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

S.A.No. 112(ET)/2017-18

(From the order of the ld.JCST (Appeal), Bhubaneswar Range, Bhubaneswar, in Appeal No. AA-108221722000056/OET/BH-II, dtd.23.06.2017, confirming the assessment order of the Assessing Officer)

Present: Sri S. Mohanty
2nd Judicial Member

Hariharan Balkrishnan, Partner,
M/s. Tex Marketing Agencies,
Plot No.283, Saheed Nagar,
Bhubaneswar. … Appellant

-Versus-

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

For the Appellant : Mr. B.B. Tripathy, Advocate
For the Respondent : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)
Date of Hearing: 23.07.2018 Date of Order: 23.07.2018

ORDER

The assessee-dealer as appellant has assailed a confirming order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, FAA/JCST) in First Appeal Case No. AA-108221722000056/OET/BH-II dtd.23.06.2017 relating to the assessment period 01.04.2016 to 31.10.2016 determined u/s.10 of the Odisha Entry Tax Act, 1999 (in short, OET Act) by the Assessing Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, AO).

2. The assessee-dealer was engaged in trading of pump sets including Hand pump sets, panel for electrical fittings, cables, HDPE pipe etc. It was self-assessed u/s.9(2) of the OET Act. But at a subsequent period basing the tax evasion report dtd.31.11.2016

submitted by Enforcement Range, Bhubaneswar, a re-assessment proceeding u/s.10 of the OET Act (Amendment Act), 2005 was initiated. It was reported that, the dealer had brought goods from out of State amounting to Rs.10,86,95,674/- but had not discharged the entry tax liability. The dealer's plea before the AO was, since the commodities brought into the local area from out of State, were not produced inside the State, the dealer was exempted from paying entry tax. The AO declined the claim of the dealer and calculated the tax liability. Besides the tax liability, he also imposed interest u/s.7(5) then penalty u/s.7(6) and further penalty u/s.10(2) of the OET Act. Thus, the total demand raised at Rs.34,57,762/-.

3. The dealer carried the matter before the FAA, who in turn, by reiterating the view of the AO confirmed the assessment order.

4. Being aggrieved by such confirmation of the order of AO, the dealer has preferred this appeal. It is contended that, the dealer had never suppressed the fact of any purchase and had duly reflected the purchases in its books of account but had not paid the entry tax under the impression that, since the goods brought into the local area were not produced inside the State during that period and for the reason the goods were not exigible to entry tax. The dealer had preferred W.P.(C) No.5529/2007 before the Hon'ble Court whereby the Hon'ble Court had directed to act in accordance to the decision in **Reliance Industries Ltd. & Others Vrs. State of Orissa (2008) 16 VST 85**. It is also contended that, after final disposal of the Reliance Industries case (supra) and in accordance to the direction of the Commissioner of Sales Tax, the dealer had started paying the tax with interest. So, in view of the fact that, the dealer had no intention to evade tax and the authorities were wrong in imposing interest and penalty on the tax due.

5. The appeal is heard with cross objection by the Revenue stating therein in support of the impugned order as legal and binding.

6. In the case in hand, keeping in view the grounds taken by the dealer, here it is to be seen that, whether the dealer is liable to pay interest and penalty as levied by the fora below. It is an undisputed fact that, the Hon'ble Court in their Order dtd.24.07.2009 in W.P.(C) No.5529/2007 had directed that, the principle decided by the Hon'ble Court in the Reliance Industries Case would be applicable to the case of the dealer-appellant. In the Reliance Industries case, it was held that, State of Odisha cannot levy entry tax on goods brought from outside the State are not manufacturing in Odisha. This order of the Hon'ble Court was stayed by the Apex Court in I.A.No.327-651 in SLP (C) 14454-14778 on 30.10.2009. Thereafter, the Hon'ble Supreme Court has set the dispute in rest in **Jindal Stainless Ltd. & another Vrs. State of Haryana & Others (2016) Vol. 2 SCALE-1** with the observation that: "A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the State"

In view of the principle as settled, now it is beyond doubt that the instant dealer is liable to pay entry tax on the goods as determined by both the fora below.

7. The claim of the dealer is, he had knocked the door of the Hon'ble Court, the Hon'ble Court had made an interim arrangement till final decision and as such the dealer remained under the impression that, he might be exempted from paying tax, had not paid the tax but had disclosed the fact of purchase in his books of account. So, there was no evil intention, there was no escapement by the dealer. So, the dealer should not be imposed with penalty. It is

further argued that, here the dealer is saddled with penalty u/s.7(6) and u/s.10(2) of the OET Act. There should not be penalty under both the provisions at a time. At the same time it is also argued that, the dealer should not be burdened with interest for the reason above.

Per contra, learned Addl. Standing Counsel, Mr. Pradhan argued that, when the dealer had not paid tax, then he is required to pay the interest and penalty. At the outset, it is pertinent to mention here that, the dealer had disclosed his transactions in his return but had not paid the tax. So hardly there is any question of escaped assessment of tax by the dealer. Further u/s.10(2) itself is not a mandatory one. In appropriate case, the penalty may be exempted as it is intended by the legislatures while engrafting the word "may" in the provision.

8. Learned Counsel for the dealer advanced the decision in Shree Krishna Electricals Vrs. State of TamilNadu and another (2009) 23 VST 249 wherein the Apex Court has held that, penalty should not be imposed when there was disclosure of the sale purchase in the books of account. The ratio in the decision is squarely applicable to the case in hand. The dealer had no intention to avoid payment of due tax. It is under the impression that, the dealer was not required to pay tax, he had not paid, but had disclosed fact of purchases in his account. He had knocked the door of the Hon'ble Court and the Hon'ble Court has also given him relaxation till final decision in the matter. Final decision of the Hon'ble Supreme Court came in favour of the State in similar matters, which also covers the dealer in question. In that event, the dealer should be asked to pay the tax and since the interest is a mandatory consequence of non-payment of tax in time, the dealer should also be asked to pay interest but not penalty as levied by both the fora below.

To sum up from the discussion above, it is held that, the dealer is liable to pay tax and interest as determined by the authority, whereas he is not liable to pay the penalty as levied. The impugned order is modified accordingly. The demand be raised on fresh calculation in accordance to the decision herein above.

The appeal is allowed in part on contest.

Dictated and Corrected by me,

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

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