

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

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

S.A. No. 155 (V) of 2017-18

(Arising out of order of the learned Joint Commissioner of
Sales Tax (Appeal), Sundargarh Range, Rourkela,
in First Appeal Case No. AA V 04 of 2016-17,
disposed of on dated 30.05.2017)

S.A. No. 69 (ET) of 2017-18

(Arising out of order of the learned Joint Commissioner of
Sales Tax (Appeal), Sundargarh Range, Rourkela,
in First Appeal Case No. AA V 03 ET of 2016-17,
disposed of on dated 30.05.2017)

M/s. Deo Ispat Alloys Limited,
Bhawanipur, Kirei,
Dist.- Sundargarh. ... Appellant

-Versus-

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

S.A. No. 198 (V) of 2017-18

(Arising out of order of the learned Joint Commissioner of
Sales Tax (Appeal), Sundargarh Range, Rourkela,
in First Appeal Case No. AA V 04 of 2016-17,
disposed of on dated 30.05.2017)

S.A. No. 86 (ET) of 2017-18

(Arising out of order of the learned Joint Commissioner of
Sales Tax (Appeal), Sundargarh Range, Rourkela,
in First Appeal Case No. AA V 03 ET of 2016-17,
disposed of on dated 30.05.2017)

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

-Versus-

M/s. Deo Ispat Alloys Limited,
Bhawanipur, Kirei,
Dist.- Sundargarh. ... Respondent

For the Dealer : Mr. S.N. Patel, Advocate
For the State : Mr. D. Behura, S.C. &
Mr. S.K. Pradhan, A.S.C.

Date of hearing:02.06.2023 *** Date of order: 13.06.2023

ORDER

Appeals, i.e. S.A. No.155(V) of 2017-18 and S.A. No.69(ET) of 2017-18 at the instance of the Dealer and S.A. No.198(V) of 2017-18 and S.A. No.86(ET) of 2017-18 at the instance of the State are against the orders dated 30.05.2007 in Appeal Case Nos. AA V 04 of 2016-17 and No. AA V 03 ET of 2016-17 respectively by the learned Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (hereinafter referred to as, JCST/first appellate authority) under OVAT Act and OET Act relate to same parties with same cause of action.

So, all these appeals are disposed of in a common order for the sake of convenience.

2. The facts of the case, in short, are that the dealer- assessee deals in trading and manufacturing process of Silico Manganese. The assessment period relates to

01.04.2009 to 06.02.2012. The proceedings u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') and u/s. 10 of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') were initiated by the learned Sales Tax Officer, Rourkela II Circle, Panposh (hereinafter referred to as, learned STO) basing on the Tax Evasion Report (TER).

3. The dealer-assessee preferred writ petitions before the Hon'ble High Court against the assessment proceedings in WP (C) Nos. 6245 and 6248 of 2014. Hon'ble High Court have been pleased to remit the proceedings to the STO for disposal afresh.

4. The STO reassessed the dealer-assessee and raised tax demand of ₹8,34,77,727.00 under the OVAT Act and ₹2,89,54,968.00 under the OET Act. The dealer-assessee preferred first appeals against the reassessment. The first appellate authority disposed of the appeal by reducing the tax demands under both the Acts. Being aggrieved with the orders of the first appellate authority, both the dealer-assessee and the State prefer second appeals. Hence, these appeals.

Both the dealer-assessee and the State file their respective cross objections.

5. The learned Counsel appearing for the dealer-assessee contended that the orders passed by the learned forums below are illegal and arbitrary. No assessment u/s.39, 42 or 44 was made before initiation of proceeding u/s.43 of the OVAT Act. Since the concept of deemed

assessment of the return has been introduced for the first time since 1st October, 2015, the impugned orders of reassessment are liable to be quashed for the period under challenge. He further submits that the proceeding u/s. 42 of the OVAT Act to a certain period does not relate to the present assessment. He relies on the decision of the Hon'ble Court in case of **M/s. Keshab Automobiles v. State of Odisha (STREV No.64 of 2016 decided on 01.12.2021)**

Further contention on behalf of the dealer in ET case is that, the return filed by way of self-assessment u/s.9(1) r/w. Sec.9(2) of the OET Act has not been accepted by the department by a formal application which is against the principle of **Ecmas Resin Pvt. Ltd. v. State of Orissa** case as decided by the Hon'ble High Court of Orissa.

6. Per contra, the learned Standing Counsel appearing for the Revenue argued that the learned first appellate authority has disposed of the appeals which are based on the provisions of law and factual position. This apart, learned Standing Counsel also contended that prior to this assessment, proceeding was initiated u/s.42 of the OVAT Act against the dealer-assessee. Learned Standing Counsel for the Revenue forcefully argued that there has been completion of assessment against the dealer u/s.42 of the OVAT Act and u/s.9(c) of the OET Act for the tax period 01.04.2011 to 31.03.2013 which is evident vide

order dtd.20.02.2014. So, both the cases i.e. **M/s. Keshab Automobiles v. State of Odisha (STREV No.64 of 2016 decided on 01.12.2021)** and **M/s. ECMAS Resins Pvt. Ltd. v. State of Orissa** are not applicable in the instant case. Apart from this, learned Standing Counsel also raised a plea that in earlier occasions the dealer had not raised all these pleas and as such right now the pleas taken by the dealer are to be discarded out rightly in view of Sec.98 of the OVAT Act.

7. Heard the contentions and submissions of both the parties in this regard. It is not in dispute that there were two proceedings against the dealer-assessee u/s. 42 of the OVAT Act and u/s. 9C of the OET Act for the assessment period 01.04.2011 to 31.03.2013. The present proceedings, i.e. u/s. 43 of the OVAT Act and u/s. 10 of the OET Act, relate to the period 01.04.2009 to 06.02.2012 inclusive the assessment period 01.04.2011 to 06.02.2012.

Admittedly, the State fails to produce any material evidence regarding acceptance/acknowledgment of self-assessment returns by the dealer-assessee for the period 01.04.2009 to 31.03.2011.

It is also not in dispute that proceedings u/s. 42 of the OVAT Act and 9C of the OET Act have been completed for the period 01.04.2011 to 31.03.2013 including the period 01.04.2011 to 06.02.2012. The proceeding u/s. 43 of the OVAT Act does not whisper a

single word about completion of the assessment proceedings u/s. 42 of the OVAT Act and 9C of the OET Act. It is also not in dispute that the present reassessment proceedings u/s. 43 of the OAVT Act and 10 of the OET Act have been remitted to the STO for reassessment on the strength of the order by the Hon'ble Court. It is also not in dispute that the point of maintainability was not challenged earlier. The same was challenged by the dealer-assessee on the strength of the orders of the Hon'ble Court passed in **Keshab Automobiles** and **ECMAS Resins Pvt. Ltd.** cases, which were decided on 01.12.2021. So, the same is binding to the STO and the dealer-assessee cannot be precluded to raise the same in view of the changed proposition of law. In the case of **M/s. Pawan Jey Sponge Iron Ltd., Rourkela v. Deputy Commissioner of Sales Tax, Rourkela Circle and others** in **WP (C) No. 10349 of 2016**, decided on dated 28.11.2022, the Hon'ble Court have been pleased to observe that the State is required to file the acknowledgment receipt regarding acceptance of return. In the said decision, the Hon'ble Court was further pleased to segregate the period where the self-assessments were not accepted.

8. In the case at hand, it appears that assessment period relates to 01.04.2009 to 31.03.2011 and 01.04.2011 to 06.02.2012. It further appears that a proceedings u/s. 42 of the OVAT Act and u/s. 9C of the

OET Act for the period 01.04.2011 to 31.03.2013 including a part period, i.e. 01.04.2011 to 06.02.2012, of the proceeding u/s. 43 of the OVAT Act and u/s. 10 of the OET Act. As the orders passed u/s. 43 of the OVAT Act and u/s. 10 of the OET Act do not whisper about completion of assessment u/s. 42 of the OVAT Act and u/s. 9C of the OET Act and a part period of the proceedings u/s. 43 of the OVAT Act and u/s. 10 of the OET Act relate to the assessments u/s. 42 of the OVAT Act and u/s. 9C of the OET Act, we feel it proper to remit the matters to the STO to examine as to whether any proceedings u/s. 42 of the OVAT Act and u/s. 9C of the OET Act for the period 01.04.2011 to 06.02.2012 have been completed or not and to segregate the period as per the ratio decided by the Hon'ble Court in case of **M/s. Pawan Jey Sponge Iron Ltd.** cited supra. If any proceedings u/s. 42 of the OVAT Act and u/s. 9C of the OET Act have been completed for the period 01.04.2011 to 06.02.2012, the STO shall recompute the assessment as per law. If no proceedings u/s. 42 of the OVAT Act and u/s. 9C of the OET Act have been completed for the aforesaid period, then the same shall be treated as quashed. As the State could not produce any material evidence showing communication of acceptance of self-assessment return for the period 01.04.2009 to 31.03.2011, so, the assessment for the aforesaid period is

unsustainable in law and is hereby quashed. Hence, it is ordered.

9. In the result, the appeals preferred by the dealer-appellant are allowed in part and the appeals at the instance of the State are dismissed. As a necessary corollary thereof, the orders of the first appellate authority are hereby set aside. The assessments under the OVAT Act and OET Act relating to the period 01.04.2009 to 31.03.2011 are hereby quashed. The matters are remanded to the STO for segregation of the assessment period and to make assessment afresh as per law keeping in view the observations made above within a period of three months from the date of receipt of this order. The cross objections are 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-II