BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 7 (ET) of 2014-15

(Arising out of order of the learned Addl. Commissioner of Sales Tax, (North Zone)
in Appeal Case No. AA-SNG-113/13-14,
disposed of on dated 10.02.2014)

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

M/s. Orbit Motors Pvt. Ltd.,
At:- Panposh Road, Rourkela,
Dist.- Sundargarh. ... Appellant

-Versus-

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

For the Appellant : Mr. B.P. Mohanty, Advocate
For the Respondent : Mr. D. Behura, S.C.

Date of hearing:22.08.2023 *** Date of order: 21.09.2023

O R D E R

The dealer prefers this appeal challenging the order dtd.10.02.2014 passed by the learned Addl. Commissioner of Sales Tax, (North Zone) (hereinafter referred to as, ACST/first appellate authority) in Appeal Case No. AA-SNG-113/13-14, thereby allowing the appeal in part by deleting the interest against the assessment order dtd.25.02.2011 passed by the learned Deputy Commissioner of Sales Tax, Rourkela II Circle,

Panposh (hereinafter referred to as, DCST/assessing authority) u/s.10 of the Orissa Entry Tax (Amendment) Act, 2005 (hereinafter referred to as, the OET Act) for the tax period from February, 2008 to October, 2010 covering the tax periods for the part year 2007-08 (February 2008 to March 2008) 2008-09 (April, 2008 to March, 2009), 2009-10 (April, 2009 to March, 2010) and part year 2010-11 (April, 2010 to October, 2010) raising demand of ₹2,26,98,236.00 including tax of ₹164,71,102.73 and interest of ₹62,27,133.00.

2. The brief fact of the case is that, the appellant in the instant case being a private limited company is trading in motor vehicles and its spares and accessories. The appellant purchased motor cars and their spare parts which are scheduled goods under the OET Act, but paid one third of the tax after the judgment dtd.18.02.2008 of Hon'ble High Court of Orissa in the case of Reliance Industries vrs. State of Orissa (2008) 16 VST 85 (O). In this judgment, Hon'ble High Court upheld the validity of the Orissa Entry Tax Act, 1999 but further held in para-30 that the State has no jurisdiction to impose tax on such goods imported from outside State and are not manufactured within the State of Orissa. Both the dealers and the State challenged the judgment before the Hon'ble Apex Court. The Hon'ble Apex Court in I.A. No.327-651 SLP(C)-14454 to 14778 vide order dtd.30.10.2009 and dtd.03.02.2010 have stayed para-30 of the judgment in Reliance case and directed to pay payment to listed dealers. Learned assessing authority found that the turnover of ₹85,94,99,843.00 had escaped assessment and deduction was claimed on account of Entry Tax goods but required statement in form E1 was not

filed. So, the assessment was completed u/s.10 of the OET Act (provision of reassessment) and the GTO and TTO was determined at ₹110,81,58,431.42. Entry Tax @ 1% on ₹7,56,64,790.00 and @ 2% on ₹103,24,93,640.00 in toto was computed at ₹2,14,06,520.73. This apart, it was observed by the learned assessing authority that the escapement was due to reasonable cause arising out of judgment and orders of Hon'ble High Court and Hon'ble Apex Court for which no penalty was levied. However, interest of ₹62,27,133.00 was levied. So the total due was calculated at ₹276,33,653.73. Entry Tax payment of ₹49,35,418.00 was adjusted and the balance amount of ₹2,26,98,236.00 was demanded against the dealer.

3. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who allowed the appeal in part and deleted the interest.

4. Further, being dissatisfied 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 for the dealer-appellant contended that during pendency of this appeal before this Tribunal about filed an application u/r.102 of the OVAT Rules r/w. Rule 33 of the OET Rules praying to accept the additional grounds of appeal which has been allowed by this Tribunal relying the case of **M/s. National Thermal Power Co. Ltd, Vrs. Commissioner of Income Tax (1997) 7 Supreme Court**

Cases 489, wherein the Hon'ble Apex Court have been pleased to observe that :-

> *"The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income-Tax (Appeal). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier".*

7. Similarly in case of **Kiran Singh & Others Vrs. Chaman Paswan and Others 1954 AIR 340**, the Hon'ble Supreme Court have been pleased to observe that:

> "*it is a fundamental approach well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever or wherever it is shoght to be enforced or relied upon, even at the stage of execution and even in collateral*

proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether it is in respect of subject matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.

8. In view of the above settled principle of law, we are of the opinion that the additional ground raised by the dealer respondent can be accepted at this stage since the same involves the question of law.

9. The appellant has taken in the additional grounds of appeal that the impugned order of reassessment is neither maintainable nor sustainable in the eyes of law, as no assessment u/s.9 of 9C of the OET Act was made or communicated to the appellant before initiation of proceeding u/s.10 of the said Act. So, the impugned proceeding is liable to be quashed.

10. Per contra, learned Standing Counsel for the Revenue refuted the claim of the dealer stating that in the instant case the appellant-dealer has been self-assessed and disclosed in the return. So, the contention of the dealer-appellant in the additional ground is not maintainable. Further contention raised on behalf of the Revenue is that the case of ***M/s. ECMAS Resins Pvt. Ltd. v. State of Odisha and Ors.*** in ***W.P.(C) No.7458 of 2015 dtd.05.08.2022*** is not at all applicable in the instant case.

11. Heard the contentions and submissions of both the parties in this regard. Perused the grounds of appeal vis-a-vis the materials available on record including the cross objection. After have a glance to the case record it reveals that the

demand as on the date of passing of the appellate order was of ₹1,63,89,579.00. The substantial part of the aforesaid demand relatable to 2/3rd Entry Tax was stayed by the Hon'ble Supreme Court vide order dtd.03.02.2010 in the case of State of Orissa vrs. Reliance Industries Ltd. But by judgment dtd.28.03.2017, the SLP filed by the State was allowed and accordingly the appellant paid the 2/3rd amount to the tune of ₹1,62,28,950.00 after passing of the appellate order.

12. At this juncture, it should be made clear that we are not sitting in any appal of the dealer or the State on the issue of self assessment and payment made against admitted tax. So, we do not express any opinion on its merit. To our considered view, we observe that the parties are bound by the law settled by the Hon'ble High Court of Orissa i.e. in case of ***M/s. Shree Bharat Motors Ltd. and others vrs. Sales Tax Officer, Bhubaneswar I Circle, Bhubaneswar and others (W.P.(C) No.13736 of 2017 and batch)*** *decided on 15.03.2023 followed by the verdicts of the Hon'ble Apex Court in case of* ***Jindal Stainless Ltd. vrs. Reliance Industries****.*

13. So, now the present second appeal is confined to demand of tax to the tune of ₹1,60,629.00 as made in the order of reassessment u/s.10 of the OET Act. But the scenario of the case entails that the assessment u/s.9 or 9C of the OET Act was not at all communicated to the appellant before initiation of proceeding u/s.10 of the OET Act. In view of such, 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 Odisha and Ors.)** 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. In the instant case, the dealer has already paid the balance tax demand of ₹1,62,28,950.00 and now the restricted demand is ₹1,60,629.00. In view of the above analysis, to our considered view, the demand amounting to ₹1,60,629.00 is to be deleted.

14. With regard to non-submission of statement in form E1 relating to the said amount of ₹1,60,629.00, declaring that the goods have already suffered tax inside the local area or inside the State. On this score, as per the decision of the Hon'ble High Court in the case of **Snow White Trading Corporation vrs. State of Orissa** in the Orissa Entry Tax manual Vol.III Page-203, it is not possible on the part of the dealer to furnish form E1, in respect of the scheduled goods purchased by a dealer from another dealer of that locality, who has brought goods into the local area, the dealer need not proof that its seller has in fact paid the Entry Tax. It will be enough for the dealer to show that its seller is identifiable and has in fact made entry of the scheduled goods into the local area and the tax is payable by its seller. In view of such, E1 statement is not required as per the law.

15. In the result, the appeal preferred by the dealer is allowed and the impugned reassessment order passed u/s.10 of the OET Act and the appellate order are hereby set aside to the extent of escaped assessment for ₹1,60,629.00. We would like to observe that the finding of the Tribunal no way affects

the payment of admitted tax. The payment of admitted tax for ₹1,62,28,950.00 shall be guided by the dictum of the Hon'ble Court rendered in case of **M/s. Shree Bharat Motors Ltd. (supra)**. Cross objection is disposed of accordingly.

Dictated & corrected by me

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

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

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

Sd/-
(B. Bhoi)
Accounts Member-I