

**BEFORE THE DIVISION BENCH-II: ODISHA SALES TAX TRIBUNAL: CUTTACK.**

**S.A. No. 223 (ET) of 2014-15**

(Arising out of the order of the learned DCST (Appeal), Bhubaneswar Range, Bhubaneswar, in First Appeal Case No. AA-108221422000018, disposed of on dtd.31.05.2014)

**P r e s e n t :** Shri A.K. Panda, & Shri P.C. Pathy,  
1<sup>st</sup> Judicial Member Accounts Member-I

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

... Appellant

**- V e r s u s -**

M/s. Anik Industries Ltd.,  
At/P.O.- Plot No.364/2115, Patrapada,  
Bhubaneswar.

... Respondent

For the Appellant ... Mr. M.L. Agarwal, S.C.  
For the Respondent ... N o n e

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Date of hearing: 21.05.2018 \*\*\*\*\* Date of order: 23.05.2018  
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**ORDER**

This appeal is directed against the order dtd.31.05.2014 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-108221422000018, wherein and whereby he has allowed the first appeal by reducing the balance tax demand and penalty to nil from Rs.3,96,873.00 raised by the learned Assessing Authority (Entry Tax), Bhubaneswar IV Circle, Bhubaneswar (hereinafter referred to as, the learned Assessing Authority) in an assessment u/s.9C of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) in respect of the respondent-

dealer for the assessment period from 01.04.2007 to 31.10.2012 and the same resulted in an order of refund amounting to Rs.10,50,378.00.

2. The respondent-dealer M/s. Anik Industries Ltd., Bhubaneswar bearing TIN-21881104587 is a trader of Anik brand ghee and milk powder etc. and it used to receive the goods on stock transfer basis from outside the State of Odisha. Basing upon an Audit Visit Report (in short, the AVR) submitted by the Tax Audit Unit, Bhubaneswar Range, Bhubaneswar, the learned Assessing Authority initiated a proceeding u/s.9C of the OET Act against the respondent-dealer for its assessment for the assessment period from 01.04.2007 to 31.10.2012 and issued a notice to appear and to produce the books of account and in response to the notice, the authorized representative of the respondent-dealer appeared and produced the books of account and the other relevant documents which were duly been examined in the light of the allegation made in the AVR. As per the allegation of the AVR, though the respondent-dealer has received goods on stock transfer basis, it has not included the freight charges on the purchase price of the goods and has paid Entry Tax thereon and as such the same needs proper determination of the purchase value of the goods as per Sec.2(j) of the OET Act. Similarly, the further allegation in the AVR is that, the respondent-dealer has paid Entry Tax amounting to Rs.10,00,000.00 subsequently with some delay and as such he is liable to pay interest and penalty as per the provision u/s.7(5) and 7(6) of the OET Act. During assessment, though the authorized representative of the respondent-dealer denied the allegations of the AVR on confrontation, the learned Assessing Authority did not accept such denial, rather accepted the allegations as true and genuine and determined the sale price of the goods as its purchase value in view of the provision u/s.2(j) of the OET Act and determined the TTO accordingly at Rs.40,98,72,779.00 and levied tax thereon @ 1% which came to be Rs.40,98,727.86. As the respondent-dealer had already deposited tax to the tune of Rs.40,98,722.00 earlier, he raised the balance tax demand of Rs.05.86

rounded of as Rs.06.00 and also imposed a penalty of Rs.12.00, equal to twice of the balance tax demand u/s.9C(5) of the OET Act. In addition to that he also levied interest amounting to Rs.4,46,855.00 u/s.7(5) of the OET Act for delayed payment of the Entry Tax and as such the balance tax demand, penalty and interest came to be Rs.3,96,873.00 in total, to be paid by the respondent-dealer.

3. After the assessment, being aggrieved with the order of the learned Assessing Authority, the respondent-dealer preferred an appeal before the learned DCST bearing First Appeal Case No. AA-108221422000018. On hearing and on consideration of the materials on record, the learned DCST accepted the contention of the respondent-dealer in toto and accordingly allowed the appeal by reducing the balance tax demand to nil from Rs.3,96,873.00 as raised earlier by the learned Assessing Authority and as such the same resulted in an order of refund amounting to Rs.10,50,378.00 in favour of the respondent-dealer. Thus, being aggrieved with the order of the learned DCST, the Revenue as appellant has preferred this second appeal.

4. No cross objection has been filed by the respondent-dealer.

5. When the matter was taken up for hearing, none appeared on behalf of the respondent-dealer and as such it was heard *ex parte* and is disposed of on merit. The learned Standing Counsel appearing for the appellant-Revenue submitted that, the learned DCST has not considered the matter properly and has passed the order which is totally erroneous in view of the provision u/s.2(j) of the OET Act. Though the respondent-dealer has received the goods on stock transfer basis and has failed to produce the original invoice or bill showing the value of the goods including the freight charges, the learned DCST has set aside the order of the learned Assessing Authority illegally by not considering the provision mentioned in Sec.2(j) of the OET Act properly and as such the order passed by him is liable to be set aside and the order passed by the learned Assessing Authority being proper and justified needs to be restored.

6. Perused the materials available on record. On going through the contention of the parties and the materials on record, the points to be determined in this appeal are, whether Sec.2(j) of the OET Act is applicable in the case in hand in the present facts and circumstances to determine the purchase value of the goods and whether the interest levied by the learned Assessing Authority upon the respondent-dealer for the delayed payment of the admitted tax is sustainable in the eye of law.

7. To adjudicate the matter it is beneficial to refer to sec.2(j) of the OET Act which defines the purchase value and the same reads as follows-

**“Purchase value”** means the value of scheduled goods as ascertained from original invoice or bill and includes insurance charges, excise duties, countervailing charges, sales tax, transport charges, freight charges and all other charges incidental to the purchase of such goods.

**Provided that** where purchase value of any scheduled goods is not ascertainable on account of non-availability of non-production of the original invoice or bill or when the invoice or bill produced is proved to be false or if the scheduled goods are acquired or obtained otherwise than by way of purchase, then the purchase value shall be the value or the price at which the scheduled goods of like kind or quality is sold or is capable of being sold in open market;”

8. It is not in dispute that Entry Tax is levied on the entry of the scheduled goods into a local area. But before levy of such tax the purchase value of the scheduled goods are to be ascertained. From the above definition of the purchase value, it is very much clear that, the same is to be ascertained from the original invoice or bills which includes insurance charges, excise duties, countervailing charges, sales tax, value added tax or, as the case may be, turnover tax, transport charges, freight charges and all other charges incidental to the purchase of such goods. When there is non-availability of original invoice or bills or the scheduled goods are obtained otherwise than by way of purchase, then the purchase value of the scheduled goods are to be determined at the price at which the scheduled goods are sold in the market.

In this case the respondent-dealer has obtained the scheduled goods on stock transfer basis from outside the State and as such it has failed to produce any original invoice or bill showing the purchase value of the goods including the freight charges. As per the provisions of the Act, when the purchase value of the goods is not ascertainable, the same can only be determined on the basis of its sale value in the open market. On consideration of the materials on record, it is very much clear that, the learned Assessing Authority has considered the matter properly and has determined the purchase value of the goods by applying the provision mentioned in sec.2(j) of the OET Act. On the other hand, the learned DCST has not considered the fact and law properly and has set aside the order of the learned Assessing Authority passed in this regard erroneously and as such the same is required to be set aside and the order passed by the learned Assessing Authority is required to be restored.

9. But, so far as the levy of interest is concerned, the order passed by the learned DCST setting aside the order of the learned Assessing Authority suffers from no infirmity as such the same needs no interference of this forum.

10. In the result, the appeal is allowed in part. In view of the above discussion, the respondent-dealer is liable to pay the balance tax demand of Rs.6.00 and the penalty amounting to Rs.12.00.

Dictated & corrected by me,

Sd/-  
1<sup>st</sup> Judicial Member,  
Odisha Sales Tax Tribunal

Sd/-  
1<sup>st</sup> Judicial Member,  
Odisha Sales Tax Tribunal

I agree,

Sd/-  
Accounts Member-I,  
Odisha Sales Tax Tribunal