

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

S.A.No. 10(ET)/2018

(From the order of the Id.ACST (Appeal), Central Zone, Odisha, Cuttack,
in Appeal No. AA/JCST/BLS(E)/129/14-15, dtd.30.11.2017, modifying
the assessment order of the Assessing Officer)

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

M/s. Diana Foams Pvt.Ltd.,
Industrial Estate, Rairanpur,
Dist. Mayurbhanj.

... 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, ASC (CT)

(Assessment period : 01.08.2008 to 31.03.2012)

Date of Hearing: 21.08.2018 Date of Order: 21.08.2018

ORDER

This appeal is directed against the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack (in short, FAA/ACST) passed in First Appeal Case No. AA/JCST/BLS(E)/129/14-15 dtd.30.11.2017 whereby, though the FAA has reduced the tax due by re-determining the TTO in application of the circular issued by CCT(O) vide No.2350/CT dtd.13.02.2015 but on the other hand enhanced the liability noticing other irregularities in calculation of entry tax by the AA.

2. The instant dealer was subjected to assessment u/s.9(C) of the OET Act on the basis of Audit Visit Report. The Assessing

Authority, Balasore Range, Balasore (in short, AA) in determination of 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.9C(5) of the 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. The matter was carried in appeal whereby and wherein the FAA accepted the argument of the dealer with regard to the calculation of taxable turnover on application of the principle that, collection of entry tax either before collection of VAT or after collection of VAT is not a discrepancy attracting penal liability and then re-calculated the tax liability. But while doing so, the FAA has noticed irregularities committed by the AA resulting under-assessment and then enhanced the tax liability as per the chart appended to the appeal order.

4. Being aggrieved, the dealer preferred this appeal. It is contended by the dealer that, there was no notice for enhancement as required under law, as such there was violation of principle of natural justice. It is also contended that, penalty as imposed is not sustainable and the disallowance of set off by the FAA is contrary to the provision of Rule 19(5) of the OET Rules.

5. The appeal is heard with cross objection from the side of the dealer. The dealer has supported the impugned order to be just and proper.

6. At the outset, learned Counsel for the dealer vehemently argued that, no notice of enhancement was given to the dealer. So because the dealer was not given with proper opportunity of being heard, the matter should be remitted back to the FAA for re-hearing. Learned Counsel based his argument as per Rule 54 of the OVAT

Rules and pleaded that, the same has application to the proceeding under OET Act. On the contrary, learned Addl. Standing Counsel draws the attention of the Court to the impugned orders and argued that, the discrepancies in the assessment were confronted to the dealer in course of the argument. The argument advanced by the Counsel for the dealer has got considerable force in the eye of law. The LCR and the order passed by the FAA does not reflect any order stating satisfaction of the FAA for enhancement and it also does not reflect, if any opportunity was provided to the dealer by giving notice for the purpose of enhancement. In that view of the matter, it is believed that, it is a fit case where the matter should be remitted back to the AA with a direction to re-hear the matter in dispute giving property opportunity of being heard to the dealer. In the result, it is hereby ordered.

The appeal is allowed on contest. The impugned order is set-aside. The matter is remitted back to the FAA for disposal afresh as per the direction made above.

Dictated and Corrected by me,

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

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(S. Mohanty)
2nd Judicial Member