

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

S.A.No.138(ET) of 2017-18.

(Arising out of the order of Ld. JCST, Angul I Range, Angul,
in First Appal Case No. AA/DCST/ANG/100/2014-15,
disposed of on dated 31.8.2017)

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

M/s. Geeta Agency,
Hatishalpada, Angul . . . 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 appellant is in appeal against the order dated 31.8.2017 of the Learned Joint Commissioner of Sales Tax, Angul Range, Angul, (hereinafter referred to as Learned First Appellate Authority/Ld. FAA) passed in First Appeal Case No.AA/DCST/ANG/100/2014-15,in reducing the tax liability determined by the Learned Assessing Authority, (in short, Ld. AA) U/s. 10 of the Odisha Entry Tax Act 1999 (in short OET Act from an amount of Rs.8,80,995.00 to Rs.4,24,516.00 for the tax period from 1.4.2011 to 31.3.2013.

2. Briefly stated the fact of the case reveals that the dealer appellant who carries of business in Biscuits, Tea and Skimmed Milk Powder etc. was subjected to assessment U/s.10 of the OET Act, on the basis of a Tax Evasion Report submitted by the Inspecting Authorities of

Vigilance Wing, Cuttack. Accordingly, proceeding was initiated with the issuance of statutory notice in Form E-32 on dated 16.2.2013 which culminated in passing of the impugned order by the Learned Assessing Authority, resulting in extra demand of Rs.8,80,995.00.

3. As transpires from record, the dealer appellant has declared its purchase of scheduled goods in its return at Rs.3,86,19,427.00 and has deposited 1/3rd of the tax due against the said purchase along with returns. While completing the assessment the Ld. AA has found that the dealer has in fact, effected purchases to the tune of Rs.4,22,39,644.00 against which Entry Tax due was calculated at Rs.4,22,396.00. After allowing adjustment of 1/3rd of admitted tax paid by the dealer, the balance tax was calculated at Rs.2,93,665.00. Thereafter the Ld. AA has imposed penalty of Rs.5,87,330.00 U/s.10(2) of the OET Act which resulted in extra demand of Rs.8,80,995.00.

4. The dealer has preferred first appeal before the Ld. FAA, who vide his order dated 31.8.2017 has reduced the penalty from Rs.5,87,330.00 to Rs.72,404.34 i.e. two times of the tax due on account of purchase suppression. Besides, he has also levied interest of Rs.58,447.00 U/s.7(5) of the OET Act, which led to determination of total tax, interest and penalty of Rs.4,24,516.00 that includes 2/3rd payment of withheld admitted tax.

5. On being further aggrieved with the aforesaid order passed by the Ld. FAA, the dealer appellant has preferred the present appeal before this forum challenging the order to be arbitrary and illegal, particularly

in respect of levy of interest and penalty without affording sufficient opportunity of being heard.

6. Per contra, the State Respondent has filed cross objection stating therein that since the impugned order passed by the Ld. FAA is based on suppression of purchase as detected by the Inspecting Authorities and more so, the dealer appellant has not discharged its admitted tax liability, both levy of penalty and interest are justified, and as such, the impugned order passed by the Ld. FAA should not be interfered with.

7. Heard the case from the Learned Counsel of the Respondent State. As the dealer appellant failed to cause appearance, the case is decided exparte on its own merit basing on the materials available on record.

8. It has come to our notice that on the strength of self same adverse report, proceeding U/s.43 of the OVAT Act for the material period was also initiated by the Ld. AA. But while adjudicating the said case under the OVAT Act, the Full Bench of this Tribunal, vide their order dated 24.5.2023 in S.A.No.244(V) of 2016-17, had come to the conclusion that the said proceeding initiated U/s.43 of the OVAT Act, was without jurisdiction, for which the impugned order was quashed. While adjudicating the same, the Tribunal had relied upon the decision of the Hon'ble High Court of Orissa, in case of M/s.Kasab Automobiles Vrs. State of Orissa, in STREV No.64 of 2016 decided on 1.12.2016.

9. On perusal of record it is revealed that the instant proceeding U/s.10 of the OET Act, was initiated along with the proceeding U/s.43 of

the OVAT Act by the Ld. AA on dated 16.2.2013 with the following order passed by him in the order sheet.

“Seen the marginal notes. Issue notice in Form VAT-307/Form E-32 to the dealer for the period 1.4.2011 to 31.1.2013 under the OVAT/**OET** Act”.

10. From the above, it becomes evident that the instant proceeding U/s. 10 of the OET Act was initiated mechanically without formation of any opinion which is one of the pre-requisites to initiate the escaped assessment proceeding. Besides, the record is also silent about the completion of assessment as envisaged U/s. 9 of the OET Act. More so, the Revenue has also failed to demonstrate the fact of any formal communication of the order of assessment U/s. 9 of the OET Act.

11. Under the aforesaid facts and circumstances, we rely upon the decision of Hon’ble High Court of Orissa in case of M/s. ECMAS Resin Pvt. Ltd., Vrs. State of Orissa & Others in W.P.(C) No.7459 of 2015, wherein the Hon’ble High Court have been pleased to observe that:-

“The sum total of the above discussion is that as far as a return filed by way of self assessment under Section 9(1) read with Section 9 (2) of the OET Act is concerned , unless it is ‘accepted’ by the Department by a formal communication to the dealer, it cannot be said to be an assessment that has been accepted and without such acceptance, it cannot trigger a notice for re-assessment under Section 10(1) of the OET Act read with 15 B of the OET Rules.

12. Keeping reliance on the above settled proposition and for reasons that the dealer has not been assessed U/s.9 of the OET Act in its true prospective, we find the instant proceeding initiated mechanically U/s.10 of the OET Act to be without jurisdiction. Accordingly, the

impugned demand raised against the tax evasion report is liable to be quashed.

13. Hence it is ordered.

14. However, we would like to observe that the above finding of this Tribunal no way affects the payment of withhold admitted tax and interest, if any, which shall be guided by the dictum of the Hon'ble High Court of Orissa, in case of M/s. Shree Bharat Motors Ltd, & Others Vrs. Sales Tax Officer, Bhubaneswar I Circle, Bhubaneswar, in W.P.(C) No.13736 of 2017 and batch decided on 15.3.2023.

Dictated and corrected by me

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

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

I agree,

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