

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

S.A.No. 110(ET)/2017-18

(From the order of the Id.Addl.CST (Appeal) North Zone, Odisha,
Sambalpur in Appeal No. AA-216(BP)/11-12, dtd.31.08.2017,
allowing in part the assessment order of the Assessing Authority)

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

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

-Versus-

M/s. Rishi Sahu,
Dist. Kalahandi. ... Respondent

For the Appellant : Mr. S.K. Pradhan, ASC (CT)
For the Respondent : None

(Assessment period : 01.04.2005 to 31.01.2007)

Date of Hearing: 28.08.2018 Date of Order: 28.08.2018

ORDER

The Revenue as appellant has challenged the order of learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), North Zone, Odisha, Sambalpur (in short, FAA/Addl.CST), whereby the FAA though has confirmed the assessment of tax due determined by the Assessing Authority/Joint Commissioner of Sales Tax, Balangir Range, Balangir (in short, AA/JCST), but deleted the penalty imposed.

2. It is the dealer M/s. Rishi Sahu, Jaipatna having its business establishment within the circle of Kalahandi, Bhawanipatna was subjected to re-assessment u/s.10 of the OET

Act basing on a report submitted by the AG Audit. It was alleged by the Audit team that, the goods dealt by the dealer should have taxed @1% as per Rule 3(4)(b) & (c) of the Odisha Entry Tax Rules, 1999 (in short, OET Rules), since the dealer had failed to produce the declaration Form E-15 entitling him to be taxed at a concessional rate of 0.05% for purchase of mohua flowers. The AA accepted the audit report and as because the dealer failed to produce the declaration Form E-15, he imposed tax at the rate of 1% instead of 0.5% as it was paid and accepted earlier in regular assessment. As a result, the balance tax due was worked out to Rs.29,413/-. Penalty of Rs.58,826/- i.e. twice of the tax due was also levied, thereby the total due was raised to Rs.88,239/-.

3. In appeal preferred by the dealer, the appellate authority though accepted the view of the AA that, in absence of declaration Form E-15, the dealer should have taxed @1%. Therefore, adjustment of the tax already paid, differential tax due was calculated by him at Rs.17,146/-. The FAA however set-aside the order of imposition of penalty.

4. Being aggrieved with deletion of penalty, State has preferred this appeal. It is contended by the State that, once the assessment order was passed u/s.10 of the OET Act and the dealer was found liable to pay additional tax, then imposition of penalty is a must. So to that effect, the order of the FAA is not sustainable.

5. The appeal is heard ex-parte, since the dealer-appellant remained absent in the hearing in spite of repeated notice.

6. In this appeal, the sole question raised by the appellant is “Whether the deletion of penalty by the appellate authority is sustainable ?

7. The dealer was subjected to assessment u/s.10 of the OET Act. It was re-assessed on the basis of Audit report on the question of appropriate rate of tax on the goods dealt by the dealer. The dealer was originally assessed u/s.9C of the OET Act. The question of submission of declaration Form E-15 should have taken care of by the AA in the regular audit assessment u/s.9C. However, the fact remains the dealer has not challenged the maintainability of the proceeding u/s.10 of the OET Act. So, this Tribunal should not make out a third case for the parties where they are not in dispute. On the other hand, if we look at the provision u/s.10 of the OET Act itself, the penalty as per Sec.10(2) is not a mandatory one. Similarly, when we look into the merit of the case, it is found that, the dealer had failed to produce the declaration form and in consequence thereof, he was asked to pay tax at full rate. We have plethora of decisions by this Tribunal and the Hon’ble Court relating non-submission of declaration form whereby a view has taken not to impose penalty. Thus, it is held that, imposition of penalty itself is not called for and the provision u/s.10(2) otherwise is not mandatory in nature. As a result, it is believed that, the appeal by the State sans merit. Hence, ordered.

The appeal is dismissed as of no merit.

Dictated and Corrected by me,

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

Sd/-
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2nd Judicial Member

