

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

**S.A.No. 264/2008-09**

(From the order of the Id.ACST (Appeal), Bhubaneswar, in  
Appeal No. AP-152/BHII/05-06, dtd.29.01.2008,  
modifying the assessment order of the Assessing Officer)

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

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

.... Appellant

**-Versus-**

M/s. Roshan Motors,  
43, Khandagiri Square,  
Bhubaneswar.

... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)  
For the Respondent : None

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Date of Hearing: 27.07.2018

Date of Order: 27.07.2018

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**ORDER**

State has come up with this appeal against the impugned order challenging the reduction of tax due by the learned First Appellate Authority/Asst. Commissioner of Sales Tax (Appeal), Bhubaneswar (in short, FAA/ACST) as not in accordance to the method of calculation prescribed under the Act.

2. The moot question to be decided in this appeal is :-  
Whether the calculation of the penalty levied u/s.11(3) of the Odisha Sales Tax Act, 1947 (in short, OST Act) by the FAA is wrong ?

The dealer was a defaulter in filing of periodical returns as required u/s.11 of the OST Act. So the Assessing Officer/Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, AO/STO) levied penalty in a proceeding u/s.11(3) of the OST Act

vide Order dtd.16.02.2005 and the penalty amount was Rs.39,980/-. The dealer carried the matter before the FAA, who in turn, in confirmation of the findings of the AO relating to the imposition of penalty but in an independent calculation determined the penalty at Rs.9,370/-, which is less than the penalty determined by the AO.

3. Being aggrieved State has filed this appeal and challenged the levy of calculation of penalty as adopted by the FAA.

**Findings :**

4. Relevant portion of the provision u/s.11(3) of the OST Act reads as follows :

“If a dealer fails, without reasonable cause, to furnish any return required under sub-section (1) by the prescribed date, the Commissioner may direct that the dealer shall, by way of penalty, pay a sum equal to one-tenth per centum of the tax due or rupees ten, whichever is higher, for every day after the prescribed date during which the dealer fails to furnish the required return.]

xxx xxx xxx xxx xxx”

As per the provision above, the dealer, who fails to furnish return in time is required to pay penalty i.e. a sum equal to 1/10<sup>th</sup> per centum of the tax due or Rs.10/- per day, whichever is higher. The calculation is to be based on the tax liability and then the delay in filing return by number of days. When orders by both the fora below are compared, it is only to see, what was the tax due and its 1/10<sup>th</sup> per centum so as to determine the penalty either adopting the percentage method or to impose Rs.10/- per day whichever is higher. Without perusing the periodical return and tax due of the dealer, this Tribunal is not in a position to calculate the penalty and to decide if the calculation of FAA is wrong. The chart of calculation

in the impugned order as it revealed, while making calculation, the FAA was aware of the calculation method and adopted the same.

The dealer had disputed the calculation of amount of penalty as determined by the AO. The FAA re-calculated the same. So, it can be safely pleaded that, the FAA was aware of the dealer's plea, the provision under law and the mode of calculation and the amount determined by the AO. In that event, in absence of any evidence, it cannot be presumed that, the calculation by FAA is wrong. In absence of any cogent evidence, the calculation by the FAA should not be interfered. Accordingly, it is ordered.

The appeal by the State is dismissed as of no merit.

Dictated and Corrected by me,

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

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