

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

S.A.No.129(ET) of 2017-18.

(Arising out of the order of Ld. JCST,(Appeal), Sambalpur Range,
Sambalpur, in First Appeal Case No.AA 233/JSG/ET/2013-14,
disposed of on dated 29.7.2017)

Present:- Shri S.K.Rout, & Shri S.R.Mishra,
2nd Judicial Member Accounts Member-II.

M/s.Bhatia International Ltd,
Chhualiberna, Belpahar . . . Appellant,

- V e r s u s -

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

For the Appellant . . . N o n e.
For the Respondent . . . Mr. S.K.Pradhan,
Addl. Standing Counsel,
(CT & GST Organisation) --

Date of Hearing: 5-12-2023.

Date Order:3-1-2024

ORDER

The dealer is in appeal against the order dated 29.7.2017 passed by the Learned Joint Commissioner of Sales Tax, (Appeal), Sambalpur Range, Sambalpur, (hereinafter referred to as Learned First Appellate Authority/Ld. FAA), in First Appeal Case No.AA233/JSG/ET/2013-14,in confirming the order of assessment passed U/s.9C of the OET Act by the Learned Assessing Authority, Jharsuguda Circle, Jharsuguda, (in short, Ld. AA) raising an extra demand of Rs.6,36,800.00 which includes penalty U/s.9C(5) of the OET Act for the tax period from 1.4.2008 to 31.3.2012.

2. Briefly stated, the fact of the case reveals that the dealer carries on business in processing of coal by producing washed coal as finished products and rejected coal as bye products. During the period while the

dealer has effected purchases from inside the State, it has effected sales both within and outside the State. It has also received stocks for processing on job work basis from different sources and also effected despatch of stocks to outside the State on branch transfer basis. The dealer appellant was subjected to tax audit for the material period and on the basis of the report submitted by the STO, Audit, the assessment was completed U/s. 9C of the OET Act, resulting in creation of extra demand of Rs.6,36,800.00 which includes penalty U/s. 9C(5) of the OET Act.

3. The dealer on being aggrieved with the order so passed by the Ld. AA has preferred an appeal before the Ld. FAA, who after considering the grounds taken by the dealer has dismissed the appeal to be devoid of merit and as such confirmed the order of assessment.

4. On being further aggrieved, the dealer has preferred the present appeal before this Tribunal on limited grounds that it has not been extended with sufficient opportunity of being heard by the lower fora for which the orders so passed are violative of the principle of natural justice. Further it has been claimed that there is erroneous determination of quantum of (set-off) of entry tax paid on purchase of raw-materials as per Rule 19(5) of the OET Rules.

5. Cross-objection filed by the State Respondent seeking non-intervention as the impugned order passed by the Ld. FAA is factually and legally correct.

6. Heard the case from the Respondent State in absence of the dealer-appellant. Since there is no response from the dealer appellant, the case is disposed of *ex parte* on its own merit as per the documents available on record.

7. Perusal of records reveals that starting from the Audit Proceeding to the completion of appeal by the Ld. FAA, the dealer was extended with several opportunities. More so, it is pertinent to mention here that aforesaid proceedings were also completed on the basis of production of books of account/relevant documents by the dealer. Since the dealer has participated in all the above proceedings, the ground that it has not been afforded with opportunities of being heard which violates his right, does not hold good.

8. Now coming to the factual aspect it is observed that although the officials conducting Audit have mentioned about the admissibility of set-off to the tune of Rs.37,06,394.00 in the Audit Visit Report, the same was derived by the Ld. AA at Rs.25,72,146.00. While determining the same the Ld. AA and the Ld. FAA have considered the entry tax paid on raw-materials purchased from the registered dealers within the State, total sales effected by the dealer and sales made outside the local area. Since the dealer failed to substantiate its claim made in the grounds of appeal and in absence of any apparent error noticed in such calculation made by the lower fora, we do not find any cogent reason to interfere with the orders so passed.

9. Resultantly, the appeal preferred by the dealer is found to be devoid of merit and hence dismissed. The cross objection filed by the State-Respondent is disposed of accordingly.

Dictated and corrected by me

Sd/-
(S.R.Mishra)
Accounts Member-II.

I agree,

Sd/-
(S.R.Mishra)
Accounts Member-II.

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