

Sales Tax, Ganjam I Circle, Berhampur (hereinafter referred to as, DCST/assessing authority) u/s.10 of the Orissa Entry Tax Act, 1999 (in short, the OET Act) for the tax period from 01.04.2012 to 31.03.2013 raising demand of ₹91,878.00.00 including penalty of ₹61,252.00 imposed u/s.10(2) of the OET Act.

2. The case at hand is that, the dealer-appellant M/s. Laxmi Agency having TIN-21511900336 is engaged in purchase and sale of cattle feed, poultry feed, maize and stone powder etc. on retail basis. During the period under challenge, the dealer has effected purchase of stone powder and maize from outside the State. The dealer has effected all its sales inside the State of Odisha. On receipt of information that the dealer has purchased stone powder from outside the State utilizing statutory way bills worth of ₹9,53,329.00 and has not paid any entry tax on such purchases, learned assessing authority issued notice for production of accounts. But the dealer did not respond to the notice for which ASTO (Asst. Sales Tax Officer) was directed to make enquiry into the matter. Thereafter, the ASTO reported that the dealer has effected interstate purchase of goods such as maize seeds for ₹18,81,311.00 and stone powder of ₹9,53,329.00 during the year 2012-13 on which no payment of Entry Tax has been made with the contention that such goods are non-scheduled goods. Learned assessing authority found that maize seeds being non-scheduled goods are not exigible to Entry Tax, whereas stone powder is liable to tax under the Act. So, notice was issued u/s.10 of the OET Act for escapement of tax on purchase of stone powder. Pursuant to such notice, the

dealer-firm appeared and submitted statement of purchase and sales on scheduled goods for the material period. Lastly, proceeding was initiated u/s.10 of the OET Act and the demand as mentioned above was raised against the dealer.

3. Against such tax demands, the dealer preferred first appeal before the learned first appellate authority who confirmed the tax demand.

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-respondents.

6. During pendency of this appeal, the dealer raised the point of maintainability stating that in absence of completion of assessment u/s.9, 9A or 9C of the OET Act for the tax period under challenge, the assessment u/s.10 of the OET Act made by the learned assessing authority for such tax period is not sustainable in law. Furthermore, learned Counsel for the dealer also relied upon the case of **M/s. ECMAS Resins Pvt. Ltd. v. State of Orissa** and prayed to quash the demand as raised against it.

7. Per contra, learned Standing Counsel for the Revenue argued that the assessing authority has assessed the dealer-company u/s.10 of the OET Act for the tax period under challenge on receipt of tax evasion report submitted by the Sales Tax Officer, Vigilance Division, Bhubaneswar which is found to be in order as per the provision of law. The additional ground preferred by the dealer-assessee is not

justified since it is completely new with intention to avoid payment of due tax. Learned Standing Counsel for the Revenue also relied upon the case of **State of Orissa v. Lakhoo Varjang 1960 SCC Online Ori 110 (1961) 12 STC 162** in which the following observations were made by the Hon'ble Apex Court:

“...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 Assistant Collector's order dealt solely with the question of penalty and did not go into the question of the liability of the assessee to be assessed because that question was never raised before him. The member, Sales Tax Tribunal, should not therefore have allowed additional grounds to be taken or additional evidence to be led in respect of a matter that had been concluded between the parties even at the first appellate stage. If the aggrieved party had kept the question of assessment alive by raising it at the first appellate stage and also in the second appellate stage, the member, Sales Tax Tribunal would have been justified in admitting additional evidence on the same and in relying on the aforesaid decision of the Supreme Court in Gannon Dunkerley's case, for setting aside the order of assessment. No subsequent change in case law can affect an order of assessment which has become final under the provisions of the Sales Tax Act...”

8. Heard the contentions and submissions of both the parties in this regard. Prior to adjudication it should be made clear that point of law can be raised at any time and as such the contention raised by the learned Standing Counsel for the Revenue holds not good. Perused the materials available on

record vis-à-vis the grounds of appeal and the orders of the fora below.

9. Likewise, the present petition concerns the assessment under the OET Act for the same period. 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.

So in view of the above analysis and placing reliance to the verdict of the Hon'ble Courts, I am of the view that the claim of the appellant deserves a merited acceptance.

10. In the result, the appeal preferred by the dealer is allowed and the orders of the fora below are hereby quashed. Cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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