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

S.A. No. 204 (E) of 2012-13

(From the order of the ld.DCST, Ganjam Range, Berhampur,
in First Appeal Case No. AA.E.28/2012-13,
disposed of on dtd.27.11.2012)

Present: Sri S. Mohanty
2nd Judicial Member

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

-Versus-

M/s. SHAGUN,
Cantonment Road,
Berhampur. ... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)
For the Respondent : N o n e

Date of Hearing: 11.01.2019 * * * Date of Order: 11.01.2019

O R D E R

Revenue has challenged the order of the First Appellate Authority, Ganjam Range, Berhampur (hereinafter referred to as, the FAA) in First Appeal Case No. AA.E.28/2012-13 assessing thereby the dealer entitled to refund of Rs.32,321.00, the excess tax paid.

2. The dealer was assessed u/s.9C of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) for the period from 29.07.2007 to 31.05.2010 on the basis of Audit Visit Report (in short, the AVR). In the assessment, the dealer was found guilty of purchase suppression of Rs.2,05,479.00 which was ultimately added to his turnover in the assessment. Similarly, the tax of Rs.4,880.00 paid at checkgate as per the claim of the dealer was also disallowed in absence of reliable proof. In conclusion the GTO/TTO was determined at Rs.3,39,95,031.60. Tax @ 2%

on TTO was calculated at Rs.67,990.00. The payment of tax by the dealer of Rs.7,12,222.00 was considered and as the dealer was found to have paid excess amount of tax, 'Nil' demand was raised by the assessing officer.

In appeal preferred by the dealer, the first appellate authority confirmed the findings of the assessing authority like purchase suppression of Rs.2,05,479.00 and denial of claim of payment at checkgate to the tune of Rs.4,880.00 but in ultimate analysis the first appellate authority has held that since the dealer has paid excess amount, he is entitled to get refund of Rs.32,321.00.

As against that, the State has come up with this appeal on the contention that, the tax period under consideration by the assessing authority and the first appellate authority are different. So, the assessment by the assessing authority should be restored.

3. It is pertinent to mention here that, time and again the authorities have cautioned in many of the judgments that, it is the duty of the Government to avoid unwarranted litigations and not to encourage any litigation for the sake of litigation. The present one before this Tribunal is another deviation from the aforesaid view. State has not raised any plausible ground to take cognizance of in this appeal. The order of the first appellate authority is challenged on a flimsy ground only because by the order of the first appellate authority the dealer is found entitled to refund.

The order of the assessing authority though ended with 'nil' demand, but the calculation as per the assessment order also reveals the dealer is entitled to refund. The assessing authority at his sweet whim has held that, there is 'nil' demand against the dealer. However, as per the assessment order the dealer is entitled to refund. The first appellate authority has not done anything more but confirmed the findings of the

assessing authority and in consequence thereof, the dealer is found entitled to refund.

On this admitted facts in the case, when the appeal is found groundless and baseless, in consequence thereof, the impugned order calls for no interference.

The appeal being sans merit dismissed on contest.

Dictated & corrected by me,

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

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