

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

**S.A. No. 136 (ET) of 2016-17**

(Arising out of the order of the learned JCCT, Puri Range,  
Puri, in First Appeal case No.108111611000016  
disposed of on 29.09.2016)

**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. Thirubala Chemicals Pvt. Ltd.,  
Plot No.62, IID Centre, Khordha Industrial  
Estate, Khordha.

... Appellant

**- V e r s u s -**

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

... Respondent

For the Appellant  
For the Respondent

... Mr. K.R.Mohapatra, Advocate.  
... Mr. D.Behura, S.C

-----  
Date of hearing: **14.03.2023** \*\*\* Date of order: **23.03.2023**  
-----

**O R D E R**

The dealer prefers this appeal challenging the order dated 29.09.2016 passed by the learned Joint Commissioner of Commercial Taxes, Puri Range, Puri ( in short, JCCT/FAA) in first appeal case No.108111611000016, thereby allowing the appeal in part and reducing the demand to Rs.22,02,182.00 against the order of assessment passed by the learned assessing authority of Jatni Circle, Jatni ( in short, STO/AO) under Section 10 of the OET Act for the tax period from 01.04.2009 to 31.03.2012 raising demand of Rs.44,04,563.00.

2. The case at hand is that the appellant M/s.Thirubala Chemicals Private Ltd. is engaged in manufacture of Industrial Solvent and Thinner from different items like Naptha, Crude Benzole, Pentane, Toluene, Dillent, Methonal as raw materials. For the purpose of its manufacturing activities, the appellant effected purchase of scheduled

goods and unscheduled goods from outside the State of Odisha. On detection of the escapement of turnover of the scheduled goods in self assessment under Section 9 as well as under Section 9(C) of the OET Act, learned assessing authority assessed the appellant to the best of judgment raising a demand of Rs.44,04,563.00.

3. Against such tax demand, the dealer preferred the first appeal before the learned first appellate authority who allowed the appeal in part and reduced the demand to Rs.22,02,182.00.

4. Further being dis-satisfied with the order of the learned first appellate authority, the dealer has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection in this case is filed by the State respondent.

6. Learned Counsel appearing for the dealer assessee contended that the order passed by the learned forum below is illegal and arbitrary. Further contention on behalf of the dealer is that M/s.Keshab Automobiles Vrs. State of Odisha decided by the Hon'ble High Court of Orissa is in pari-materia with section 9(2) of the OET Act.

7. Per contra, learned Standing Counsel for the revenue refuted the claim of the dealer appellant.

8. Heard the contentions and submissions of both the parties in this regard. Pursuant to the verdict of the Hon'ble High Court of Orissa decided in the case of M/s.Keshab Automobiles Vrs. State of Orissa, 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup>. 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, nowhere 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 to our view, the orders of the fora below are not sustainable in the eye of law.

9. In the result, the appeal preferred by the dealer is allowed and the orders of the fora below are hereby quashed. Accordingly, the cross objection is disposed of.

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**

