

**BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

S.A. Nos.113 & 114(ET) of 2019

(Arising out of the order of the learned Addl.CCT & GST,
(Appeal), Bhubaneswar, in First Appeal case No.AA-108101510000418
& 108101510000179 disposed of on 29.07.2019 & 30.07.2019)

**P r e s e n t: Shri G.C.Behera, Sri. S.K.Rout & Shri M.Harichandan,
Chairman. Judicial Member-II Accounts Member-I.**

M/s.Adani Enterprises Ltd.,
HIG-20, 1st Floor, BDA Colony,
Jayadev Vihar, Bhubaneswar. ... Appellant.

- V e r s u s -

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

For the Appellant ... Mr.P.K.Harichandan, Adv.
For the Respondent ... Mr.M.L.Agarwal, SC

Date of hearing: **17.03.2023** * * * Date of Order:**23.03.2023**

ORDER

Both these appeals, are disposed of by this composite order as the same involved common question of fact and law and in between the same parties though for different periods.

2. The dealer prefers both these appeals challenging the order dated 29.07.2019 and 30.07.2019 passed by the learned Addl. Commissioner of Sales Tax, Bhubaneswar (in short, Addl. CST/FAA) in first appeal case No.AA-108101510000418 and AA.1081-1510000179 respectively thereby confirming the orders of assessment passed by the learned Deputy Commissioner of Sales Tax, Bhubaneswar II Circle, Bhubaneswar (in short, DCST/AO) raising demands of Rs.8,35,18,508.00 for the period 01.02.2014 to 31.03.2014 and Rs.7,70,14,113.00 for the period 01.04.2014 to 31.05.2014 under Section 10 of the OET Act.

3. The case at hand is that the dealer in the instant case M/s.Adani Enterprises having TIN-21911118587 is engaged in trading of coal, coke, iron ores, gold bullion, silver bullion, precious stones and gems. Basing on the return scrutiny report of the STO, Bhubaneswar II Circle, Bhubaneswar a prima facie finding was recorded to the effect that scheduled goods i.e. coal brought by the dealer company had escaped assessment of tax in the scheme of self assessment under Section 9(2) of the OET (Amendment Act) 2005. So assessment proceeding was initiated against the dealer company under sub- Section 1 of Section 10 of the OET (Amendment Act), 2005 for the periods under challenge and the demands as mentioned above were raised.

4. Against such tax demands, the dealer company preferred first appeals before the learned Addl. Commissioner of Sales Tax (Appeal), Bhubaneswar (FAA), who confirmed the orders of assessment.

5. Further being dis-satisfied with the orders of the learned first appellate authority, the dealer company has preferred these second appeals before this Tribunal as per the grounds stated in the grounds of appeal.

6. In both these cases cross objections are filed by the state respondent.

7. During course of argument, learned Counsel for the dealer company vehemently contended that the orders passed by the learned forum below are illegal and arbitrary. Further contention on behalf of the learned Counsel for the dealer is that the position under the OET Act stands covered by the judgment of the Full Bench of the Hon'ble Court decided in the case of M/s. ECMAS Resins Pvt. Ltd. v. State of Orissa in W.P.(C) No.7458 of 2015 dtd.05.08.2022 in which it was held by the Hon'ble Court that unless the return filed by way of self-assessment u/s.9(1) r/w. section 9(2) of the OET Act is "accepted" by the department by a formal communication, it cannot trigger a notice of reassessment u/s.10(1) of the OET Act r/w. Rule 15(b) of the OET Rules.

8. Per contra, learned Standing Counsel for the revenue vehemently contended that the orders of the fora below are genuine and these cases are not at all covered by ECMAS Resins Pvt. Ltd. case. Further contention on behalf of the learned Standing Counsel for the revenue is that the self assessment was within the knowledge of the dealer company and earlier return of the dealer is accepted which is very much clear from the assessment order and that such a ground is not taken earlier by the dealer and for the first time now this ground is taken stating that these cases are covered by M/s.ECMAS Resins Pvt. Ltd. Vrs. State of Odisha.

9. Heard the contentions and submissions of both the parties in this regard. Pursuant to the verdict of the Hon'ble High Court of Odisha decided in the case of M/s.Keshab Automobiles Vrs. State of Odisha, it becomes clear that only after assessment of dealer u/s.39, 40, 42 or 44 for any tax period, the assessing authority, on the basis of any information in his possession, is of the opinion that the whole or any part of the turnover of the dealer in respect of such tax period or tax periods has escaped assessment, or been under assessed, or been assessed at a rate lower than the rate at which it is assessable, then giving the dealer a reasonable opportunity of hearing and after making such enquiry, assess the dealer to the best of his judgment. In paras 13 to 16 of the judgment observed that "the dealer is to be assessed under Sections 39, 40, 42 and 44 for any tax period". The words "where after a dealer is assessed" at the beginning of Section 43(1) prior to 1st October, 2015 pre-supposes that there has to be an initial assessment which should have been formally accepted for the periods in question i.e. before 1st October, 2015 before the Department could form an opinion regarding escaped assessment or under assessment".

Moreover, the Hon'ble Court has clearly observed that the corresponding provisions of the OVAT Act namely Section 39(2) of the OVAT Act as it stood prior to 1st. October, 2015 is in pari materia with Section 9(2) of the OET Act. Moreover, the position under the OET Act stands covered by the judgment of the Full Bench of the Hon'ble Court

dtd.05.08.2022 in W.P.(C) No.7458 of 2015 (M/s. ECMAS Resins Pvt. Ltd. v. State of Orissa) in which it was held by the Hon'ble Court that unless the return filed by way of self-assessment u/s.9(1) r/w. section 9)2) of the OET Act is "accepted" by the department by a formal communication, it cannot trigger a notice of reassessment u/s.10(1) of the OET Act r/w. Rule 15(b) of the OET Rules. But in the instant case, no where it reveals that the return filed by the dealer by way of self assessment is accepted by the department by a formal communication. In view of the above analysis, the orders of the fora below are not sustainable in the eye of law.

10. For the reasons assigned above, we are of the unanimous view that the learned first appellate authority is not correct in its approach pursuant to the verdict of the Hon'ble Court decided in the case of M/s.ECMAS Resins Pvt. Ltd. Vrs. State of Odisha and as such the orders warrant interference. Hence, order.

11. Both the appeals preferred by the dealer are allowed and the orders of the fora below are hereby quashed. The cross objections are disposed of accordingly.

Dictated and Corrected by me,

Sd/-

(Shri S.K.Rout)
Judicial Member-II

I agree,

I agree,

Sd/-

(Shri S.K.Rout)
Judicial Member-II

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

Sd/-
(Shri M.Harichandan)
Accounts Member-I

