

BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 50 (ET) of 2018

(Arising out of order of the learned JCST (Appeal), Bhubaneswar Range,  
Bhubaneswar in First Appeal Case No. AA-108221622000158/OET/BH-II  
disposed of on 30.11.2017)

Present: Shri R.K. Pattanaik,  
Chairman

M/s. Utkal Builders Ltd.,  
Plot No.777, Saheed Nagar,  
Bhubaneswar

... Appellant

-Versus-

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

... Respondent

For the Appellant : Sri A.K. Mohapatra, Advocate

For the Respondent : Sri D. Behura, Standing Counsel (CT)

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Date of hearing: 20.01.2021

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Date of order: 05.02.2021  
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**ORDER**

Instant appeal under Section 17(1) of the Odisha Entry Tax Act, 1999 (hereinafter referred to as 'the Act') is at the behest of the dealer assessee assailing the impugned order dated 30.11.2017 promulgated in Appeal Case No. AA-108221622000158/OET/BH-II by the learned Joint Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, 'FAA'), who confirmed the order of assessment dated 06.11.2015 passed under Section 9C(4) of the Act by the learned Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar (hence called, 'AA') for the tax period from 01.04.2009 to 31.03.2014 on the grounds inter alia that the

levy of entry tax on imported goods and penalty to be bad in law and thus, deserves to be set aside in the interest of justice.

2. The dealer assessee is a limited company and engaged in construction of apartments and was subjected to tax audit for the alleged period which ultimately led to the submission of a report alleging non-discharge of entry tax liability on import purchases of ₹2,32,98,572.29. Later to the receipt of the Audit Visit Report (AVR), the dealer assessee was reassessed by the AA, who, ultimately determined the taxable turnover under the Act and assessed it at ₹3,91,551.02 and levied penalty twice the amount, in total, an amount of ₹11,74,653.00 was held payable. The dealer assessee challenged the said assessment dated 06.11.2015 and approached the FAA and raised certain points claiming that no tax liability remained to be discharged and also questioned the penalty levied. However, the FAA, since the dealer assessee failed to produce documentary evidence to counter the discrepancies pointed out in the AVR, did not find any cogent reason to interfere with the order of assessment dated 06.11.2015. Having been unsuccessful in appeal, the dealer assessee has approached the Tribunal on the self same grounds by stating that it is not liable to pay entry tax on imported goods.

3. By way of cross-objection, the State, on the other hand, apprised the Tribunal that the law is now well settled and no more res integra that entry tax is leviable on import purchases, the dealer assessee must have to be honour and comply the tax liability and furthermore, on the aspect of penalty, the authorities below rightly it imposed keeping in view Section 9C(5) of the Act. In

other words, according to the State, the impugned order dated 30.11.2017 is unassailable, absolutely justified and in accordance with law and thus, does not call for any interference.

4. The dealer assessee, on verification of the books of accounts, found to have imported Glass worth of ₹96,15,742.00 during December, 2011 and Tile of ₹1,36,82,830.00 in the month of March, 2012 and as per the AVR, it did not discharge the entry tax liability and hence, the AA proceeded to levy such tax @ 1% and 2% respectively. The levy of entry tax under the Act is ensured by virtue of Section 3 of the Act. Likewise, manufacturers are to collect and pay entry tax in terms of Section 26 of the Act. A dealer is liable to pay entry tax on the purchase value of scheduled goods as ascertained from original invoice or bill which is inclusive of all the other charges as mentioned in Section 2(j) of the Act. In course of argument, the learned Counsel for the dealer assessee fairly conceded that entry tax is payable on imported goods for the alleged period, but advanced a plea that in view of the Tribunal's recent orders dated 20.11.2020 in S.A. Nos. 119 (ET) & 120 (ET) of 2010-11 and S.A. Nos. 140 (ET) & 141 (ET) of 2010-11 and 26.11.2020 in S.A. Nos. 84 (C) of 2015-16 & S.A. No. 344 (VAT) of 2015-16 and S.A. No. 184 (ET) of 2015-16, the penalty should be deleted. The learned Standing Counsel (CT) for the State would contend that if such a plea as to deletion of penalty is accepted, by the Tribunal, then, interest should be levied on the amount of tax assessed which is really in the nature of compensation. It is apprised that the Tribunal in one of the orders dated 20.11.2020 *ibid* has indeed allowed interest on the ground that it is

payable on the admitted tax due vis-a-vis the scheduled goods in order to make good the loss suffered by the State.

5. Since the customs duty finds no place in Section 2(j) of the Act, it was in a fluid state, as to if leviable in respect of import purchases effected by the dealers. In a way, many dealers did not show turnover under the Act for the reason that customs duty is no part of the purchase value as defined in Section 2(j) of the Act. In this regard, a matter was carried to the Hon'ble Court challenging the vires of the Act which ultimately landed up in the Hon'ble Apex Court in the case of State of Kerala and others Vs. Fr. William Fernandez and others reported in (2018) 56 GSTR 6 (SC), wherein, the controversy was set to rest with the enunciation of law that the Act is not invalid and entry tax is realizable on imported goods. Thus, in view of the above settled position of law, the dealer assessee has to pay the entry tax on the alleged import of goods.

6. That being so, the only question which is now left for consideration is, if at all penalty is to be upheld or not. There is no mention that the dealer assessee was ever be a party challenging the vires of the Act. However, the fact of the matter is, till the time the law was settled by the Hon'ble Apex Court in Fr. William Fernandez's case, an environment was overwhelmed with a perception that entry tax is not leviable on imported goods. There was indeed no clarity on the law for quite some time and different interpretations were resorted to by the dealers and under a bonafide belief that such duty is not payable on import purchases, payment of entry tax was avoided. The Tribunal, in the recent past, in

quite a number of cases deleted penalty on the ground that its non-payment was under a bonafide belief or impression which is in good faith. If a law was volatile during a period which tempted to have divided opinions or interpretations on taxation and in such a situation, if tax was not paid, in the humble opinion of the Tribunal, no penalty should be levied, ultimately when, the law was later settled or controversy was laid to rest. In the instant case, such was the situation and ground upon which, as it apparently suggests, the dealer assessee failed to honour the tax liability and in paying entry tax on the imported goods. Having regard to the above facts and circumstances, in the considered view of the Tribunal, applying the rule of parity to the present case, penalty part should be deleted. However, appreciating the submission of the learned Standing Counsel (CT) for the State and for the recent view of the Tribunal consistently adopted and followed, it is also realized that for the non-payment of entry tax by the dealer assessee albeit on a just ground, interest should be imposed on the admitted tax due in order to compensate for the loss sustained by the State which is again a mandate of law.

7. Hence, it is ordered.

8. In the result, the appeal stands allowed in part. As a necessary corollary, the impugned order dated 30.11.2017 passed in Appeal Case No. AA- 108221622000158/OET/BH-II is hereby set aside to the extent indicated above. Consequently, the AA is directed to take up recomputation as to the tax liability vis-a-vis the dealer assessee for the tax period in the light of the observations of the Tribunal and in accordance with law and to pass appropriate

order preferably within a period of three months from the date of receipt of the above order. The cross-objection is accordingly disposed of.

Dictated & Corrected by me

Sd/-  
(R.K. Pattanaik)  
Chairman

Sd/-  
(R.K. Pattanaik)  
Chairman