

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

S.A. No. 138 (ET) of 2005-06

(Arising out of order of the learned ACST, Balasore Range,
Balasore in First Appeal No. AA 145/BA- 2002-03 (ET)
disposed of on 31.05.2005)

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

M/s. B. Seenaiiah & Co. (Project) Ltd.,
At/PO- Mirigini, Via- Nilgiri, Dist. Balasore ... Appellant

-Versus-

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

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

Date of hearing : 14.10.2022 *** Date of order : 29.10.2022

ORDER

The Dealer assails the order dated 31.05.2005 of the Asst. Commissioner of Sales Tax, Balasore Range, Balasore (hereinafter called as 'First Appellate Authority') in F A No. AA - 145/BA- 2002-03(ET) reducing the assessment order of the Assessing Authority, Balasore Circle, Balasore (in short, 'Assessing Authority').

2. The case of the Dealer, in brief, is that –

M/s. B. Seenaiiah & Co. (Project) Ltd. is engaged in construction of stone crusher units for manufacture of stone chips and supply to its work sites in West Bengal for widening of NH 60 from Balasore to Kharagpur. The assessment period relates to 2001-02. The Assessing Authority raised

tax demand of ₹7,42,860.00 u/s. 7(4) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority allowed the appeal in part and reduced the tax demand to ₹6,42,860.00. Being further aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files no cross-objection.

3. The learned Counsel for the Dealer submits that the forums below have erred in law in taking the value of consignment for assessment, which did not enter into the 'local area' as defined under the OET Act, since the consignment purchased from Hyderabad on 29.03.2002 and entered into Odisha on 02.04.2002 coming within the financial year 2002-03. He further submits that levy of entry tax on cone crusher for ₹1,42,31,104.00 and barme crusher for ₹73,03,142.00, which were brought from Rajasthan site to Kharagpur site, without any concrete evidence to establish that the said machineries/equipments were actually brought into the State through Government way bills issued is also illegal. Accordingly, he submits that the orders of the fora below are liable to be quashed.

4. Per contra, learned Standing Counsel (CT) for the State supports the order of the First Appellate Authority to be just and proper.

5. Either party does not dispute the finding of the First Appellate Authority regarding rate of entry tax. Therefore, the sole question remains for adjudication in the appeal if any entry tax can be levied on the machines.

6. The order of the Assessing Authority reveals that the fact of purchase of crusher machine for crushing unit was stated by the Authorized Agent of the Dealer. The order of the First Appellate Authority shows the said fact of purchase was reflected in the purchase register of the Dealer. The Assessing Authority and the First Appellate Authority categorically

observed that the Dealer did not utilize the way bill of Odisha. The finding of the Assessing Authority is based on the statement of purchase furnished by the Authorized Agent of the Dealer in assessment proceeding. The statement reveals 22 entries of total purchase of ₹6,22,92,818.10.

The Dealer does not disown that the Authorized Agent appeared and furnished a statement in the assessment before the Assessing Authority. He fails to produce any document even before any forum including this Tribunal and adduced any cogent and credible materials that the said machines were not at all installed at Nilgiri. The Dealer fails to give any reasonable explanation against the entry in the statement of purchase.

7. On the foregoing discussions, we have no hesitation to hold that the finding of the Assessing Authority and the First Appellate Authority suffers from no infirmity. Hence, it is ordered.

8. Resultantly, the appeal stands dismissed. The order of the First Appellate Authority is hereby confirmed.

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**