

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

**S.A. No. 90(ET) of 2013-14**

(From the order of the Id. JCST, Cuttack I Range,  
Cuttack, in First Appeal Case No. AA(ET)4/CUIC/2012-13,  
disposed of on 28.02.2013)

**P r e s e n t :**                      **Shri S. Mohanty,  
1<sup>st</sup> Judicial Member**

M/s. Ask Constructions,  
Bajrakabati Canal Road,  
Cuttack.

... Appellant

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

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

... Respondent

For the assessment period: 01.04.2005 to 31.01.2011

For the Dealer                      : Mr. A. Panda, Advocate  
For the State                        : Mr. M.L. Agarwal, S.C.

-----  
Date of hearing: 03.08.2019        \*\*\*\*        Date of order: 03.08.2019  
-----

**ORDER**

A confirming order of assessment is under challenge by the dealer as appellant in this appeal with the contentions like, assessment order was passed beyond the period of limitation. The tax due, interest and penalty levied are not warranted in the case in hand.

2.            The dealer was subjected to audit assessment u/s.9C of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) for the tax period 01.04.2005 to 31.01.2011 on the basis of Audit Visit Report (in short, the AVR). The assessing authority found the the dealer had effected interstate purchase of Rs.2,23,380.00. During the period it has effected manufacture of goods and effected intrastate

sale of Rs.1,42,30,926.7, ET on it @ 2% was calculated at Rs.2,84,618.18. The dealer having paid tax of Rs.2,81,447.00 balance tax due from the dealer was calculated at Rs.3,171.18 besides, for late payment of Entry Tax, interest of Rs.1,675.26 was imposed, whereas, penalty of Rs.6,346.00 as per sec.9C(5) of the OET Act was also imposed, thereby the total demand against the dealer was calculated at Rs.13,045.26.

3. In appeal before the first appellate authority, the dealer could not get any relief as the first appellate authority confirmed the order of the assessing authority.

4. When the matter stood thus, this appeal is preferred by the dealer with the contentions like, assessment was barred by limitation, interest and penalty as levied are not as per law. The contentions like, assessment is barred by limitation is not pressed in the hearing, besides, it is not supported by any evidence. Therefore, this question answered in negative to dealer. Late payment of tax and interest being lawful and automatic one remained beyond question, hence confirmed. So far as the penalty u/s.9C(5) of the OET Act is concerned, the same is mandatory in nature in view of any balance tax due in an audit assessment. So, it cannot be said that, the finding of fora below is perverse or not tenable in law.

5. The argument of the learned Counsel for the dealer is, there was a calculation mistake for which the penalty should not be imposed. On the other hand, learned Standing Counsel argued that, such a mistake is covered under the term of evasion of tax, hence the dealer is liable to pay penalty.

6. One peculiar thing noticed from the assessment order and first appellate authority that, both the authorities have also made a calculation mistake. The calculation of the tax, penalty and interest on the first page differs from the calculation in the order portion. Learned Counsel for the dealer further submitted that, the dealer has already paid the tax due and interest but has not paid penalty as it is

not warranted in the facts and circumstances of the case. In the circumstances above, it is found that, this is a fit case where the matter should be remitted back to the assessing authority to rectify the calculation mistake and thereafter on adjustment of the tax and interest already paid, the balance demand if any, may be raised against the dealer. It is made clear that, in the event the dealer is found to have no liability under the head of tax and interest, penalty should not be warranted as it is nothing but a mere calculation mistake by the dealer and the assessing authority as well.

Accordingly, it is ordered.

The appeal is dismissed as of no merit with the observation hereinabove. The calculation of the tax due is to be made afresh as per the observation above.

Dictated & corrected by me,

Sd/-  
(S. Mohanty)  
1st Judicial Member

Sd/-  
(S. Mohanty)  
1<sup>st</sup> Judicial Member