BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No. 87(ET) of 07-08

(Arising out of the order of the learned ACST(Appeal), Sundargarh Range, Rourkela in first appeal case No. AA.100(RL-II) of 2006-2007, disposed of on 31.03.2007)

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

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

-Vrs. –

M/s. OCL India Limited, At/Po- Rajagangpur, Dist- Sundargarh(Orissa). ..... Respondent.

For the Appellant : : Mr. D. Behura, ld. S.C.(C.T.)
: Mr. S.K. Pradhan, ld. ASC(C.T)
For the Respondent : : Mr. B. Mahanti, Sr. Advocate,
: Mr. A.K. Samal, ld. Advocate

Date of Hearing : 05.06.2023 * Date of Order : 30.06.2023**

O R D E R

The State is in appeal against the order dated 31.03.2007 of the Assistant Commissioner of Sales Tax(Appeal), Sundargarh Range, Rourkela passed in First Appeal Case No.100(RL II) 2006-2007 (In brevity, referred to as ld.FAA) reducing the demand to ₹4,57,965.00 as against demand of ₹11,74,287.00 raised by the Sales Tax Officer, Rourkela II Circle, Panposh (hereinafter called as ld.STO) under Section

7(4) of the OET Act in case of M/s OCL India Limited, Rajgangpur for the year 2004-05.

2. The respondent-dealer, a Public Limited Company engaged in manufacture of cement, Refractories and Sponge Iron was assessed under Section 7(4) of the OET Act for the year, 2004-05. The purchases of scheduled goods those brought into the local area such as machineries and spare parts, electrical goods, iron and steel plastic goods etc. valuing ₹219,17,54,673.60 were disclosed during the year under appeal. Out of the said purchases, an amount of ₹64,87,83,051.17 has been claimed as exemption from entry tax u/R. 5 of the OET Act. The ld.STO found ₹1,07,44,267.00 as not qualifying for exemption, since the same were purchases made from the unregistered dealers. Further, entry tax has been paid on the scheduled goods of ₹154,29,64,952.67 on the purchase value as per original invoices and has not taken into account of the freight and other incidental charges. Hence, the learned STO added 2% on ₹154,29,64,952.67 which calculated to ₹3,08,59,299.05. The learned STO disallowed ₹33,25,711.00 towards availment of concessional rate of tax, as the dealer-assessee could not furnish Form E-15 against such sales to the registered dealers. While completing the assessment under the OST Act, the ld. STO had enhanced ₹6,90,48,616.00 basing on higher consumption of iron ore and less production of sponge

iron. It was added to the GTO and TTO returned under entry tax also for the purpose of levy of tax. The dealer-assessee had sold cement to M/s. Balmaer Lawrie & Co. Ltd. For use in the project of Paradeep Refinery of Indian Oil Corporation for ₹6,72,859.00 and had not collected entry tax because of exemption granted to the Refinery Unit. The learned STO levied entry tax on the said amount with observation that the purchaser M/s. Balmaer Lawrie & Co. Ltd. was not allowed the benefit of exemption which was granted to Indian Oil Corporation only. As the claim of discount from sale turnover of cement was disallowed in the OST assessment, the ld. STO added ₹25,83,691.00 to the entry tax turnover and levied tax at the appropriate rate. Resorting to best of judgment, the ld. STO determined the GTO & TTO at ₹505,74,61,623.85 and ₹441,94,22,839.68 respectively after allowing deduction of ₹63,80,38,784.17. The entry tax so calculated under different tax groups against the TTO determined worked out to ₹5,01,42,218.95. The dealer-assessee having paid ₹4,72,23,500.00 at the time of filing returns and availing setoff of ₹17,44,431.00, an amount of ₹11,74,288.00 is payable by the dealer-assessee as assessed by the ld. STO. The first appeal as preferred by the dealer-assessee was disposed off reducing the demand of ₹11,74,287.00 to ₹4,57,965.00 with a observation that the special cash discount and quantity discount are permissible as deductions under the Act and also

the addition of ₹6,90,48,616.00 towards unaccounted production of sponge iron and sale thereof was not sustainable.

3. The State preferred appeal before this forum against the above order of the ld. FAA contending that the deletion of enhancement of GTO made at assessment by the ld. STO at the first appellate stage is not reasonable. The ld. FAA being the extended forum of assessment should have verified the quality of raw materials purchased in the price paid vis-à-vis market price and should have appreciated the finding of ld. STO.

4. Mr. Bibekananda Mohanti, learned Senior Advocate appearing on behalf of the dealer-assessee filed cross objection submitting that the dealer-assessee being aggrieved against the order of the ld. FAA as stated supra had filed second appeal before this Tribunal. The Tribunal vide their S.A.No.62(ET) of 2007-08 dated14.01.2010 passed in Division Bench have been pleased to allow the appeal in part and remitted the case back to the ld. STO for re-computation of the tax due as per the directions contained in the aforesaid second appeal order. The ld. Sr. Advocate places a copy order of the Tribunal in question asserting this forum not to interfere and to dismiss the appeal filed by the State, as the grounds assailed by the State herein have already been adjudicated.

5. Heard the averments made by both the parties. Gone through the appeal and assessment orders, grounds of appeal

and the materials available on the record. We find worthy to provide the relevant abstract of the order of the Tribunal delivered in S.A. 62(ET) of 2007-08 as under for better appreciation:-

"5. The arguments and the counter arguments of the contesting counsels appearing for the appellant and the state were keenly listened to and the impugned orders of assessment vis-à-vis the grounds of appeal and the written submission thoroughly gone through. The questions that require answer from this Tribunal as conceived from the fact and circumstances of the case can be framed as follows;

a. Whether in the facts and circumstances of the case the sale of cement to M/s. Balmaer Lawrie & Co. Ltd. without collection of entry Tax U/s.26 of the OET Act is correct and legally permissible.
b. Whether the addition of ₹3,08,59,299.00 towards freight/transportation charges to the total value of scheduled goods returned by the appellant to determine the purchase value on the face of having proper invoices is illegal and therefore needs deletion.
c. Whether the addition of ₹50,49,131/- towards freight/transportation cost to the receipt value of lime stone and quartzite stone along with addition of ₹5,75,896.00 on

account of raw material and ₹1,34,271/- on account of vehicles is correct.

6. Before answering the questions as framed on the facts of the case it is thought prudent to deal with the vociferous contention of the appellant on the point of location of factory premises in an industrial township which is beyond the purview of Orissa Entry Tax Act, 1999. The fact that has been put up by the appellant and not rebutted by the respondent is that the factory premises are located in an industrial town ship not coming under Rajgangpur Municipality. The appellant has challenged levy of entry tax on this particular point before the Hon'ble High Court and further before the Hon'ble Apex Court of the country without getting a stay of operation. The verdict when pronounced will be the final dictum on the matter and both the appellant and the Revenue are bound to bow down before it but till then the entry Tax Act takes the appellant under its closet and the learned STO and the ACST have rightful jurisdiction to levy entry tax on the appellant. This court has no locus standi to restrict the authorities fora below in levying the entry tax on the appellant.

7. The undisputed fact that comes out of the record is that the appellant had sold cement for ₹6,62,896.00 to M/s. Balmaer Lawrie & Co. Ltd. a contractor engaged in construction of oil refinery plant of M/s. Indian Oil Corporation Ltd. at Paradeep

and had not collected entry tax as stipulated U/s.26 of the OET Act, 1999 on the ground that the construction of refinery project is exempted from levy of entry tax by the Govt. of Orissa in notification No.25017-CTA-117/2002(Pt.II)-f dt.07.06.2004 (S.R.O.298/2004). The claim was disallowed by the learned STO and upheld by learned ACST with observation that the M/s. Indian Oil Corporation was exempted from the payment of entry tax but not the purchaser M/s. Balmaer Lawrie & Co. Ltd. The appellant has challenged such a finding with argument that all materials involved in the construction work have been exempted from payment of entry tax as per aforesaid notification. On going through the copy of the entry tax notification dt. 7th June, 2004 of Finance Department it is found that the exemption is granted for entry of machinery, equipment and other scheduled goods required for construction work into a local area for use in the construction of the Paradeep Refinery of Indian Oil Corporation Ltd. at Abhayachandrapur in the district of Jagatsinghpur in the State of Orissa. The language is very clear that the entry of goods in to a local area for use in the construction of Paradeep Refinery is exempted from tax unlike exemption under the OST Act granted to a dealer putting up a refinery unit in the State of Orissa. The appellant produced copy of letter of acceptance of M/s. IOCL issued in favour of M/s. Balmaer Lawrie & Co. Ltd. for the work of combined work of pump house building and

allied civil, mechanical, electrical and instrumentation works including supply and installation of PLC based fire protection system at Paradeep Refinery Project. When the goods are meant for entry into Abhayachandrapur for construction of Paradip Refinery, the said goods become eligible for exemption under the OET Act, 1999. The appellant being satisfied with the fulfillment of conditions had correctly not collected entry tax on sale of his finished goods to M/s. Balmaer Lawrie & Co. Ltd. The appeal succeeds on this point.

The mode of determination of purchase value of the scheduled goods that enter into the local area of the appellant has been stoutly challenged with arguments that the learned STO committed the error of law by adding estimated 2% of the invoice value towards transportation charges when there was no deficiency found in invoices making those liable for rejection and estimation of purchase value on conduct of market inquiry under Rule 17(1). The invoices were not rejected on due recording of reasons in writing and none of the conditions for enhancement of purchase turnover as contemplated under Rule17(1) was fulfilled. In support of the arguments the circular dt. 04.01.2001 of the CCT Orissa on the subject of 17(1) determination was produced. On going through the Sec.2(j) and Rule 17(1) this Tribunal finds that no illegality appears to have been committed by the learned STO in not rejecting the invoices

and adding an estimated percentage towards transportation cost as the language of 17(1) is clear in mentioning that the purchase value shall be determined on the basis of the invoices unless the same are rejected for reasons to be recorded in writing and after giving reasonable opportunity of being heard to the dealer. For the purpose of better appreciation the Sec.2(j) and Rule 17(1) are quoted verbatim below:

Sec. 2(j):- "Purchase value" Means the value of scheduled goods are ascertained from original invoice or bill and includes insurance charges, excise duties, countervailing charges, sales tax, transport charges, freight charges and all other charges incidental to the purchase of such goods:

Provide that where purchase value of any scheduled goods is not ascertainable on account of non-availability or non-production of the original invoice or bill or when the invoice or bill produced is proved to be false or if the scheduled goods are or obtained otherwise than by way of purchase, then the purchase value shall be the value of the price at which the scheduled good of like kind or quality is sold or is capable or being sold in open market;

Rule 17(2):- In determining the purchase value liable to tax under the Act, the amount relating to the purchases made within the local area from a registered dealer carrying on business in the same local area shall be deducted. The purchase

value shall be determined on the basis of the invoices unless the same are rejected for reasons to be recorded in writing and after giving reasonable opportunity of being heard to the dealer.

As would be seen from the above quotations the purchase value of the scheduled goods as ascertained from the original invoice or bill and includes insurance charges, excise duty, countervailing charges etc and for that purpose the invoice should be the basis. Where the invoices failed to the act as basis the assessing officer may reject the same and with reasons as to why the invoices cannot be taken as a basis by recording in writing and proceed further. When the invoices are perfect one to be the basis on which the edifice of purchase value can be build by adding insurance charges, transport charges, freight charges etc. why would the assessing officer reject the same to arrive at the purchase value? The Rule 17(1) has just explained the position of law led down in U/s.2(j) by making the invoice to be the basis. The word basis is the most important one. The meaning of basis as per the New Webster's Dictionary of Deluxe Encyclopedic Edition is that as follows"

Basis:- The bottom or base of anything, or that which it stands on rests; hence, that by which anything is sustained; or upon which it is established; a foundation or support; a groundwork or fundamental principle; the principal constituent; a fundamental ingredient.

The Merriam Webster Dictionary defines the word "Basis" as follows:-

1. The bottom of something considered as its foundation
2. The principal component of something

3a.something on which something established or based b. an underlying condition or state of affairs <hired on a trial basis> on a first name basis>

4. The basis principle
5. 5. A set of linearly independent vectors in a vector space such that any vector in the vector space can be expressed as a linear combination on them with appropriately chosen coefficients.

The invoices form foundation or support to which the transportation and other charges are added for arriving at the purchase value. Such being the position of law, there is no legal necessity of rejecting the invoice where such invoices reflect the cost of the goods worthy of credence. There might have been conceptual confusion in believing that the value reflected in the invoice has to be taken as purchase value for levy of entry tax unless the invoice is rejected with recording of due reasons. Such confusion might have led to issue of a clarificatory circular by the CCT, Orissa which has got not statutory relevance to bind the assessing authority in following it. This Tribunal is of a considered view that the learned STO committed no error in not rejecting the invoices to arrive at the purchase value. Of course

it is another matter that when the appellant, being a limited company of a high standing maintained details of all his expenses, the learned STO's estimation of 2% towards transportation cost stands hollow and instead the appellant should have been asked to produce the cost of transportation as reflected in his books of accounts in determining the value of goods at the time of entry into the local area. If the appellant so desires he will be at liberty to produce the books of account relating to cost of transportation before the learned STO at the time of recomputation of tax due or may accept 2%estimation as done by the STO.

The last point of adjudication is the addition of ₹50,49,131/- towards transportation charges on the receipt value of lime stone and quartzite stone. The appellant submitted that the lime stone a raw material for cement and quartzite stone a raw material for Refractories were produced from his captive mines and he has taken the receipt value of lime stone and the quartzite stone at ₹27,52,025.00 and ₹22,97,106.00 respectively totaling to ₹50,49,131.00 in his books of account. When goods belong to the appellant and not purchased, the landing cost will be naturally the transportation and other associated costs. From the orders of fora below it does come out as to why the said amount was again added as transportation cost. The order of the learned ACST is silent on the point

although a ground was taken in that regard as seen from page-6 of the first appeal order. When the cost shown in the books of accounts related to the landing cost but not purchase price there arises no action of determination of further value by addition of another equal amount. The study of the assessment order and the first appeal order does not reveal exactly where the addition was effected to the raw materials procured from the captive mines. The learned STO should look to this aspect at the time of recomputation. If it is found that there has been addition of ₹50,49,131.00 to the receipt value of lime stone and quartzite stone the same should be deleted and only the receipt value be taken for levy of tax.

In the result the appeal is allowed in part and the order of learned ACST is set aside consequently the order of learned STO. The case is remanded to the learned STO for recomputation of tax due as per the directions given in forgoing paragraphs."

6. Under the above eventuality, we are of the view that as the dealer-assessee as well as the State has filed second appeal against the same first appeal order and the same dealer assessee having been disposed of in S.A. No.62(ET) of 2007-08 on 14.01.2010, we are not tempted to embark upon the decision already rendered thereunder due to juristic justification. The second appeal filed by the State in the impugned case is hereby

disposed of in the light of the observations made in the foregoing discussion. The cross objection is accordingly disposed of.

Dictated & corrected by me.

Sd/-
Bibekananda Bhoi)
Accounts Member-II

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

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