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

S.A. No.183(ET) of 2013-14

(Arising out of the order of the learned JCST, Jajpur Range, Jajpur Road in first appeal case No. AA-236 KJ ET 12-13 dtd.06.08.2013)

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

M/s. BRM Mines & Minerals,
At-Salarapenth, Po-Mahadeijoda,
Dist-Keonjhar, TIN-21071402580. ..... Appellant.

-Vrs –

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

For the Appellant : : Mr. R.K. Mishra, ld. Advocate
For the Respondent : : Mr. S.K. Pradhan, ld. A.S.C.(C.T.)

Date of Hearing : 07.08.2023 * Date of Order: 05.09.2023**

O R D E R

The dealer-assessee is in appeal against the order dated 06.08.2013 of the Joint Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short, 'ld. FAA') passed in First Appeal Case No. AA-236 KJ ET 12-13 disallowing the scheduled goods said to have suffered entry tax resulting in demand of ₹23,36,357.00 as against demand of ₹62,115.00 raised at assessment under Section 9(C) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') passed by the

Assistant Commissioner of Sales Tax, Keonjhar Circle, Keonjhar (in short, 'ld. STO').

2. The summary of the case is that M/s. BRM Mines and Minerals, a partnership carries on business in crushing of iron lumps into size iron ore and iron ore fines procuring iron lumps from inside the state of Odisha and sell thereof inside and outside the State of Odisha besides exporting the same outside the territory of India. Assessment under Section 9(C) of the OET Act for the tax period 01.04.2005 to 31.03.2010 (2005-06 to 2009-10) was completed based on findings made available in the Audit Visit Report (AVR). The said assessment resulted in demand of ₹62,115.00 including penalty of ₹41,410.00. The ld. FAA disallowed ₹4,66,54,385.00 out of ₹17,99,70,897.00 claimed as entry tax suffered scheduled goods purchased from the registered dealers on the pretext that the said scheduled goods were not supported with Form E1 as envisaged under sub rule (5) of Rule 3 of the OET Rules. Hence, the present second appeal.

3. Mr. R.K. Mishra, ld. Advocate representing the dealer-assessee contends that the ld. assessing authority was just and proper in allowing deduction of ₹17,99,70,897.00 towards purchases of tax suffered scheduled goods from outside its local area from the registered dealers. The ld. FAA has grossly erred in insisting upon furnishing of Form E-1 against ₹4,66,54,385.00 on failure on the

part of the dealer-assessee to furnish the same at first appeal. Mr. Mishra submits that furnishing of Form E1 is a declaration by the purchasing dealer (assessee) evidencing purchases of scheduled goods from the registered dealers in respect of which entry tax has been levied earlier. The said Form E1 is required to be furnished along with the return it files in Form E3. It is argued that the dealer assessee has disclosed the purchases of tax suffered scheduled goods in the returns filed for tax periods under appeal. Form E1 could not be furnished along with the returns. The reason being that the purchase invoices availed from the selling registered dealers were inclusive of the entry tax levied. Levy of entry tax has not been separately exhibited in the purchase invoices. Entry tax is a single point levy unlike Value Added Tax. Since the selling dealers have purchased the said scheduled goods from other registered dealers who have paid entry tax on entry of the scheduled goods into their local areas and have raised sale bills inclusive of entry tax paid, the purchasing dealer (assessee) has no occasion to carve out the quantum of entry tax embodied in the sale bills. The learned Advocate has submitted a bunch of purchase invoices and a statement thereof showing the (a) names of the dealers with RC No/TIN from whom purchased,(b) Name of the scheduled goods purchased, (c) Bill/Invoice No. with date, (d) Quantity (e) Purchase value of the goods. The information furnished are identical to that

required in Form E1 except on evidence as regards "Entry tax paid as per invoice". Mr. Mishra has relied on the judgment of the Hon'ble High Court of Orissa in case of ***M/s. Snow White Trading Corporation Vs. State of Orissa*** reported in STREV No.57 of 2013 passed on 31.03.2014. He submits that since the dealer assessee has effected purchases of scheduled goods from the registered dealers, levy of entry tax is not called for.

4. Per contra, the State holds that the non-furnishing of E1 Form entices the dealer-assessee to pay entry tax on the turnover not supported with Form E1. Further, it is submitted that imposition of penalty under section 9(C)(5) of the OET Act being a provision *pari materia* with Section 42(5) of the OVAT Act, imposition of penalty is mandatory with there being no discretion available with the ld. assessing authority.

5. The rival contentions advanced by both the parties together with the materials available on LCR (Lower Case Records) are gone through at length. The substantial dispute cropped up for consideration is as to whether under the facts and circumstance of the case the dealer-assessee is subjected to levy of entry tax on its purchases of scheduled goods from the registered dealer said to have suffered entry tax earlier on the exclusive allegation that the said goods are not supported with Form E1.

6. Before we infer any opinion, it is ideal to have a glance into the charging Section of the OET Act enumerated in Section 3 of the Act in conjoint with sub rule (5) of Rule 3 of the OET Rules. The relevant portion of Section 3 of the OET Act is reproduced below:-

> **"3.Levy of tax**
> (1) There shall be levied and collected a tax on entry of the scheduled goods into a local area for consumption, use or sale therein/at such rate not exceeding twelve percentum of the purchase value of such goods from such date as may be specified by the State Government and different dates and different rates may be specified for different goods and local areas subject to such conditions as may be prescribed.
>
> xxx xxx xxx
>
> (2) xxx xxx xxx
>
> **Provided that** no tax shall be levied under this Act on the entry of scheduled goods into a local area, if it is proved to the satisfaction of the assessing authority that such goods have already been subjected to entry tax or that the entry tax has been paid by any other person or dealer under this Act."

7. Bare reading of the above provision enshrined under Section 3 of the OET Act along with the proviso annexed thereto, it is clear that there shall be levied and collected tax on entry of scheduled goods into the local area from any place outside the said local area for consumption, use or sale therein. But it is stipulated in sub section (2) of Section 3 of the Act that no tax shall be levied under this Act on the entry of scheduled goods into the local area, if it is proved to the satisfaction of the ld. assessing authority that such

goods have already been subjected to entry tax or that entry tax has been paid by any other parson or dealer under this Act.

The provision of sub rule (5) of Rule 3 of the OET Rules is as under:-

> "(5) Notwithstanding anything contained in this rule, no tax shall be levied under these rules in respect of such goods purchased by a dealer for which the details are furnished in Form E1 along with the return under sub-rule (1) of Rule 10 to prove that such goods have already been subjected to entry tax or that the entry tax has already been paid under the Act for such goods."

8. Now, we come up with the basic intents of incidence of taxation mandated under the OET Act. The incidence of taxation arises when scheduled goods brought into local area from any place outside the same local area for consumption, use or sale. No tax shall be levied, if such purchases are effected from any dealer or registered dealer on which entry tax has earlier been paid. As a matter of preventive measure to curb evasion of tax, furnishing of Form E1 has been formulated along with statutory returns in Form E3 at column 9.

9. Entry tax is a single point levy unlike Value Added Tax. No subsequent levy is permissible under law. It is also not fair to levy entry tax on scheduled goods already subjected to tax earlier in the hands of registered dealers. That would amount to injustice. Form E1 is a declaration by the purchasing dealer exhibiting the

scheduled goods purchased from the registered dealers to have already suffered tax earlier. The Format of Form E1 is as under:-

FORM E1

(See Rule 3(5))

Details of goods already subjected to entry tax

For the period/year____

Registration No & name of the dealer from whom purchased.	Name of the scheduled goods purchased	Bill/Invoice No & date	Quantity	Purchase value of the goods(as per invoice	Entry tax paid as per invoice	Remarks
1	2	3	4	5	6	7

Signature of the dealer
or his authorized agent

On perusal of Form E1, it transpires that it is a testimonial or declaration to be exercised by the purchasing dealer to furnish the details of the scheduled goods purchased from the registered dealers. It is unlike Form 'C', 'F' or 'H' which is sought for from the selling dealers to avail the benefits as provided under CST Act. In the case at hand, the learned assessing authority to his satisfaction is learnt to have allowed scheduled goods worth ₹17,99,70,897.00 purchased from the registered dealers as tax suffered goods. The ld.FAA disallowed ₹4,66,54,385.00 as having not supported with Form E1. The learned Advocate has submitted a volume of purchase invoices relevant to the period under appeal supported by

a statement showing details of purchases such as name of the party, TIN No., Invoice no & date, description of materials and amount except amount of tax paid. The information furnished in the statement is as good as Form E1 except information on payment of entry tax. The names of the registered dealers with TIN and other particulars have been reported upon. The sale bills issued by the selling dealers are inclusive of entry tax paid, as the levy of entry tax was occasioned earlier from whom the scheduled goods were purchased. Entry tax being a single point levy, the instant selling dealers are restrained from levy further entry tax. Hence, the sale bills bear no levy of entry tax separately. In the present case, as discussed above, the dealer assessee has furnished purchase invoices evidencing purchases of scheduled goods from the registered dealers. They are identifiable from the documents furnished by the dealer assessee. This substantial issue has been well taken care of in the judgment of the Hon'ble High Court of Odisha passed in STREV No.57 of 2013 in case of ***The Snow White Trading corporation Vs. State of Odisha***. The Hon'ble Court in Para 20 and 21 observes as under:-

> "20. The incidence of taxation is on entry of the scheduled goods into the local area for use, consumption or sale. Nobody is competent/authorized to shift the point of taxation.
>
> 21. In view of the above, we are of the considered opinion that to get benefit from payment of entry tax in

> respect of the scheduled goods purchased by a dealer from another dealer/registered dealer of that locality, who has brought the goods into the local area, the dealer need not prove that its seller has in fact paid the entry tax. It will be enough for the dealer to show that its seller is identifiable and has in fact made entry of the scheduled goods into the local area and the tax is payable by its sellers."

In the ratio of the above dictum, it is crystal clear that the purchasing dealer is not required to prove as to whether the selling dealer has paid entry tax or not provided the selling dealer is identifiable. In the present case, the dealer assessee has furnished the details of the registered dealers with their names, TIN, scheduled goods brought into local area, Invoice No and dates and purchase value. The dealers are therefore identifiable in terms of the verdict of the Hon'ble High Court stated supra. In view of this, the dealer assessee is allowable to deduction towards tax suffered scheduled goods purchased from the registered dealers. Hence, the first appeal order disallowing tax suffered goods for want of furnishing Form E1 is not sustainable in the present facts and circumstance of the case.

10. It is ordered as under:-

The appeal filed by the dealer assessee is partly allowed. The order of the ld.FAA is set aside. The impugned case is remitted back to the learned assessing authority with direction to assess the dealer assess afresh under Section 9C of the OET Act taking into consideration the evidence of purchases of scheduled goods made

from the registered dealers in respect of transactions agitated in the second appeal. The dealer assessee also is advised to adduce the proof of purchases of scheduled goods purchased from the registered dealers for the impugned periods as may be asked for by the learned assessing authority. The learned assessing authority is further advised to extend reasonable opportunity of being heard to the dealer assessee. The entire exercise may be completed within three months from the date of receipt of this order. Cross objection/additional objection is disposed of accordingly.

Dictated and corrected by me.

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

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