

**BEFORE THE DIVISION BENCH, ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A. No.66(ET) of 2020

(Arising out of the orders of the learned
Addl.CST(Appeal), Bhubaneswar in First
Appeal Case No.CU-II-AA-63/2006-
2007/AA-(ET)37/CU-II/2018-19, disposed
of on 30.09.2019)

**Present: Shri S.K. Rout, 2nd Judicial Member &
Shri B. Bhoi, Accounts Member-I**

M/s. NALCO LIMITED, (Smelter Division),
Nalco Nagar, Angul. Appellant.

-Vrs. -

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

For the Appellant: : Mr. S.C. Sahoo, Advocate
For the Respondent: : Mr. D. Behura, S.C.(C.T.)
: Mr. N.K. Rout, A.S.C. (C.T.)

Date of Hearing : 16.12.2023 * Date of Order : 12.01.2024**

O R D E R

The dealer is in appeal against the orders dated
30.09.2019 of the Additional Commissioner of Sales Tax (Appeal),
Bhubaneswar (hereinafter referred to as 'ld. FAA') passed in First
Appeal Case No. CU-II-AA-63/2006-2007/AA-(ET)37/CU-II/2018-
19 confirming the order of scrutiny of returns passed under sub-
section 10 of Section 7 of the OET Act read with sub-rule 6(a) of
Rule 10 of the OET Rules by the Assistant Commissioner of Sales

Tax(LTU), Cuttack II Range, Cuttack (hereinafter called as 'Id.Assessing Authority) pertaining to the returns filed for the month endings 01.04.2006 to 31.01.2007.

2. The factual matrix of the case is that M/s. National Aluminium Company Limited (Smelter Division, Angul) (hereinafter referred to as 'Dealer-company') is a Government of India undertaking engaged in manufacturing of aluminium ingots/goods using raw materials like alumina, coal, alum, CP coal aluminium fluoride, caustic soda and other consumables. The Id. Assessing Authority took up scrutiny of the returns filed under Section 7 of the OET Act for the month endings 01.04.2006 to 31.01.2007 under sub-section 10 of Section 7 of the OET Act read with sub-Rule 6(a) of Rule 10 of the OET Rules. On scrutiny, Id. Assessing Authority observed that entry tax @ 0.5% has been paid by the dealer-company on purchases of scheduled goods like C.P. Coke worth ₹107,63,56,947.00, L.Pitch worth ₹93,68,79,001.00 and LALF-3 worth ₹42,50,83,945.00 treating the same as raw-material for manufacture of aluminum goods. The Id. Assessing Authority held the said goods as not raw materials and levied entry tax @1% thereon. As a result, the differential amount of entry tax due for payment after adjustment of tax paid @ 0.5% on such purchases at the time of filing returns calculated to ₹1,21,86,599.00. This apart, the Id. assessing authority observed that Alumina purchased for ₹137,93,91,891.00 was in use as raw

materials for production of aluminium goods meant for export outside the territory of India. The dealer-company has availed set off of entry tax paid on such purchase of alumina in violation of sub- Rule 4 of Rule 3 of the OET Rules as substituted in Odisha Entry Tax (Amendment) Rules, 2004 vide Finance Department Notification No.43961/CTN-5/2003-F (SRO No. 467/2004 dated 07.10.2004) which provides that “*goods specified in part I and part II of the Schedule to the Act when used as raw material directly in manufacture of goods to be exported out of the territory of India shall not be exigible to tax where a declaration in Form E-16 from the buying manufacturer is furnished*”. As there were no E-16 Forms furnished, the ld. Assessing Authority levied entry tax @ 0.5% on alumina worth ₹15,75,63,248.00 calculating to entry tax at ₹68,96,960.00. Under both the aforesaid counts, the ld. Assessing Authority fixed the tax liability upon the dealer-company at ₹1,90,83,559.00 and issued notice in Form E-24 for less payment of tax directing the dealer-company to pay ₹1,90,83,559.00 along with interest @ 2% thereon. The first appeal as preferred by the dealer-company against the above order of scrutiny resulted in affirmation of the order of the ld. Assessing Authority. The dealer-company being aggrieved with the order of the ld.FAA approached this forum for relief. Hence, this second appeal.

3. The dealer-company assails the order of the ld.FAA as not sustainable under law being devoid of any legal sanctity. Raising of demand unilaterally by the ld. Assessing Authority by simply issuance of notice in Form E-24 is against the principles of natural justice. There was no opportunity of being heard afforded to the dealer-company to defend. In this context, Mr. S.C Sahoo, ld. Advocate appearing on behalf of the dealer-company relies on the verdict of the Hon'ble High Court of Orissa delivered in case of ***Toyo Engineering India ltd Vs. Sales Tax Officer reported in (2012) 47 VST 109W (Ori)*** wherein the Hon'ble Court has observed that notice in E-24 is sought to be issued in case of a dealer admitting tax in the return has made less payment of tax. Apart from contesting on issue of sustainability of the proceeding, Mr. Sahoo protests levy of entry tax @ 1% on purchases of raw materials such as C.P. Coke, L.Pitch and LALF-3 as against 0.5% of tax levied while filing of returns and levy of 0.5% on alumina purchased for production of aluminium goods for export. In this context, Mr. Sahoo placed reliance on the decisions of the Hon'ble Courts delivered in case of J.K. Cotton Spinning & Weaving Mills Co. Ltd Vs. Sales Tax Officer, Kanpur and others (1964) 16 STC 563(SC), Collector of Central Excise Vs. Ballarpur Industries Ltd (1990) 77 STC 282 and M/s Associated Cement Companies Ltd Vs. State of Orissa in STREV No.28 & 29 of 2007.

The State has filed cross objection supporting the orders of the forums below.

4. Having gone through the orders of forums below, grounds of appeal and other materials available on record, we find it expedient to examine the aspect of sustainability of the order of scrutiny of returns passed under sub-section 10 of Section 7 of the OET Act read with sub-rule 6(a)(b) of Rule 10 of the OET Rules and issue of notice in Form-E 24 thereupon. On perusal of the order of scrutiny of returns, it is revealed that the ld. Assessing Authority on scrutiny of returns for the month endings April,2006 to January,2007 could observe that the dealer appellant has paid entry tax @ 0.5% on CP Coke, L.Pitch and ALF-3 treating the same as raw materials, but these items are not raw materials in the process of manufacturing of aluminium. On levy of entry tax @ 1% on such purchases and allowing deduction of entry tax paid @ 0.5% at the time of filing returns, the differential tax worked out to ₹1,21,86,599.00. Similarly, the Assessing Authority levied entry tax @ 0.5% on alumina worth ₹15,75,63,248.00 calculating to entry tax at ₹68,96,960.00. In total, the tax liability of the dealer-company was fixed at ₹1,90,83,559.00. The ld. Assessing Authority issued notice for less payment of tax in Form E-24 dated 28.02.2007/07.03.2007 asking the dealer-company to pay ₹1,90,83,559.00 along with interest @ 2% thereon by 22.03.2007. In this context, it is essential to spell out the provisions of sub-

section 10 of Section 7 of the OET Act as well as the sub-rule 6(a)(b) of Rule 10 of the OET Rules.

Sub-section 10 of Section 7 of the OET Act provides as under:-

“Each and every return in relation to any tax period furnished by a dealer under this section, shall be subject to scrutiny by the assessing authority to verify the correctness of calculation, application of correct rate of tax and interest, claim of deductions, if any, under this Act and full payment of tax and interest payable by the dealer for such period.”

Sub-rule 6(a) and (b) of Rule 10 provides as below:-

“(a) Each and every return in relation to any tax period furnished by a dealer shall be subject to manual or system based scrutiny.

(b) If, as a result of such scrutiny, the dealer is found to have made payment of tax less than what is payable by him for the tax period, as per the return furnished, the assessing authority shall serve a notice in Form E-24 upon the dealer directing him to pay the balance tax and interest thereon by such date as may be specified in that notice.”

The notice as issued under Rule 10(6)(b) of the OET Rules in Form E24 prescribes that *“You are found to have filed the returned for the tax period commencing from --- to --- on ---- or scrutiny of the returns for the aforesaid tax period reveals that you have paid an amount of ₹---- (Rupees----) less than what is admitted in the return furnished towards tax for the said tax period. Your are therefore, directed to pay the amount of ₹----- (Rupees-----) as due and admissible in accordance with the said return by dt.----- .”*

5. On analysis of the aforesaid prescriptions outlined under the OET Act and Rules made thereunder, it is made clear that if a

dealer pays the less amount of tax than what he admits to be payable by him as per the return furnished, the Assessing Authority shall and can ask the dealer to pay the differential amount in Form E-24. Form E-24 is only a notice to the dealer asking him to pay the differential tax admitted in the return. In the present case, the Id. Assessing Authority has issued a notice in Form E-24 dated 07.03.2007 holding that *“Scrutiny of the return for the aforesaid tax period reveals that you have paid an amount of ₹1,90,83,559.00 (Rupees one crore ninety lakhs three thousand five hundred fifty nine) only less than what is admitted in the return furnished towards due for the said tax period. You are, therefore, directed to pay the amount of ₹1,90,83,559.00(Rupees one crore ninety lakhs three thousand five hundred fifty nine) only as due and admissible in accordance the said return by 22.03.2007.”* The dealer-company has not disclosed ₹1,90,83,559.00 in the returns furnished for the month endings under appeal. The Id. Assessing Authority has calculated the tax due unilaterally giving his own interpretation and issued a notice in Form E-24 holding that the dealer-company has admitted ₹1,90,83,559.00 in the returns. It is totally untrue and thus, is illegal. There was also no opportunity of being heard afforded to the dealer-company before such issuance of notice. There is no provision under sub-rule 6 of Rule 10 of the OET Rules to give any opportunity of hearing to the dealer before issuing notice under that sub rule in Form E-24. For, notice in

Form E-24 is issued in case of a situation where the dealer has made payment of entry tax less than that admitted in the return filed. Under the above premises, the impugned notice in Form E-24 issued in the instant case is rendered infructuous being devoid of any legal stand. In corollary, the order of scrutiny passed by the ld. assessing Authority as well as the order of the ld.FAA is not sustainable in the eyes of law.

6. In the result, the appeal filed by the dealer-company is allowed. The order of the ld. FAA is set-aside and the order of scrutiny of return passed by the ld. Assessing Authority is quashed. Cross objection is accordingly disposed of.

Dictated and corrected by me.

**Sd/-
(Bibekananda Bhoi)
Accounts Member-I**

I agree,

**Sd/-
(Bibekananda Bhoi)
Accounts Member-I**

**Sd/-
(S.K. Rout)
2nd Judicial Member**