

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

S.A.No. 78(ET)/2016-17

(Arising out of order of the Id. Addl.CST (Appeal), South Zone,
Berhampur, in First Appeal Case No. AA (ET) 22/2013-14,
disposed of on dtd.28.07.2016)

P R E S E N T :

Sri A.K. Dalbehera Smt.Sweta Mishra & Sri S. Mishra
Judicial Member-I Judicial Member-II Accounts Member-II

M/s. Ravva Ramakrishna,
Jamal Lane, Jeypore,
Dist. Koraput.

.... Appellant

-Versus-

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

.... Respondent

For the Appellant : Mr. N. Ananda Rao, A.R.

For the Respondent : Mr. D. Behura, Standing Counsel

(Assessment Period : 01.01.2008 to 31.08.2010)

Date of Hearing: 06.04.2021 *** Date of Order: 12.04.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, FAA/Addl.CST) in First Appeal No. AA (ET) 22/2013-14 dtd.28.07.2016 in confirming the assessment order passed by the learned Assessing Authority/Joint Commissioner of Sales Tax, Koraput Range, Jeypore (in short, STO/JCST) for the assessment period from 01.01.2008 to 31.08.2010 u/s.9C of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. The brief facts of the case are that :

The dealer-appellant in the instant case M/s. Ravva Ramkrishna, Jeypore carries on business in kerosene oil under the PDS scheme, fertiliser and lubricants. On receipt of Audit Visit Report (AVR), the learned Assessing Officer initiated proceedings u/s.9C of the OET Act. In response to the notice, the dealer appeared and produced the books of accounts which were examined by the learned Assessing Officer with reference to the observations of the AVR and periodical returns filed for the period 01/08 to 08/10. As per AVR, the audit team has examined the books of accounts but found no discrepancy except non-payment of admitted tax of Rs.7,97,110/-. Being asked about non-payment of admitted tax, the dealer contended that it has not been paid in pursuance of the judgement of the Hon'ble High Court of Orissa in case of M/s. Reliance Industries Ltd. & Others.

The learned Assessing Officer examined the books of account and found no discrepancy on purchases and sales. Accordingly, the learned Assessing Officer computed the tax payable by the dealer which has been arrived at on non-payment of admitted tax of Rs.671110/-. The contention of the dealer to the effect is that in view of judgement of Hon'ble High Court of Orissa in case of M/s. Reliance Industries Ltd. and Others, the dealer has not paid the same. He further contended that, in view of the orders of the Hon'ble Court, the dealer has deposited 1/3rd of the tax due into the Government account. The learned Assessing Officer asked him to produce the copy of the order to the effect but the dealer failed to produce the same. Accordingly, the learned Assessing Officer viewed that

in the instant case the dealer is neither a party to the case disposed of by the Hon'ble High Court of Orissa nor the Special Leave Petition in Case No.14454 pending before the Hon'ble Apex Court, hence the instant dealer is not entitled to avail such benefit and liable to pay the entire tax in terms of Sec.3 of the OET Act. Accordingly, the learned Assessing Officer raised demand of non-payment of admitted tax of Rs.6,71,110/- and imposed penalty of Rs.13,42,220/- invoking provision of Sec.9C(5) of the OET Act.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Addl.CST (Appeal), South Zone, Berhampur, who in turn, dismissed the appeal and confirmed the order of assessment.

4. Being further aggrieved with the order of the learned FAA/Addl.CST (Appeal), South Zone, Berhampur, the dealer knocked the door of this Tribunal by way of filing of second appeal, with contention that, the order passed by the learned FAA by confirming the order of the learned Assessing Officer is without appreciation of facts and merits of the case.

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

6. Learned Advocate appearing on behalf of the dealer has vehemently argued that, the orders passed by the forums below under the OET Act relating to the period 01.01.2008 to 31.08.2010 are illegal, unjust, unwarranted and the same are not in reference to the facts and circumstances of the case. The dealer-appellant in the instant case has maintained the books of accounts in the regular course of

business transactions. The business premises of the dealer-appellant was subjected to audit by the audit team of the Department and on their such audit have not found any defect. The dealer was dealing in goods which are not manufactured inside the State of Odisha and hence they are not liable for payment of entry tax as per the decision of Hon'ble High Court of Orissa in the case of **M/s. Reliance Industries –Vrs. State of Odisha** reported in (2008) 16 VST- Page 85. The learned Assessing Officer as well as the First Assessing Authority without considering the aforesaid facts has raised the tax demand and also imposed penalty thereon which is against the principles of natural justice. The learned Advocate for the dealer has cited two judgements i.e. **Ruchak Metals –vrs. State of Tamil Nadu** reported in (2011) 41 VST 63 (Mad) and **M.G. Garments –vrs. Sales Tax Officer, Investigation Unit, Bhubaneswar & Others** reported in (2009) 19 VST 372 (Ori) in support of his stand. Perused the judgements cited by the learned Advocate for the dealer. He 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 Standing Counsel, Mr. Behura 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. There is no reasonable merit in the second appeal filed by the dealer, which is not sustainable in the eyes of law. The learned Assessing Officer and First Appellate Authority have rightly completed the assessment/appeal basing on the statutory

provisions under the Act and Rules. The Hon'ble Apex Court has upheld the validity on imposition of Entry Tax in the case the goods are not manufactured within the State, so the case cited by the dealer has already been dismissed by the Hon'ble Apex Court. The order of the learned FAA is crystal clear with respect to the other points raised by the dealer. He has dealt each and every item which is self-explanatory in nature and requires no further interference by this Tribunal.

In the case of **Indodan Industries Ltd. –vrs. State of U.P.** reported in **(2010) 27 VST 1 (SC)**, it was held that the interest is compensatory in nature in the sense that when the assessee pays tax after it becomes due, the presumption is that the department has lost the revenue during the interregnum period and that the assessee enjoys that amount during the said period and in order to recover the lost revenue, the levy of interest is contemplated.

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. N. Anand Rao appearing on behalf of the dealer and learned Standing Counsel Mr. D. Behura on behalf of the State. Gone through the grounds of appeal, impugned orders of appeal and assessment and cross objection filed by the State-respondent. Analysed the arguments of both the sides at the time of hearing. Perused the materials available on record. In this case, the dealer-appellant has mainly agitated about imposition of penalty which is arbitrary amongst other grounds. It was contended that the circular of sales tax department has clearly advised not to impose penalty. In

S.A.Nos. 133(C) of 2017-18 and 2(C) of 2018, the Division Bench of this Tribunal has directed the first appellate authority to levy interest on the ultimate tax dues of the dealer-assessee in accordance with law. Hence, in the present case the penalty imposed is arbitrary and unjustified and as such the same is deleted and in the light of the above discussion, it is necessary to levy interest on the tax due for which the matter should be remitted back to the learned Assessing Officer for necessary computation. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed in part on contest. The order of the learned FAA is hereby set-aside. The matter is remitted back to the learned Assessing Officer for necessary computation by levying interest on the tax due instead of penalty as per the provision of law giving the dealer a reasonable opportunity of being heard preferably 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

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

I agree,

Sd/-
(A.K. Dalbehera)
Judicial Member-I

I agree,

Sd/-
(S. Mishra)
Accounts Member-II

