

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

S.A. Nos. 23 (ET) & 24 (ET) of 2021

(Arising out of orders of the learned Addl. CST (Appeal), Commissionerate of CT & GST, Odisha, (At Cuttack) in First Appeal Nos. AA – 108101810000102/2018-19 & 108101810000101/2018-19, disposed of on 31.03.2021 & 22.02.2021 respectively)

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

M/s. National Aluminium Company Limited,
NALCO Bhawan, Plot No. P/1, Nayapalli,
Bhubaneswar, Khurda ... Appellant

-Versus-

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

For the Appellant : Sri S.C. Sahoo, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 08.12.2022 *** Date of order : 06.01.2023

ORDER

Common question of facts and law are involved in these appeals and, therefore, both the appeals are disposed of by this composite order for the sake of convenience.

2. Dealer is in appeals against orders of the Addl. Commissioner of Sales Tax (Appeal), Commissionerate of CT & GST, Odisha (At Cuttack) (hereinafter called as ‘First Appellate Authority’) in F A Nos. AA – 108101810000102/2018-19 dated 31.03.2021 and AA – 108101810000101/2018-19 dated 22.02.2021 confirming the assessment orders of the Deputy Commissioner of Sales Tax, Dhenkanal Circle, Dhenkanal (in short, ‘Assessing Authority’).

3. Briefly stated, the facts of the cases are that –

M/s. NALCO Ltd., a Public Sector Undertaking, is engaged in producing electricity for its captive consumption. The assessments relate to the periods from 01.02.2007 to 31.01.2010 and 01.02.2010 to 31.03.2011. The Hon'ble Court were pleased to set aside the order on the ground that both the First Appellate Authority and the subsequent Assessing Authority was the self-same person vide order dated 29.09.2015 in W.P (C) No. 10597 of 2015 along with a direction to take up the reassessment by an appropriate officer other than the officer who passed the first appellate order.

Accordingly, the Assessing Authority reassessed and raised tax demands of ₹12,21,55,755.00 and ₹7,08,94,284.00 for the periods from 01.02.2007 to 31.01.2010 and 01.02.2010 to 31.03.2011 respectively u/s. 10 of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') as per order of the Hon'ble Court.

Dealer preferred first appeals against the orders of the Assessing Authority. The First Appellate Authority confirmed the assessment orders. Being aggrieved with the orders of the First Appellate Authority, the Dealer prefers these appeals. Hence, these appeals.

4. The State files cross-objections and supported the finding of the First Appellate Authority. The State made a prayer to direct the Dealer to produce the statutory CA report with enclosure thereon u/s. 65 of the OVAT Act r/w Rule 73 of the OVAT Rules.

5. The learned Counsel for the Dealer submits that the orders of the First Appellate Authority and the Assessing Authority are contrary to law and fact involved and as such, the same require interference in appeal. He further submits that the goods in question, i.e. coal, caustic soda, HFO and LDO etc. are raw materials and are specified in Part-I & Part-II of the Schedule under the OET Act. He further submits that the statutory concessional benefit cannot be denied merely because the same do not find place in the Registration Certificate. He further submits that the rate of entry tax should be fifty percentum of the tax rate of Part-I and Part-II goods as

per the amendment provision of Rule 3(4) of the OET Rules. He further submits that the levy of penalty u/s. 10(2) of the OET Act is not lawful. He also submits that the Assessing Authority and the First Appellate Authority went wrong in raising tax demands, which are not sustainable in law and the same need interference in these appeals.

6. Per contra, the learned Standing Counsel (CT) for the State submits that the Assessing Authority and the First Appellate Authority are justified in raising such tax demands, which were settled by this Tribunal in an earlier order. He further submits that the Registration Certificate does not include the materials in question to derive the benefit under the statute. He further submits that the Assessing Authority and the First Appellate Authority have rightly raised the tax demands and the same require no interference in these appeals.

7. On hearing the rival submissions of the parties and on careful scrutiny of the records, it transpires that the reassessment completed as per the direction of the Hon'ble Court passed in W.P. (C) No. 10597 of 2015. The Assessing Authority disallowed the benefit availed by the Dealer u/r. 3(4) of the OET Rules, i.e. concessional rate of tax on purchases, and raised the tax demands including penalty for the periods under assessment.

8. The First Appellate Authority confirmed the orders of the Assessing Authority in appeal. The orders of the Assessing Authority and the First Appellate Authority were based on the finding of this Tribunal in S.A. No. 50 (ET) to 53 (ET) of 2010-11.

Dealer challenged the orders of this Tribunal before the Hon'ble Court vide STREV Nos. 31 of 2012 and 10 of 2012. The STREV Nos. 31 to 34 of 2012 have already been disposed of by the Hon'ble Court vide order dated 19.04.2021. In the said STREVs of the Dealer, the Hon'ble Court have been pleased to record a finding that the petitioner (Dealer) cannot be deprived of the concessional statutory benefit on raw materials, which the Dealer is entitled to merely because the same were not mentioned in the Registration Certificate.

Hon'ble Court were pleased to observe that the Registration Certificate issued to NALCO should contain the items such as, coal, caustic soda, HFO and LDO, by an entry made w.e.f. 14.03.1987. The entry should have been further mentioned that these were raw materials. Hon'ble Court further observed that the mere fact that the Registration Certificate does not mention the goods as raw materials cannot result in depriving the petitioner (Dealer) of the concession to which it is statutorily entitled. Hon'ble Court further observed the position under the OET Rules that after 6th November, 2000 was that in terms of Rule 3(4) of the OET Rules, goods specified in Part-I and Part-II of the Schedule to the OET Act when used as raw materials by a manufacturer on its first entry "in a local area other than that specified in clause (a) above shall not be exigible to tax".

Rule 3(4)(a) envisages the entry of the goods in a local area notified as a Municipality or Municipal Corporation or a Notified Area Council, in which case the goods would be exigible to tax @ 50% of the rate to which they are exigible under Rule 3(2) and Rule 3(4) of the OET Rules. However, if the entry is in a local area other than Municipality, Municipal Corporation or Notified Area Council then no tax would be leviable. As far as electricity is concerned that is supplied from the CPP to the Smelter Plant and, therefore, it is within the same Garam Panchayat. Hon'ble Court further observed that no entry tax was leviable on the purchase by the Petitioner-NALCO of raw materials such as coal, caustic soda, HFO and LDO upto 6th November, 2000 in view of Rule 3(4)(b) as it existed prior to the 2nd amendment to the OET Rules. On such finding, the revision, i.e. STREV Nos. 31 to 34 of 2012, were disposed of in favour of the Dealer and against the Revenue.

9. In the case at hand, the Dealer had purchased coal from MCL and others etc. at concessional rate paying @ 0.5%. The Dealer had purchased raw materials including imported coal, caustic soda, HFO and LDO from outside State of Odisha by depositing @ 0.5%. The Dealer has also purchased spare and consumables paying tax @ 1% and also purchased

11. It is not in dispute that the coal has been purchased by the Dealer from MCL as raw material for generation of electricity. It is also not in dispute that coal, caustic soda, HFO and LDO were imported by the Dealer from outside the State. So, in view of Rule 3(4)(a) and (b) of the OET Rules, the Assessing Authority and the First Appellate Authority should have charged the rate of tax @ 0.5% on coal purchased from MCL and raw materials like imported coal, caustic soda, LDO and HFO etc. from outside the State @ 0.5% instead of 1%. So, the orders of the Assessing Authority and the First Appellate Authority are not sustainable in the eyes of law and need interference in these appeals. Hence, it is ordered.

12. In the result, the appeals of the Dealer stand allowed and the orders of the First Appellate Authority confirming the orders of the Assessing Authority are hereby set aside. The Assessing Authority is directed to recompute the tax liability of the Dealer for the periods under assessment in accordance with law keeping in view the observations made hereinabove within a period of three months from the date of receipt of this order. Cross-objections are disposed of accordingly.

Dictated & Corrected by me

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

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

I agree,

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

I agree,

**Sd/-
(M. Harichandan)
Accounts Member-I**