

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 232(V)/2015-16

(From the order of the Id.Addl. CST (Appeal), Central Zone, Odisha, Cuttack, in Appeal No. AA-107(V)/JCST/CUI/09-10, dtd.29.07.2015, 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. Gajra Gears Private Limited,
Link Road, Dist.Cuttack.

... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (CT)
For the Respondent : Mr. A. Mishra, Authorised Representative

(Assessment period : 01.04.2005 to 31.07.2008)

Date of Hearing: 05.01.2019 *** Date of Order: 05.01.2019

ORDER

The present second appeal has been directed against the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack (in short, FAA/Addl.CST) in First Appeal Case No.AA-107 (V)/JCST/CUI/09-10, dtd.29.07.2015 in modifying the order of assessment passed by the learned Assessing Authority/Asst. Commissioner of Sales Tax, Cuttack-I Range, Cuttack Range (in short, AA/ACST) for the assessment period from 01.04.2005 to 31.07.2008 u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The respondent-dealer in the case in hand, is a branch of the Gajra Gears Private Limited. In regular course of its business, it

receives goods from the head office i.e. from Madhya Pradesh and Delhi on branch transfer basis and sales the goods to local dealers. In an assessment u/s.42(4) of the OVAT Act for the tax period from 01.04.2005 to 31.07.2008 on the basis of Audit Visit Report submitted on 25.10.2008, the dealer was found to have not paid tax on certain goods sold to 'Rahul Auto Agency Pvt. Ltd.' on the plea that, the goods were given under warranty replacement scheme and not exigible to tax. The AA declined to accept the plea of the dealer in absence of any credit note and debit note in between the dealer and the purchaser and in consequence thereof, he hold the price of good supplied as branch transfer as sale suppression was determined at Rs.2,24,000/-. Balance amount of tax after adjusting the admitted tax and penalty u/s.42(5) of the OVAT Act were calculated and raised against the dealer i.e. at Rs.81,687/-.

3. In appeal before the FAA, the demand was reduced to Nil since the FAA found that, the goods supplied to the dealer were not a sale but warranty replacement and as the goods carried '0' value, the dealer is not liable to tax.

4. Felt aggrieved by such reversal of assessment and deletion of penalty, the Revenue has preferred this appeal on the contentions like, the FAA has committed wrong in accepting the plea of warranty replacement without any valid documents and prayed for restoration of the assessment order.

5. The appeal is heard with cross objection from the side of the Revenue, wherein the dealer has supported the view of the FAA.

6. The moot question raised to be decided in this appeal is:- Whether the FAA is wrong in determining Nil tax treating the goods carries '0' value under the warranty replacement scheme.

7. Facts admitted in this case are, the dealer has sold goods to M/s. Rahul Auto Agency and collected VAT duly reflected in his books of account and return. So far as the goods which are supplied to the purchasing dealer under warranty replacement scheme price of the goods are shown as zero and no tax was collected on it. The ambiguity before the AA arises when he found that, the purchasing dealer, Rahul Auto Agency had returned the defective goods to the main office at Delhi and Madhya Pradesh and there is no credit note issued by the assessee-dealer in his favour for such return of goods. However, the FAA on due scrutiny of the connected documents came to a conclusion that, the goods were carrying '0' value as supplied under the warranty replacement scheme, which is a contract between the seller and purchaser. So, requirement u/r.7 is not squarely applicable to the case in hand. In that view of the matter, there is no reason to accept that, the FAA has committed any wrong by not imposing tax liability on the goods supplied under warranty replacement scheme. On the other hand, it is found that, the output tax collected from the purchasing dealer i.e. M/s. Rahul Auto Agency was not reduced or reversed on return of goods. In that case, there is no occasion of unjust enrichment by the assessee-dealer.

8. In the conclusion, I am of the considered view that, the impugned order suffers from no illegality and hence the appeal preferred by the State is dismissed on contest.

Dictated and Corrected by me,

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

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