

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 119(ET)/2018**

(Arising out of order of the Id. Addl. CST (Appeal),
Bhubaneswar, in First Appeal Case No. AA (ET)
108221722000262, disposed of on dtd.25.05.2018)

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

M/s. Jayashree Plywoods,
Plot No. 166, Kharvela Nagar,
Bhubaneswar, Odisha. Appellant

-Versus-

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

For the Appellant : Mr. B.P. Rout, Advocate
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.04.2015 to 30.09.2015)

Date of Hearing: 10.03.2021 *** Date of Order: 18.03.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), Bhubaneswar (in short, FAA/Addl.CST) in First Appeal No. AA (ET) 108221722000262 dtd.25.05.2018 in confirming the assessment order passed by the learned Sales Tax Officer/Deputy Commissioner of Sales Tax, Bhubaneswar-II Circle, Bhubaneswar (in short, STO/DCST) for the assessment period from 01.04.2015 to 30.09.2015 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-appellant, in the instant case, is a partnership trading concern engaged in trading business in plywood, sun mica, adhesive, laminated sheets, aluminium opposite panels, hardware items, thermocool, bidding etc. both on wholesale and retail basis. Basing upon an Audit Visit Report (AVR) submitted by the Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar, the DCST issued statutory notice to the dealer in Form E-27 to appear along with production of books of accounts for verification and proceeded assessment u/s.9C(1) of the OET (Amendment) Act, 2005. During verification, it was found that, the dealer has paid entry tax @1/3rd of total tax due as per the order of Hon'ble Supreme Court of India at the time of filing of return. For the aforesaid tax period, the dealer has effected purchase of scheduled goods which is taxable @1% to the tune of Rs.5,77,29,551/- and taxable @2% for machineries purchased to the tune of Rs.99,916/-. So the total entry tax payable becomes Rs.5,79,294/- out of which the dealer has already deposited Rs.1,93,096/- through E-challans. In the meanwhile, the Hon'ble Apex Court in case of State of Orissa & Others. Vrs. Reliance Industries Ltd. & Others in SLP (C) No.14454-14778/2008 has already allowed the State appeal against the observation of the Hon'ble Orissa High Court in case of Reliance Industries Ltd. in W.P.(C) No.6515/2006. In this judgement, the Hon'ble Supreme Court of India has stated that, the dealer is liable to pay entry tax on the goods purchased from outside the State. In terms of the Apex Court

judgement, the dealer has paid 1/3rd of entry tax at the time of filing of return, but became liable to pay balance 2/3rd of tax due. However, the dealer after receipt of further notice from the DCST in Form E-24 has also paid the 2/3rd amount of the tax due to the tune of Rs.3,86,198/- but has not paid the interest owing to the pendency of the aforementioned relevant judgements before the Hon'ble Apex Court subject to belated payment of tax due. Thus, the DCST has imposed interest u/s.7(5) of the OET Act on the dealer to the tune of Rs.93,187/-, which the dealer is liable to pay at the time of assessment.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Addl. CST (Appeal), Bhubaneswar, who in turn, dismissed the appeal and confirmed the order of assessment. Thus, the tax demand/interest of the dealer remained unaltered at the first appellate stage also.

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

5. Cross objection has been filed by the State-Respondent in this case.

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned First Appellate Authority. He has vehemently argued that, the order of the learned FAA appears to be unjust and improper. The impugned orders of appeal and assessment passed by the

forums below are not just and proper under the facts and in the circumstance of the case, as such the amount of entry tax withheld as per the order of the Hon'ble Supreme Court, vide SLP (C) No.14454-14778/2008. Therefore, interest imposed u/s.7(5) of the OET Act is liable to be quashed to maintain justice. Since the order passed by the Addl. CST(Appeal), Bhubaneswar is in gross violation of principle of natural justice, as such the impugned order passed by him being not sustainable in the eyes of law is liable to be set-aside for the interest of justice. The learned Advocate for the dealer has filed one petition for additional evidence. Copy of the petition was served to the learned Addl. Standing Counsel. The petition was heard from both the sides and the petition was allowed. The learned Advocate for the dealer has prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing learned Addl. Standing Counsel, Mr. Pradhan for the State argued that, the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The dealer-appellant was given sufficient opportunities in the forums below. Hence, his plea is not acceptable. The order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer-appellant, which is not sustainable in the eyes of law. So, he has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

8. Heard the learned Advocate, Mr. B.P. Rout 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, cross objection filed by the State-respondent, the impugned orders of appeal and assessment and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion that, the points raised by the learned Advocate for the dealer is quite satisfactory and this is a fit case, where the matter should be remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the learned First Appellate Authority is hereby set-aside. The matter is remanded back to the learned AO and he is to consider the additional evidence filed by the dealer after verifying the genuineness of the documents thoroughly and accordingly re-compute the tax liability of the dealer after giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order. 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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(S. Mishra)
2nd Judicial Member

