

**BEFORE THE DIVISION BENCH-I, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 84 (ET) of 2019

&

S.A. No. 95 (ET) of 2019

(Arising out of order of the learned Addl. CST (Appeal),
North Zone, Sambalpur in Appeal No. AA-93(E)/18-19,
disposed of on 30.05.2019)

Present: **Shri G.C. Behera, Chairman**
&
Shri B. Bhoi, Accounts Member-II

S.A. No. 84 (ET) of 2019

M/s. Hariom Traders,
At/PO- Junagarh, Dist. Kalahandi ... Appellant

-Versus-

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

S.A. No. 95 (ET) of 2019

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

-Versus-

M/s. Hariom Traders,
At/PO- Junagarh, Dist. Kalahandi ... Respondent

For the Dealer : Sri B.P. Mohanty, Advocate
For the State : Sri D. Behura, S.C. (CT)

Date of hearing : 30.01.2023 *** Date of order : 09.02.2023

ORDER

Both the Dealer and the State have come up in two separate
appeals against the same impugned order. Therefore, they are heard

analogously and disposed of by this composite order for the sake of convenience.

S.A. No. 84 (ET) of 2019 :

2. Dealer assails the order dated 30.05.2019 of the Addl. Commissioner of Sales Tax (Appeal), North Zone, Sambalpur (hereinafter called as 'First Appellate Authority') in F A No. AA-93(E)/18-19 reducing the assessment order of the Deputy Commissioner of Sales Tax, Kalahandi Circle, Bhawanipatna (in short, 'Assessing Authority').

S.A. No. 95 (ET) of 2019 :

3. State is also in appeal against the same order dated 30.05.2019 of the First Appellate Authority reducing the assessment order of the Assessing Authority.

4. The facts of the cases, in short, are that –

M/s. Hariom Traders carries on business in selling of wall tiles, floor tiles, steps, pan, wash basin, khappar, roofing tiles and granites etc. on retail as well as wholesale basis. The period of assessment relates to 01.04.2013 to 30.06.2017. The Assessing Authority raised tax and penalty of ₹30,88,788.00 u/s. 10 of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') basing on the Tax Evasion Report (TER).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹15,90,558.00 and partly allowed the appeal. Being aggrieved with the order of the First Appellate Authority, both the Dealer and the State prefer these appeals. Hence, these appeals.

5. State and the Dealer file cross-objections against each other case.

6. The learned Counsel for the Dealer submits that the order of the First Appellate Authority and the Assessing Authority are otherwise bad in law and contrary to the law and facts involved. He further submits that the Assessing Authority and First Appellate Authority accepted the TER on hypothetical ground and imposed tax, interest and penalty without any basis. He has taken the maintainability of proceedings u/s. 10(1) of the OET Act

r/w. Rule 15B of the OET Rules unless self-assessment return filed u/s. 9(1) of the OET Act r/w. 9(2) of the OET Act is accepted by the Department by a formal communication to the Dealer. He relies on the decision of the Hon'ble Court in the case of *M/s. ECMAS Resins Pvt. Ltd. and other v. State of Odisha* (WP(C) Nos. 7458 of 2015 & 7296 of 2013, decided on 05.08.2022).

7. Per contra, learned Standing Counsel (CT) for the State submits that the Dealer had not taken the ground of maintainability of the proceeding u/s. 10 of the OET Act at the time of assessment nor at the time of first appeal. He further submits that a party who had not taken a ground in the assessment or in the first appeal, he cannot take the same at the stage of second appeal for the first time. He further submits that the First Appellate Authority went wrong in making estimation of suppression by considering the transaction of a single month, i.e. June, 2016. He further submits that the assessment periods include the position of both pre-amendment and post-amendment periods. So, he submits that the whole proceeding cannot be quashed in the aid of the decision of the case cited supra. So, he submits that the order of the First Appellate Authority requires interference in appeal and the order of the Assessing Authority is required to be restored.

8. Having heard the rival submissions of the parties and on going through the orders of the both the Assessing Authority and the First Appellate Authority vis-a-vis the materials on record, it transpires that the assessment periods relate to 01.04.2013 to 30.06.2017.

In the case of *M/s. ECMAS Resins Pvt. Ltd.* and other cited supra, Hon'ble Court have been pleased to observe that unless the self assessment is accepted by the Department by a formal communication to the dealer, it cannot trigger a notice for reassessment u/s. 10(1) of the OET Act r/w. Rule 15B of the OET Rules. The relevant portion of the order of the Hon'ble Court is reproduced herein below for better appreciation :-

“43. The sum total of the above discussion is 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 15 B of the OET Rules. This answers the question posed to the Court.”

9. In view of the ratio laid down above by the Hon’ble Court, we are of the considered view that the assessment for the impugned period is not sustainable in the eyes of law in absence of acceptance of return of self assessment u/s. 9(1) read with 9(2) of the OET Act.

10. As the appeal of the Dealer, i.e. S.A. No. 84 (ET) of 2019 was taken up on technical ground, i.e. maintainability in absence of acceptance of return u/s. 9(1) r/w. 9(2) of the OET Act and it strikes the root touching the jurisdiction of the case, and the first appellate order is liable to be set aside, so, the appeal of the State, i.e. S.A. No. 95 (ET) of 2019, is redundant and the same needs no further adjudication.

11. Resultantly, the appeal of the Dealer, i.e. S.A. No. 84 (ET) of 2019, is allowed and the impugned orders of the First Appellate Authority and the Assessing Authority are hereby quashed. As such, the appeal of the State, i.e. S.A. No.95 (ET) of 2019, is dismissed. Cross-objections are disposed of accordingly.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

**Sd/-
(G.C. Behera)
Chairman**

I agree,

**Sd/-
(B. Bhoi)
Accounts Member-II**