

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

**S.A.No.101(ET)/2018**

(Arising out of order of the Id. Addl. CST (Appeal), North Zone,  
Odisha, Sambalpur, in First Appeal Case No. AA-20(E)/10-11,  
disposed of on dtd.28.3.2018)

**Present: Sri S.K. Rout**  
**2<sup>nd</sup> Judicial Member**

Sarvesh Refractories Pvt. Limited,  
Kuarmunda, Dist. Sundargarh. .... Appellant

**-Versus-**

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

For the Appellant : Mr. S.C. Agarwal, Advocate

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

(Assessment Period : 01.04.2006 to 31.03.2008)

---

Date of Hearing: 02.04.2022 \*\*\* Date of Order: 02.05.2022

---

**ORDER**

Challenge in this appeal is the Order dtd.28.03.2018 passed by the Id.Addl. Commissioner of Sales Tax (Appeal) North Zone, Sambalpur, Odisha (in short, Id.ACST/FAA) in first appeal case No.AA-20(E)2010/11 allowing the appeal in part, deleting the interest charged of Rs.7,16,360/- from the total demand of Rs.51,09,362/- and reduced to Rs.43,93,002/- against the order of assessment passed by the Id.JCST, Sundargarh Range, Rourkela (in short, Id.JCST/AO) U/s.9-C of the OET Act for the period 01.04.2006 to 31.03.2008 raising an additional demand of

Rs.51,09,362/- including tax of Rs.14,64,334/-, interest of Rs.7,16,360/- and penalty of Rs.29,28,668/-.

2. The case at hand in short is that, the dealer-appellant carries on business in purchase of scheduled goods like machinery and its spares, electrical goods and V-Belt, Casting goods, cotton waste, wooden materials, grease, lubricants etc. The dealer company effect purchase of scheduled goods both from inside and outside the State. The Id.Assessing Officer initiated proceeding u/s.9(C) of the OET Act basing on the audit visit report and raised an additional demand of Rs.51,09,362/- including interest and penalty.

3. Being aggrieved with the order of assessment passed by the learned AO, the dealer-appellant filed first appeal before the learned FAA/Addl.CST, who reduced the order of assessment.

4. Being further aggrieved with the order of the learned FAA/ACST, the dealer has preferred the present second appeal before this Tribunal.

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

6. The contention of the dealer-appellant is that since the order of assessment has been passed u/s.9(C) 4 of OET Act, no interest is leviable u/s.7(5) of the OET Act in view of judgment of Hon'ble Apex Court in the case of J.K. Synthetics Ltd. reported in (1994) 94 STC 422 (SC). The GTO & TTO determined in the assessment order has not been disputed by the dealer-appellant. Dealer's contention is that the determination of set off amount

and the entry tax levied on raw materials imported from outside the country should have been considered for allowing set off. On perusal of the case record, it becomes clear that during course of calculation, due consideration is given to the entry tax paid of Rs.11,71,700/- on purchase of raw materials effected from registered dealers inside the State and also entry tax levied at Rs.15,48,445/- on purchase of raw materials from outside the State and outside the country. So, it reveals that due consideration is given to the entry tax levied on imported raw materials during calculation of set off amount of Rs.11,88,159/-. With regard to imposition of penalty, it reveals that the penalty of Rs.29,28,668/- has been imposed u/s.9-C(5) of the OET Act which is twice the amount of tax assessed of Rs.14,64,334/-. As the assessment has been made u/s.9-C of the OET Act, as a result of tax Audit, dealers case was not under subjudice during the period of filing of returns and completion of assessment, for which imposition of penalty of Rs.29,28,668/- u/s.9-C(5) of the OET Act is genuine. With regard to charging of interest of Rs.7,16,360/- u/s.7(5) of the OET Act, against tax assessed on Rs.14,64,334/-, Id.FAA relying upon the verdict of the Hon'ble Apex Court decided in the case of **J.K. Synthetics Ltd.** reported in (1994) 94 STC 422 (SC) has rightly held the same as premature and as such deleted the interest of Rs.7,16,360/- charged u/s.7(5) of the OET Act. So, deletion of interest charged on Rs.7,16,360/- from total demand of Rs.51,09,362/- raised in the assessment order is genuine which resulted in reducing to Rs.43,93,002/-.

All the aspects in this case have rightly been adjudicated upon by the ld.FAA in consonance with the position of law and as such, the order needs no interference.

7. In the result, the appeal preferred by the dealer-appellant is dismissed and the order of the learned FAA is hereby confirmed. The cross objection is disposed of accordingly.

Dictated and Corrected by me,

Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member

Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member