

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 4(ET)/2017-18**

(From the order of the Id.JCST, Bhubaneswar Range,
Bhubaneswar, in Appeal No.
AA(ET)10822152000211/BHIV/2015-16, dtd.27.02.2017
modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

-Versus-

M/s. Cradinal Yatch,
Bhubaneswar. Respondent

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

(Assessment Period : 08.03.2013 to 31.03.2014)

Date of Hearing: 18.04.2019 *** Date of Order: 18.04.2019

ORDER

Revenue is the appellant here in this appeal against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax, Bhubaneswar Range, Bhubaneswar (in short, FAA/JCST) deleting thereby the levy of tax by the Assessing Authority, Bhubaneswar-IV

Circle, Bhubaneswar (in short, AA) in an assessment u/s.7(5) of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. The assessee-dealer, M/s. Cradinal Yatch House is a manufacturer and trader of yatches and boats. Audit Visit Report (AVR) u/s.41(4) of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) by the tax audit team, was submitted with the allegation of incorrect tax compliance by the dealer. As a result, the dealer was subjected to audit assessment under VAT as well as ET Act. The AA found the dealer had effected purchases from intra-state and inter-state sellers details as follows:

Intra-State Registered dealers including purchases suffered E.T.	- Rs. 25,91,997.24
Intra-State Un-registered Purchases	- Rs. 48,112.00
Inter-State Purchases	- <u>Rs.1,03,82,535.00</u>
Total	- Rs.1,30,22,644.24

Since the dealer had not disclosed freight charges, the AA added an amount of Rs.5,19,127/- as freight charges against the inter-state purchases. The total purchase value of the schedule goods was determined at Rs.1,10,91,453/-. Deduction of Rs.25,91,997/- was allowed towards intra-state entry tax suffered purchases. Thus, the taxable turnover became determined at Rs.1,09,49,774/-. Entry tax @0.5% was imposed on raw materials worth of Rs.78,29,732/- and entry tax @2% was levied on the worth of machinery value of

Rs.31,20,042/-. The total entry tax liability was determined at Rs.1,01,549/-. The dealer having deposited Rs.99,520/- is assessed to pay balance amount of entry tax of Rs.2,030/-. Penalty at two times of the tax due calculated to Rs.4,060/- was imposed and thus, the total demand raised to Rs.6,090/-.

3. The dealer preferred appeal. In the appeal, the FAA treated the goods dealt by the dealer as non-schedule goods under the Entry Tax Act and reduced the demand to the return figure only.

4. When the matters stood thus, State being aggrieved preferred this appeal:

It is contended that, when the order of the AA is explicit, certain goods purchased were entry tax suffered goods and certain goods purchased were without payment of entry tax, particularly when the goods are schedule goods, the FAA has committed wrong in deleting the tax liability.

5. The appeal is heard without cross objection and in absence of the dealer, since the dealer did not turn up in spite of receipt of notice.

6. The question raised for decision in this appeal is: Whether the FAA has committed wrong in keeping the goods dealt by the dealer as not amenable to entry tax.

7. Gone through the orders of the AA as well as the FAA. The AA has prepared a chart showing inter-state entry

tax suffered goods, intra-state purchases from unregistered dealers and registered dealers. It has treated the part of the goods as raw materials and levied tax @0.5%, whereas on the other hand, the FAA has held that, the goods like boat is not covered under any of the entry of the schedule of the Entry Tax Act, so the dealer is not liable to pay entry tax.

Learned Addl. Standing Counsel, Mr. Pradhan argued that, the dealer is not a trader of boat. It used to purchase raw materials and manufacture boat and yatches. The goods brought by the dealer are categorically reflected in the AVR. It also can be gathered from the grounds of appeal advanced by the dealer before the FAA. So, it can definitely presume that, the FAA has committed illegality in passing the order, as he has ignored the admitted facts like the purchase of raw materials by the dealer. It is a fact that, the dealer himself has stated before the FAA that, it has purchased schedule and non-schedule goods. Boat is not a schedule goods, but the raw materials purchased for preparation of boat are all not non-schedule goods. If that be, it can safely be said that, the FAA has committed a manifest error in deleting the entire tax liability. Further, the finding contradicts the portion of purchase and levy of tax in it as accepted by FAA. In that view of the matter, it is believed that, the order of the FAA is perverse and the same cannot withstand in the eye of law. In

consequence thereof, it is held that, the matter needs to be remitted back to the AA for re-hearing on due scrutiny of the details of the transaction of the dealer and the goods under transaction whether covered under any of the entry of the schedule of the Act and then to fix tax liability found leviable. Since the FAA has mis-directed his enquiry with the impression that, the dealer is a trader of boat and boat is not a schedule goods, it is believed that, the matter should be heard afresh by him on due scrutiny of the goods purchased by the dealer. Accordingly, it is ordered.

The appeal is allowed on contest. The impugned order by the FAA is set-aside. The matter is remitted back to the AA for hearing afresh by the FAA as per the observation herein above.

Dictated and Corrected by me,

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

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