

**THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.**

**S.A. No.187(ET) of 2014-15**

**S.A. No.188(ET) of 2014-15**

**S.A. No.189(ET) of 2014-15**

**S.A. No.190(ET) of 2014-15**

**S.A. No.191(ET) of 2014-15**

**S.A. No.192(ET) of 2014-15**

**S.A. No.193(ET) of 2014-15**

**S.A. No.194(ET) of 2014-15**

**S.A. No.195(ET) of 2014-15**

**S.A. No.196(ET) of 2014-15**

**S.A. No.197(ET) of 2014-15**

(Arising out of the orders of the learned  
Addl.CST(Revenue) in First Appeal Nos.

AA-151/OET/DCST/Assmt./BH-III/2011-2012,  
AA-150/OET/DCST/Assmt./BH-III/2011-2012,  
AA-156/OET/DCST/Assmt./BH-III/2011-2012,  
AA-168/OET/DCST/Assmt./BH-III/2012-2013,  
AA-173/OET/DCST/Assmt./BH-III/2012-2013,  
AA-185/OET/DCST/Assmt./BH-III/2012-2013,  
AA-107/OET/DCST/Assmt./BH-III/2013-2014,  
AA-108/OET/DCST/Assmt./BH-III/2013-2014,  
AA-216/OET/DCST/Assmt./BH-III/2013-2014,  
AA-215/OET/DCST/Assmt./BH-III/2013-2014&  
AA-01/OET/DCST/Assmt./BH-III/2014-2015  
disposed of on 12.11.2014)

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

M/s. National Aluminium Company Limited,  
AT/Po-Angul, Dist-Angul,  
TIN- 21331104647.

..... Appellant.

**-Vrs. -**

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

..... Respondent.

For the Appellant : : Mr. S.C. Sahoo, Advocate.  
: : Mr. G. Sahoo, Advocate  
For the Respondent : : Mr. D. Behura, S.C.(C.T.)  
: : Mr. S.K. Pradhan, Addl. SC(C.T.)

-----  
**Date of Hearing : 30.10.2023 \*\*\* Date of Order : 23.11.2023**  
-----

**O R D E R**

These aforesaid eleven second appeals have been preferred by the dealer-company challenging the first appeal orders of the Additional Commissioner of Sales Tax (Revenue), (in short, 'ld. FAA') passed in first appeal orders mentioned above confirming the orders of assessments passed under Section 10 of the OET Act by the Deputy Commissioner of Sales Tax, Bhubaneswar-III Circle, Bhubaneswar (in short ld. assessing authority). These appeals though relate to different tax periods involve common question of facts and law. For convenience, they are clubbed together for hearing and disposal made in a common order.

2. The facts leading to these second appeals are summarized in brief for better appreciation. M/s. National Aluminium Company Ltd., NALCO Bhawan, Plot No.1 Nayapalli, Bhubaneswar, TIN-21331104647 is a Public Sector Undertaking under the administrative control of Ministry of Mines, Govt. of India. It has set up an integrated establishment in the State of Odisha having its corporate office at Bhubaneswar consisting of three units viz. Aluminium Refinery Plant at Damanjodi, Aluminium Smelter Plant at Angul and Formal Captive Power Plant at Angul. It manufactures Aluminium ingots, Wires, Sheets etc. by using raw materials such as Aluminina, coal, alum, CP Coke, Aluminium floride, Caustic soda and other consumables etc. The ld. assessing authority has completed assessments under Section 10 of the OET Act for the tax periods as mentioned in the eleven Second Appeals filed by the dealer-company

on the purported grounds that the dealer-company has wrongly availed the benefits of concessional rate of entry tax @ 0.5% on purchase of Caustic soda, HFO, LDO, Coal, CP Coke, CT Pitch, ALF-3 and Sodium silicate treating them as raw-materials. The learned assessing authority assessed the dealer-company to tax levying 1% of tax on the purchase value of the said scheduled goods. The ld. assessing authority pertaining to the tax period 01.04.2011 to 30.06.2011 assessed the dealer-company to tax for ₹561,36,606.00 including penalty of ₹374,24,404.00. Similarly, in respect of tax periods such as 01.07.2011 to 30.09.2011, 01.10.2011 to 31.12.2011, 01.01.2012 to 31.03.2012, 01.04.2012 to 30.06.2012, 01.07.2012 to 30.09.2012, 01.10.2012 to 31.12.2012, 01.01.2013 to 31.03.2013, 01.04.2013 to 30.06.2013, 01.07.2013 to 30.09.2013 and 01.10.2013 to 31.12.2013, the ld. assessing authority has assessed the dealer-company to tax and penalty respectively for ₹900,03,663.00, ₹614,7,367.00, ₹11,79,36,041.00, ₹10,66,93,701.00, ₹9,71,11,536.00, ₹8,50,85,211.00, ₹11,02,27,161.00, ₹8,48,25,645.00, ₹8,06,08,674.00, ₹6,34,20,237.00. The first appeals filed by the dealer-company against the above demands raised in assessments resulted in affirmation of the orders of assessment.

3. Aggrieved with the orders of the ld. FAA, the dealer-company preferred second appeals before this forum. In addition to the grounds of appeal filed, Mr. S.C. Sahoo, ld. Advocate appearing on behalf of the dealer-company has filed additional grounds of appeal at the stage of hearing contending that the assessments passed by the ld. assessing authority under Section 10 of the OET Act in case of the above tax periods under appeal without having assessment

completed under Section 9 (1) and 9 (2) of the OET Act are not sustainable in the eyes of law as per the settled ratio of the decisions rendered in the case of ***M/s. ECMAS Resins Pvt. Ltd. Vs. State of Odisha & Others in W.P.(C) No.7458 of 2015, M/s. Shyam Metaliks & Energy Ltd. Vs. The Commissioner of Commercial Taxes, Odisha and Others passed in W.P.(C) No.7296 of 2013*** by the Hon'ble High Court of Orissa. Identical cases disposed of in the Tribunal have also been relied upon. The learned Advocate, therefore, pleads for quashing of the orders of the forums below being not sustainable in law.

4. Per contra, the State has filed cross objections and additional cross objection supporting the orders of the forums below. It is contended that the additional ground preferred by the tax payer is not justified, since it is not pure question of law but a mixed question of law and fact. Thus, the additional ground preferred by the dealer-company is not maintainable. It is further submitted by the State that the dealer-company has disclosed the turnover in the return and has paid the entry tax at concessional rate of tax taking into account as raw materials for manufacturing of aluminum products. But, the appellant dealer-company has not disclosed the aforesaid materials as raw materials in the Registration Certificate. Thus, the ld. FAA has confirmed that the aforesaid materials are not raw materials. The State placed reliance of the decision of the Hon'ble High Court of Odisha passed in case of ***M/s. Shree Bharat Motors Ltd. and Another Vs. The Sales Tax Officer, Bhubaneswar-I Circle, Bhubaneswar and Others*** reported in W.P(C) No.13736 of 2017 & batch. In view of the above decision of the Hon'ble High

Court, the dealer-company is liable to pay entry tax in case of admitted turnover in the return under the OET Act. Further, the State urges not to entertain the additional grounds of appeal preferred by the dealer-company in view of the decision delivered in case of ***State of Odisha Vs. Lakhoo Vajrang (1960) SCC onLine Ori 10 (1961) 12 STC 162*** which observes as follows:-

“The Tribunal may allow additional evidence to be taken, subject to the limitations prescribed in Rule 61 of the Orissa Sales Tax Rules. But this additional evidence must be limited only to the questions that were then pending before the Tribunal....”

The State, therefore, objects acceptance of the additional grounds of appeal filed by the dealer-company.

5. Having heard the rival contentions after going through the orders of the forums below and the grounds of appeal/additional grounds of appeal vis-à-vis the cross objection/additional cross objection, it is observed that the learned assessing authority has completed the assessments under Section 10 of the OET Act without assessments having been taken up under Section 9 of the OET Act. Before we dwell upon considering other grounds of appeal on merit, we find it essential to look into the additional grounds that speak of the aspect of maintainability of initiation of the proceedings. The Hon'ble High Court of Odisha in case of ***M/s ECMAS Resins Pvt. Limited and Others Vs. State of Odisha*** (supra) holds 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 15B of the OET Rules. In the present cases, there is no evidence on record to the effect that the self-assessed returns have been communicated to the dealer-company by the assessing authority or acknowledgements availed thereof. The prerequisites outlined in the aforesaid decisions of the Hon'ble High Court of Odisha are thus vitiated.

5. Under the backdrop of the above facts, it is made clear that the additional grounds submitted before this forum became available on account of change of circumstances or law. The Tribunal has discretion to consider the question of law arising in assessment proceedings although not raised earlier. The Hon'ble High Court of Odisha in case of ***State of Orissa and Others Vs. D.K. Construction and others*** reported in (2017) 100 VST 24 (Orissa) holds that it is trite in law that question of law can be raised at any stage.

In view of the above, the additional grounds filed by the dealer-company are considered as accepted whereas the contention of the State in this regard is not acceptable. Further, the decision of the Hon'ble High Court of Odisha passed in case of ***M/s. Shree Bharat Motors Ltd.*** (supra) is of little application in the present facts and circumstances of the case.

6. Under the above backdrop, we opine that the assessments passed by the learned assessing authority under Section 10 of the OET Act in respect of all the eleven cases cited supra are not sustainable in law being lack of jurisdiction and thus, the orders of the forums below are liable to be quashed. Accordingly, other issues raised in the grounds of appeal become thereby redundant.

7. It is, therefore, held that the appeals filed by the dealer-company are allowed. The orders of the Id.FAA are set aside. As a necessary corollary thereof, the assessment orders passed by the learned assessing authority are hereby quashed. The cross-objections/ additional cross objections are disposed of accordingly.

Dictated and corrected by me.

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

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

**I agree,**

**Sd/-**  
**(G.C. Behera)**  
**Chairman**

**I agree,**

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