

as, STO/assessing authority) u/s.10 of the Orissa Entry Tax (Amendment) Act, 2005 (hereinafter referred to as, the OET Act) raising demand of ₹13,90,618.00 including tax of ₹4,40,069.00, interest of ₹70,411.00 and penalty of ₹8,80,138.00 for the tax period 01.04.2008 to 30.06.2011.

2. The case is that, the appellant in the instant case being a company incorporated under the Companies Act, 1956 is engaged in manufacturing of sponge iron and trading of iron ore fines and coal. The appellant uses iron ore fines, coal and dolomite for raw materials and effected purchase of scheduled goods and sale of finished products both in course of inside and outside the State of Odisha. Pursuant to tax evasion report No.12/2011-12 dtd.30.07.2011 submitted by the Sales Tax Officer, Investigation Unit, Rourkela, the assessing authority initiated assessment proceeding u/s.10 of the OET Act and raised the demand as mentioned above.

3. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who reduced the 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-respondent.

6. During course of argument, learned Counsel for the dealer vehemently contended that the orders passed by the learned forum below are illegal and arbitrary. Further contention on behalf of the learned Counsel for the dealer is

that, the position under the OET Act stands covered by the judgment of the Full Bench of the Hon'ble Court decided in 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** 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.

7. Per contra, learned Standing Counsel for the Revenue vehemently contended that the orders of the fora below are genuine and this case is not at all covered by M/s. ECMAS Resins Pvt. Ltd. case. Learned Standing Counsel also pointed out that the order of the first appellate authority clearly entails that the return so filed in form E-3 for the period under challenge was self assessed u/s.9(2) of the OET Act vide order dtd.10.07.2017 submitted by the Sales Tax Officer, Enforcement Range, Bhubaneswar and on that effect order-sheet is maintained. This apart learned Standing Counsel also argued stating that the same fact as stated by the learned first appellate authority in its order is also reflected in the order of assessment. So, in view of such, assessment proceeding initiated u/s.10 of the OET Act is just and proper.

8. Heard the contentions and submissions of both the parties in this regard. The sole question in the instant case to be adjudicated upon is, whether a formal communication of acceptance of return filed by way of self assessment u/s.9(2) of the Act is a pre-requisite for reopening of an assessment u/s.10(1) of the Act. On perusal of the case record it becomes

quite evident that, nowhere it reveals that the return filed by the dealer by way of self-assessment is accepted by the department by a formal communication. On this score, the Hon'ble Court has clearly observed that the position under the OET Act stands covered by the judgment of Full Bench on 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 view of the above analysis, I am of the view to say that the orders of the fora below are not sustainable in the eye of law.

9. For the reasons assigned above, I am of the view that the learned first appellate authority is not correct in its approach pursuant to the verdict of the Hon'ble Court decided in the case of **M/s. ECMAS Resins Pvt. Ltd. v. State of Odisha and Ors.** and as such the orders warrant interference. Hence, order.

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

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