

**BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

S.A. No. 224 (ET) of 2013-14

(Arising out of the order of the learned DCST (Appeal), Bhubaneswar Range,
Bhubaneswar, in First Appeal Case No. AA-108221211000083,
disposed of on dtd.31.08.2013)

P r e s e n t :

Shri A.K. Panda,
1st Judicial Member

M/s. Dazzle Beverages,
Plot No.A/7, Polymer Complex,
CNI Complex, P.O.-KIIT,
Bhubaneswar.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant ... N o n e

For the Respondent ... Mr. M.L. Agarwal, S.C.

Date of hearing: 31.10.2017

Date of order: 31.07.2018

ORDER

This appeal is directed against the order dtd.31.08.2013 passed by the learned Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (hereinafter referred to as, the learned DCST) in First Appeal Case No. AA-108221211000083, wherein and whereby he has allowed the first appeal in part by reducing the balance tax demand and penalty to Rs.34,509.00 from Rs.42,600.00 raised by the learned Sales Tax Officer, Bhubaneswar III Circle, Bhubaneswar (hereinafter referred to as, the learned STO) in an assessment u/s.10 of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) in respect of the appellant-dealer for the assessment period from 01.04.2005 to 30.09.2008.

2. The appellant-dealer bearing TIN-21571103642 is a manufacturer and seller of packaged drinking water and soda. Basing upon a report of the Auditor General (A.G.), the learned STO initiated a proceeding u/s.10 of the OET Act against the appellant-dealer for its assessment for the assessment period from 01.04.2005 to 30.09.2008 and issued a notice to appear and produce the books of account and in response to the notice, the authorized representative of the appellant-dealer appeared and produced the books of account which were duly been examined. As per the allegation of the audit report, while passing the order of assessment u/s.9C of the OET Act against the appellant-dealer earlier, excess set off of Rs.14,200.00 has been allowed to it and as such on further examination of the materials available on record and on hearing the appellant-dealer, the learned STO found out the allowance of excess set off to be illegal and accordingly disallowed the same and raised the tax demand of Rs.14,200.00. Then, the learned STO also imposed a penalty of Rs.28,400.00, equal to twice of the balance tax demand u/s.10(2) of the OET Act and as such both the balance tax demand and penalty came to be Rs.42,600.00 in total, to be paid by the appellant-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the appellant-dealer preferred an appeal before the learned DCST bearing First Appeal Case No. AA-108221211000083. On hearing and on consideration of the materials available on record, though the learned DCST did not accept the contention of the appellant-dealer, he found out that, the balance tax demand raised earlier u/s.9C of the OET Act is to be deducted from the balance tax demand raised herein and accordingly after deducting the earlier tax demand of Rs.2,697.00, recomputed the tax liability of the appellant-dealer and the same resulted in reduction of the balance tax demand and penalty to Rs.34,509.00 from Rs.42,600.00 as raised earlier by the learned STO. But, still being aggrieved with the order of the learned DCST, the appellant-dealer has preferred this second appeal.

4. Cross objection has been filed by the respondent-Revenue supporting the order of the learned DCST.

5. When the matter was taken up for hearing, none appeared on behalf of the appellant-dealer and as such it was heard *ex parte* and is disposed of on merit. The learned Standing Counsel appearing for the respondent-Revenue supported the order of the learned DCST and urged for dismissal of the appeal.

6. Perused the orders of both the learned forums below and the other materials on record. From the materials on record, it is seen that, basing upon the objection was raised by the A.G. in his audit report, the learned STO examined the books of account and other relevant materials produced by the appellant-dealer and after consideration of the legal provisions disallowed the excess set off of Rs.14,200.00 and the same has further been confirmed by the learned DCST at the first appeal stage. It is not in dispute that, the appellant-dealer is a manufacturer and seller of packaged drinking water and soda and to manufacture the finished products, it has purchased certain goods and has brought the same to the local area to be utilized as raw materials. The set up is admissible u/s.26(1) of the OET Act read with Rule 19(5) of the Orissa Entry Tax Rules, 1999 and the limit of grant of set up is subject to restriction and condition mentioned in this provision. The entire claim of Entry Tax paid on purchase of raw materials cannot be allowed to a dealer rather the same is allowable proportionately to the extent of tax collected on taxable sales. Considering these provisions of law, the learned STO found out that, the appellant-dealer is not entitled to avail set off of Rs.14,200.00 on proper calculation and the same has further been confirmed by the learned DCST at the first appeal stage. Of course, the learned DCST has further found out that, the balance tax demand amounting to Rs.2,697.00 raised earlier in an assessment u/s.9C of the OET Act is to be deducted from the balance tax demand raised in this proceeding and accordingly he deducted the same and raised the balance tax demand of Rs.11,503.00. Similarly, after exercising his discretionary power he has also imposed a penalty of Rs.23,006.00, equal to twice of the balance tax demand u/s.10(2) of the OET Act and as such both the balance tax demand and penalty came to be

Rs.34,509.00, to be paid by the appellant-dealer. On scrutiny of the entire materials available on record and on consideration of the related provisions of law, it can clearly be said that, the order passed by the learned DCST suffers from no infirmity and as such the same needs no interference of this forum.

7. In the result, the appeal is dismissed being devoid of merit. The cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-
(A.K. Panda)
1st Judicial Member

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