

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

S.A. No.148(ET) of 2014-15

&

S.A. No.241(VAT) of 2014-15

(Arising out of the order of the learned JCST,
Bhubaneswar Range, Bhubaneswar in first appeal case
Nos. AA-108111311000038 & AA-106111311000035
disposed of on 31.03.2014)

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

M/s. Silicon Polymers,
Plot No-3103, Samantarapur,
Bhubaneswar, TIN-21461100647. Appellant.

-Vrs. -

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

For the Appellant : : Mr. M.L. Agarwal, Advocate.
For the Respondent : : Mr. S.K. Pradhan, Addl.S.C.(C.T.)

Date of Hearing : 25.09.2023 * Date of Order: 20.10.2023**

O R D E R

The aforesaid two second appeals filed by the dealer assessee under Section 78 of the OVAT Act and Section 17 of the OET Act arose out of the orders dated 31.03.2014 of the Joint Commissioner of Sales Tax, Bhubaneswar Range, Bhubaneswar (in short, 'ld. FAA') passed in First Appeal Case Nos. AA-108111311000038 & AA-106111311000035 with respect to the assessments passed under Section 43 of the OVAT Act and

under Section 10 of the OET Act by the Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar (In short, ld.STO) for the tax period from 01.04.2009 to 31.03.2012. These second appeals pertain to the same tax periods and involve common question of facts and law. They are heard together and disposal made in a composite order for the sake of convenience.

2. The facts that led to emergence of these appeals are summarized hereunder for better appreciation. The dealer-assessee under the name and style of M/s. Silicon Polymers, Plot No-3103, Samantarapur, Bhubaneswar, TIN-21461100647 is engaged in manufacture and trading of Plastic Containers. The learned STO was in receipt of a Tax Evasion Report from the Vigilance Division, Bhubaneswar alleging sale suppression of ₹40,66,698.00. Assessments under Section 43 of the OVAT Act and under Section 10 of the OET Act were completed by the learned STO based on such allegation of suppressions contained in the Tax Evasion Reports emanating tax demand of ₹4,84,956.00.00 under the OVAT Act and ₹85,350.00 under the OET Act. The first appeals as preferred against the said assessments resulted in reduction in demand to ₹3,21,807.00 under the OVAT Act and ₹73,074.00 under the OET Act. The dealer-company has further preferred these second appeals before this forum challenging the demands as raised at assessments.

3. The dealer-assessee assails the orders of the forums below as not maintainable, since there is no order passed on acceptance of self-assessed returns by the learned STO under Section 39 of the OVAT Act and under Section 9 of the OET Act. The learned STO is alleged to have not applied his independent mind and assessed the dealer-assessee without forming his

opinion on the allegation contained in the Tax Evasion Report. Imposition of penalty under Section 43(2) of the OVAT Act and under Section 10(2) of the OET Act is rebutted by the dealer-assessee. Mr. M.L. Agarwal, learned Advocate who represents the dealer-company vehemently pleads that sustainability of initiation of the proceedings either under Section 43 of the OVAT Act or under Section 10 of the OET Act without completion of assessments under Section 39, 40, 42 or 44 of the OVAT Act and under Section 9(2) of the OET Act is vitiated in law. It is submitted that this plea was agitated before the ld.FAA. The same was not accepted holding that, as the returns filed were in time besides being in order, they are accepted as self-assessed. The learned Advocate places reliance on the decision dated 01.12.2021 of the Hon'ble High Court of Odisha in case of **Keshab Automobiles Vs. State of Odisha** passed in STREV No.64 of 2016 and in case of **M/s ECMAS Resins Pvt. Limited and Others Vs. State of Odisha** passed on 05.08.2022 in W.P.(C) No.7458 of 2015.

The State has filed cross objections supporting the orders of the ld.FAA.

4. Averments placed by both the rival parties are heard. The dealer-company has endorsed several grounds in defense of the orders of the ld.FAA. The learned Advocate raises a substantial question with respect to sustainability of initiation of proceedings under Section 43 of the OVAT Act and under Section 10 of the OET Act without assessments being completed under Section 39, 40, 42 or 44 of the OVAT Act and Section 9C of the OET Act. Before we go into other grounds of appeal on merit, we find it essential to look into the aspect of maintainability of the proceedings. Consequent upon outcome of the decision of the

Hon'ble High Court of Odisha in case of ***Keshab Automobiles Vs. State of Odisha*** (supra) on 01.12.2021, the modality of acceptance of self-assessed returns has been conceptualized in consequence of amendment to Section 39(2) of the OVAT Act introducing the concept of 'deemed' self-assessment only with effect from 1st October, 2015. With respect to OVAT Act, the Hon'ble High Court in case of ***Keshab Automobiles Vs. State of Odisha*** holds that if the self-assessment under Section 39 of the OVAT Act for the tax periods prior to 1st October, 2015 are not 'accepted' either by a formal communication or an acknowledgement by the Department, then such assessment cannot be sought to be reopened under Section 43(1) of the OVAT Act and further subject to the fulfillment of other requirements of that provisions as it stood prior to 1st October, 2015.

Similarly, as for the OET Act, the Hon'ble Court in case of ***M/s ECMAS Resins Pvt. Limited and Others Vs. State of Odisha*** 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.

5. In the present case, it is observed that the reassessments framed under the OVAT Act and the OET Act relate to the tax period 01.04.2009 to 31.03.2012. It is absolutely a tax period prior to 01.10.2015. There is no evidence on record to the effect that the self-assessed returns have been communicated to the dealer-company by the STO or an acknowledgement availed

thereof. The prerequisites outlined in the aforesaid decisions of the Hon'ble High Court of Odisha are vitiated. Thus, initiation of proceedings under Section 43 of the OVAT Act and Section 10 of the OET Act is not sustainable in law. Thus, the assessments passed under Section 43 of the OVAT Act and Section 10 of the OET Act in the impugned cases being devoid of jurisdiction are liable to be quashed. This being the fate of these cases, other issues raised in the grounds of appeals are rendered redundant.

6. Under the above backdrop, it is ordered that the both appeals filed by the dealer-company are allowed. The orders of the Id.FAA are set aside and the orders of assessments passed under Section 43 of the OVAT Act and Section 10 of the OET Act by the learned STO are quashed. The cross objections and are 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**