

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 63(ET)/2019**

(Arising out of order of the Id.Addl.CST (Appeal), Balasore, in
First Appeal Case No. AA/JCST/BLS (ET)/129/14-15,
disposed of on dtd.20.03.2019)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

M/s. Diana Foams Pvt. Ltd.,
Industrial Estate, Rairangpur,
Dist. Mayurbhanj, Odisha. Appellant

-Versus-

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

For the Appellant : Mr. C.R. Das, Advocate
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.08.2008 to 31.03.2012)

Date of Hearing: 09.03.2021 *** Date of Order: 15.03.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), Balasore (in short, FAA/Addl.CST) in First Appeal No. AA/JCST/BLS(ET)/129/14-15 dtd.20.03.2019 in enhancing the assessment order passed by the learned Assessing Authority/Joint Commissioner of Sales Tax, Balasore Range, Balasore (in short, STO/JCST) for the assessment period from 01.08.2008 to 31.03.2012 u/s.9C of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. The brief facts of the case is that :

The dealer-company, M/s. Diana Foams Pvt. Ltd. carries on business in manufacture and sale of PU (Poly Urethane) foams. The dealer is also engaged in trading of raw materials used for manufacture of PU foam. The assessment order was completed on the basis of an audit visit report submitted by learned STO, Balasore Range, Balasore. The instant dealer was subjected to assessment u/s.9C of the OET Act on the basis of Audit Visit Report. The Assessing Authority, Balasore Range, Balasore determined the entry tax payable on inter-state and intra-state purchase of raw materials and claim of set off. Then he fixed the liability on the dealer to the extent that the dealer was asked to pay balance tax due of Rs.60,952.36. Penalty u/s.9-C(5) of OET Act, i.e. twice of the tax due was also added and thereby the total due became raised to Rs.1,82,857/-.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority, who in turn, dismissed the appeal and the assessment was enhanced from Rs.1,82,857/- to Rs.4,80,920/-.

4. Being further aggrieved with the order of the learned FAA/Addl.CST, the dealer knocked the door of this Tribunal previously by way of filing of second appeal, who in turn, remitted back the matter to the learned FAA for disposal afresh giving the dealer a reasonable opportunity of being heard.

5. The learned FAA deleted the penalty but the dealer was made liable to pay interest @1% on the balance tax

due of Rs.1,60,306.51, which comes to Rs.1,08,260.32 tax and interest together calculates to Rs.2,68,566.83 or Rs.2,68,567/-.

6. Being further aggrieved with the order of learned FAA, the dealer has again knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the learned FAA is unjust, improper and not based on facts and law.

7. Cross objection has been filed by the State-respondent in this case.

8. Learned Advocate appearing on behalf of the dealer has vehemently argued that, the order of the learned FAA dtd.20.03.2019 passed by the learned ACST (Appeal), Balasore is a cryptic one. As such, such cryptic order has no place in the eye of law and deserved to be set-aside. The learned FAA by order dtd.23.11.2017 reduced the set-off of entry tax to Rs.2,16,383/- from Rs.3,74,679/- resulting extra demand of tax of Rs.1,58,296/-. The above objection has never been raised in the AVR, consequently demand has been made by travelling beyond the scope of AVR which has no place in the eye of law. As a result, the present demand cannot stand in the eye of law and being perverse, deserved to be set-aside. Tax of Rs.1,60,305.51 arises out of the order of first appeal dtd.20.03.2019. As such it is not ascertained from the impugned order dtd.20.03.2019 under which provision of law, the learned FAA levied interest of Rs.1,08,260.32, when the demand itself is raised on dt.20.03.2019. Consequently, such illegal order cannot stand in the eyes of law. Interest arises for default in payment of tax within the prescribed date of

determination of tax. As in the present case, the tax has been determined on dt.20.03.2019, levy of interest amounting to Rs.1,08,260.32 by the same order is incorrect. The learned Advocate for the dealer has cited many judgments in support of his contention. He has prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

9. On the other hand, during the course of hearing, learned Addl. Standing Counsel, Mr. Pradhan for the State argued that, the order of the learned FAA appears to be just and proper. The grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The dealer-appellant was given sufficient opportunities in favour of his stand before the learned FAA. Hence, his plea is not acceptable. There is no reasonable merit in the second appeal filed by the dealer, which is not sustainable in the eyes of law. The grounds and averments taken by the dealer-appellant regarding reduction of set off of entry tax from Rs.3,74,679/- to Rs.2,16,383/-, resulting into extra demand of tax of Rs.1,58,296/- and interest of Rs.1,08,260/- are without any fact and law, hence not sustainable. The learned FAA has confronted the dealer-appellant on the grounds and averments and the learned Advocate for the dealer admitted it and agreed on the same. This was observed by learned FAA at Page-4 of his order which is as follows :

“During hearing of appeal Ld. Advocate accepted the method of calculation and also set off allowed by the first appellate authority and agreed to pay tax but vehemently opposed to the penalty levied against the company. Further, he argued that the dealer company has disclosed all the transaction in the return, even the audit officer as well as the assigning authority has not pointed out any error in the return and accepted it. But due to wrong calculation of tax

and excess claim of set off such occurrence was happened. So penalty should not be imposed against the dealer company at the same time the Ld. Advocate appeared on behalf of the dealer company agreed to pay interest on the demanded tax”.

The learned FAA has rightly calculated the tax and interest based on material facts, non-submission of E-15 to avail concessional rate of tax leading to wrong set off and levied interest as per the statute. The learned Advocate for the dealer also agreed to pay the interest on the demanded tax by citing the judgement of this Tribunal in S.A.No.87(ET)(A)/2017-18 in case of **Pramod Kumar Sahoo, BBSR –Vrs.- State of Odisha**. The learned FAA has deleted the penalty levied by the learned Assessing Officer u/s.9(C)(5) of the OET Act but imposed the interest because the tax due was withhold by the dealer and utilised in the furtherance of business. So, he has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

10. Heard the learned Advocate Mr. C.R. Das appearing on behalf of the dealer and learned Addl. Standing Counsel Mr. S.K. Pradhan on behalf of the State. Gone through the grounds of appeal, impugned orders of appeal and assessment. Cross objection filed by the State-respondent and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case, after analysing the points raised in this appeal, I am of the considered opinion that, the points raised by the learned Addl. Standing Counsel for the State is quite satisfactory and the order of the learned FAA appears to be just and proper, which needs no interference by this Tribunal. Accordingly, it is ordered.

11. The appeal filed by the dealer is dismissed on contest. The order of the learned FAA is hereby confirmed. The cross objection filed by the State-Respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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