

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

S.A. No. 38 (ET) of 2017-18

(Arising out of order of the learned Addl. CST (Appeal), South Zone,
Berhampur in Appeal No. AA (ET) 57/2014-15,
disposed of on 24.03.2017)

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

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

... Appellant

-Versus-

M/s. Jayashree Chemicals Pvt. Ltd.,
At/PO- Jayashree, Ganjam

... Respondent

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

Date of hearing : 12.09.2023 *** Date of order : 11.10.2023

ORDER

State is in appeal against the order dated 24.03.2017 of the Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (hereinafter called as 'First Appellate Authority') in F A No. AA AA (ET) 57/2014-15 reducing the demand raised in assessment order of the Joint Commissioner of Sales Tax, Ganjam Range, Berhampur (in short, 'Assessing Authority').

2. Briefly stated, the facts of the case are that –

M/s. Jayashree Chemicals Pvt. Ltd. is engaged in manufacturing of caustic soda lye, chlorine and hydrochloric acid by utilizing raw materials like common salt, barium carbonate, lye, soda ash etc. The assessment

period relates to 01.04.2005 to 31.03.2011. The Assessing Authority raised tax and penalty of ₹14,04,592.00 u/s. 10 of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') on the basis of Fraud Case Report (FCR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the demand to ₹4,68,197.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files cross-objection and additional cross-objection.

3. The learned Standing Counsel (CT) for the State submits that the Hon'ble Apex Court have been pleased to observe that the Dealer-Company is required to discharge entry tax liability. He further submits that the Hon'ble Court were also pleased to observe that the Dealer-Company has to pay 1/3rd entry tax and the Hon'ble Apex Court were also pleased to direct the Dealer to deposit rest 2/3rd of the tax due. He also submits that the Hon'ble Apex Court and Hon'ble High Court were also pleased to direct the Dealer and others to pay the admitted entry tax as per the self-assessed returns as per the provisions of Section 2(47) of the OVAT Act read with Section 2(q) of the OET Act. So, he submits that the Dealer cannot be discharged from the tax liability arising out of the escaped assessment and he cannot take the additional grounds in view of decision of the Hon'ble Apex Court in case of *State of Orissa v. Lakhoo Varjang*, reported in **[1961] 12 STC 162 (SC)**.

4. On the contrary, the learned Counsel for the Dealer that the law in the meantime has been settled by the Hon'ble Court and the Hon'ble Apex Court. He also submits that Hon'ble Court were pleased to observe that the proceeding u/s. 10 of the OET Act cannot be initiated without completing assessment u/s. 9(1) and (2) of the OET Act. He relies on the decision of the Hon'ble Court in case of *M/s. ECMAS Resins Pvt. Ltd. and other v. State*

of Odisha in WP(C) Nos. 7458 of 2015 & 7296 of 2013. The aforesaid order of the Hon'ble Court has been confirmed by the Hon'ble Apex Court. So, he submits that the orders of the Assessing Authority and the First Appellate Authority are liable to be set aside in the ends of justice.

5. Having heard the rival submissions and on going through the materials on record, the record reveals that the Dealer deposited 1/3rd of tax on purchases made from outside Odisha as per the direction of the Hon'ble High Court. It further reveals that the Dealer also deposited 50% of tax as per interim order of the Hon'ble Apex Court.

Admittedly, we are not sitting in any appeal of the Dealer or the State on the issue of self-assessment and payment made against admitted tax. Therefore, we are not expressing any opinion on its merit. We feel it proper to observe that the parties are bound by the law settled by the Hon'ble High Court, i.e. in case of *M/s. Shree Bharat Motors Ltd. and others v. Sales Tax Officer, Bhubaneswar-I Circle, Bhubaneswar and others* (WP (C) No. 13736 of 2017 & batch) decided on 15.03.2023 followed by the verdicts of the Hon'ble Apex Court in case of in cases of *Jindal Stainless Ltd. & Reliance Industries Ltd.*

As regards the dispute raised on maintainability of the proceeding initiated u/s. 10 of the OET Act, the Hon'ble Court were also pleased to observe in **Para- 17.4** in *M/s. Shree Bharat Motors Ltd.* case cited supra that the Dealer is at liberty to approach the appellate forum u/s. 16 of the OET Act. The reassessment has been completed u/s. 10 of the OET Act basing on FCR. The State has filed second appeal, wherein the Dealer has taken a ground on maintainability of proceeding u/s. 10 of the OET Act in absence of communication of acceptance of self-assessed returns u/s. 9(1) and (2) of the said Act.

In the meantime, the position of law has been settled in the case of *M/s. ECMAS Resins Pvt. Ltd. and other* cited supra, wherein the

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.”

Keeping in view the ratio laid down by the Hon'ble Court in the cited case, the Dealer has taken the additional grounds in cross-objection on the point of jurisdiction and maintainability of the assessment proceeding, which strikes the root. So, the same cannot be brushed aside merely on the ground that the Dealer took the same belatedly before this forum.

6. It is settled law 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.

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) r/w Section 9(2) of the OET Act.

However, we would like to observe that the finding of this Tribunal no way affects the payment of admitted tax. The payment of

admitted tax, if any, shall be guided by the dictum of the Hon'ble Court rendered in case of M/s. Shree Bharat Motors Ltd. cited supra.

7. We have already rendered our views on preliminary issue regarding maintainability of proceeding u/s. 10 of the OET Act holding that the Assessing Authority is without jurisdiction in absence of acceptance of self-assessed return. So, it is not required to discuss other issues on merit. Hence, it is ordered.

8. Resultantly, the appeal stands allowed and the impugned order of the First Appellate Authority is set aside. The assessment order of the Assessing Authority is hereby quashed. Cross-objection is disposed of accordingly.

However, we would like to observe that the finding of this Tribunal no way affects the payment of admitted tax. The payment of admitted tax, if any, shall be guided by the dictum of the Hon'ble Court rendered in case of M/s. Shree Bharat Motors Ltd. cited supra.

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/-
(S.R. Mishra)
Accounts Member-II**