, he neither engaged a

counsel nor anybody on its behalf remained present before this Tribunal on the schedule date of hearing. This Tribunal, therefore, left with no other alternative except to hear the argument of Mr. S.K. Pradhan, learned Addl. Standing Counsel appearing on behalf of the State and to dispose of the matter on ex-parte basis.

7. Perused the assessment order as well as first appeal order, all the materials available in the record, grounds of appeal submitted by the State-appellant. During the course of hearing, Mr. Pradhan, Addl. Standing Counsel for the State argued that, the order of the learned FAA appears to be unjust and improper. In the instant case, the observation of the learned FAA appears to be biased because the selling of flex banner and printer is neither coming under purview of publication as per Sl.No.90 nor covering Sl.No.69 of Part-II, Schedule-B goods respectively. So, it is undoubtedly an unspecified goods coming within ambit of 13.5% scheduled tax rate. So, the learned Addl. Standing Counsel has prayed to allow the appeal filed by the State and to set-aside the order of the learned FAA and to restore the order of the learned STO.

8. Heard the learned Addl. Standing Counsel, Mr. S.K. Pradhan on behalf of the State in absence of participation of the dealer in hearing of this appeal. Gone through the grounds of appeal, the impugned orders of appeal and assessment and arguments of the learned Addl. Standing Counsel at the time of hearing. The dealer has not adduced any evidence on his behalf nor he has appeared before this Tribunal to defend himself against the grounds of appeal filed

by the State-appellant. No reasonable excuse is also explained by the dealer. It is also observed that the dealer neither participated himself nor through his counsel and no documentary evidence was produced before this Tribunal. 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 argument advanced by the learned Addl. Standing Counsel is quite genuine and satisfactory. Accordingly, it is ordered.

The appeal filed by the State-appellant is allowed. The order of the learned First Appellate Authority is hereby set-aside.

Dictated and Corrected by me,

Sd/-  
(S. Mishra)  
2<sup>nd</sup> Judicial Member

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