

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

S.A.No.29(VAT) of 2018

(From the order of the learned JCCT, Bhubanewar Range,
Bhubaneswar in Appeal No.AA.106221622000146/BH-II/16-17),
dated 18.12.2017)

P r e s e n t :

**Shri Subrat Mohanty,
Judicial Member.**

M/s.Eastern Enterprisers,
Plot No.3041, Rasulgarh, Near Saptasati
Temple, Bhubaneswar.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant

...Mr.R.C.Jena, Advocate.

For the Respondent

...Mr.S.K.Pradhan, Addl. S.C.(CT).

Period of Assessment: 01.04.2013 to 31.03.2015

Date of hearing: 10.09.2019 * * * Date of Order:10.09.2019

O R D E R

This tax appeal is at the instance of the assessee-dealer as appellant. Challenge is the impugned order of the first appellate authority whereby and wherein the first appellate authority has not only confirmed the order of the assessing authority but also enhanced the penalty amount in an assessment under Sectin-42 of the OVAT Act relating to the appellant dealer for the tax period 01.04.2013 to 31.03.2015.

2. The instant dealer is engaged in the business of trading of power tiller, power reaper, pump sets, rotavetor etc. On the basis of AVR suggesting from audit report with the

allegation of irregular adjustment of tax and purchase suppression. Learned STO, Bhubaneswar II Circle assessed the dealer under Section 42(4) of the OVAT Act. The assessment was ended with demand of balance tax due of Rs.68,505.87 and penalty at one times for the same amount, thereby, the total demand towards tax and penalty was calculated at Rs.1,37,011.74.

3. Being aggrieved the dealer knocked the door of the first appellate authority. Learned JCST, Bhubaneswar as first appellate authority vide impugned order though confirmed the findings of suppression and of balance tax due but enhanced the penalty amount from one time to two times. As a result, the total demand became enhanced Rs.2,05,518.00.

4. Felt aggrieved, the dealer preferred this second appeal with the contentions like, the assessing authority has not taken into consideration of the payment of Rs.13,050.00 of tax already paid by the dealer. Further, it has wrongly decided the fact relating to return of goods and accordingly the enhancement of GTO and TTO is baseless.

5. The appeal is heard with cross objection on the side of the revenue whereby and wherein the revenue has supported the impugned order.

6. Before delving into the merits of the appeal as per the grounds raised as the appellant dealer, it is pertinent to mention here that, the learned counsel for the dealer has fairly conceded and did not press the question on the merit but argued only for reconciliation of the figure relating to admitted tax paid by the dealer. Learned Counsel produced Xerox copy of one banker cheque showing payment of tax to the tune of Rs.13,526.00 on dated 19.04.2014 and for Rs.2 lakhs on dated 29.03.2014 and urged for rectification of the calculation of tax due in consideration of the above payments. In the facts and

circumstances as submitted by the learned Counsel for the dealer here in this case it is held that there is not question for consideration on merit other than the calculation of the balance tax due taking into consideration the tax already paid. It is further held that after re-conciliation of the figure if it is found that the dealer has no tax due then there is no question of imposition of penalty. With the observations herein above it is ordered.

7. The appeal is allowed on contest. The impugned order is set aside. The matter is remitted back to the assessing authority for assessment afresh.

Dictated and Corrected by me,

(Sri Subrat Mohanty)
Judicial Member.

(Sri Subrat Mohanty)
Judicial Member.