

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

**S.A. No. 71 (ET) of 2014-15**

(Arising out of order of the learned Addl. CST (Appeal), South Zone,  
Berhampur in Appeal No. AA (ET) 10/ 2010-11,  
disposed of on 28.03.2014)

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

M/s. Ramco Industries Ltd.,  
Plot No. 112, Subudhipur,  
Kalinga Vihar, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri B.K. Patnaik, Advocate  
For the Respondent : Sri N. K.Rout, Addl. SC (CT)

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Date of hearing : 04.10.2023 \*\*\* Date of order : 02.11.2023  
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**ORDER**

Dealer is in appeal against the order dated 28.03.2014 of the Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (hereinafter called as 'First Appellate Authority') in F A No. AA (ET) 10/2010-11 reducing the demand raised in assessment order of the Joint Commissioner of Sales Tax, Puri Range, Bhubaneswar (in short, 'Assessing Authority').

2. The facts of the case, in short, are that –

M/s. Ramco Industries Ltd. is engaged in receiving Calcium Silicate Board and A.C. Sheets by way of stock transfer basis and sold the

same inside the State. Assessment relates to the period 01.04.2005 to 31.08.2009. The Assessing Authority raised tax demand of ₹15,62,770.00 u/s. 9C of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') on the basis of Audit Visit Report (AVR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹14,41,890.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

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

3. Besides, the preliminary ground regarding validity of notice, the Dealer has challenged the impugned order on merit also. But, the learned Counsel for the Dealer submits that the preliminary issue raised in the additional grounds of appeal may be taken up at the outset. He further submits that the Assessing Authority issued notice on 08.03.2010 fixing the appearance of the Dealer on 08.04.2010 and the same was served on 25.03.2010. So, he submits that it is clear violation of the mandatory provision of Section 9C(2) of the OET Act and the same is invalid. Therefore, he submits that the orders of the Assessing Authority and First Appellate Authority are otherwise bad in law and need interference in appeal.

He relies on the decision of the Hon'ble Court in case of *Patitapabana Bastralaya v. Sales Tax Officer & Others* in W.P. (C) No. 14696 of 2009 decided on 24.09.2014; and decision of this Tribunal in case of *M/s. Vikram Pvt. Ltd., S3H1- 2, Kalinga Vihar, Rourkela-769015 v. State of Odisha* (S.A. No. 22(ET) of 2016-17 & S.A. No. 57 (ET) of 2016-17)

4. Per contra, the learned Addl. Standing Counsel (CT) for the State submits that the Dealer raised point maintainability in additional grounds of

appeal only at the stage of second appeal. He further submits that the Dealer had not challenged the same at the earliest opportunity, i.e. at the time of assessment, so, the Dealer is precluded to take such ground at a belated stage. So, he submits the Assessing Authority and First Appellate Authority have rightly passed the order and same need no interference in appeal.

5. Heard the rival submissions of the parties, gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. It transpires from the assessment order that the Assessing Authority took the purchase value of the goods considering prevailing market sale price. Further, the Assessing Authority took the corrected figure at ₹42,24,07,469.97 by rejecting the price reported by the Audit Team at ₹47,73,73,917.39. The Assessing Authority further found that the purchase suppression leading to sale suppression of ₹5,250.00 and computed the tax liability of the Dealer. The First Appellate Authority upheld the finding of the Assessing Authority regarding purchase value of the goods, i.e. prevailing sale price in the market. The First Appellate Authority further found that the Assessing Authority has not taken into consideration the payment of ₹40,248.00 made through the Axis Bank Account against the tax due for the period under assessment. The First Appellate Authority partly allowed the appeal by reducing the assessment to ₹14,41,890.00.

6. The Dealer took the grounds and additional grounds in appeal. The Dealer assails the orders of the Assessing Authority and First Appellate Authority on the ground that sale price cannot be the stock transfer value of the goods, wrong counting of physical stock in respect of 15 nos. of A.C. Sheet leading purchase suppression of ₹5,250.00 is not proper, imposition of penalty is not just and proper. In additional grounds of appeal, the Dealer took the preliminary issue of maintainability of the assessment on the

ground of invalid notice as per the provisions of Section 9C(2) of the OET Act.

7. The issue raised in additional ground is a preliminary issue and the same shall be taken up at the outset for adjudication.

The provision of Section 9C(2) of the OET Act runs as under :-

**“Section 9C(2) -**

*Where a notice is issued to a dealer under sub-section (1), he shall be allowed time for a period of not less than thirty days for production of relevant books of account and documents.”*

A bare reading of the above provision, it transpires that whenever a notice is issued to a Dealer under sub-section (1) of Section 9C of the OET Act, the Dealer shall be allowed one month’s time for production of books of account and documents. In the instant case, as it appears from the assessment order that the notice was issued on 08.03.2010 with a direction to the Dealer to appear on 08.04.2010, but the said notice was received by the Dealer on 25.03.2010. Revenue fails to produce the relevant assessment record to rebut the plea of the Dealer. It is apparent from the assessment order that the Dealer was not given one month’s time as mandated in Section 9C(2) of the OET Act.

In case of *Patitapaban Bastralaya* cited supra, the Hon’ble Court have been pleased to observe that minimum time of 30 days as provided u/s. 9C(2) of the OET Act has not been provided to the petitioner and thus, it is a clear case of violation/infracton of mandatory provisions of Section 9C(2) of the said Act and the proceeding initiated by the Assessing Officer in pursuance of such invalid notice would be illegal and invalid. Under such circumstances, the Hon’ble Court remanded the matter to the Assessing Authority for assessment afresh.

8. In the instant case, the notice was issued on 08.03.2010 fixing the date to 08.04.2010, but the notice was served on the Dealer on 25.03.2010.

It is apparent that thirty days time was not allowed to the Dealer for production of books of account and documents. So, the same is sufficient to hold that the notice is invalid and thus, the assessment proceeding is not sustainable in the eyes of law. So, we feel it proper to remit the matter to the Assessing Authority for assessment afresh after affording reasonable opportunity of hearing to the Dealer. Hence, it is ordered.

9. Resultantly, the appeal is allowed and the impugned order of the First Appellate Authority is hereby set aside. The matter is remanded to the Assessing Authority for fresh assessment as per law after affording reasonable opportunity of hearing to the Dealer. The Dealer is at liberty to raise the other issues before the Assessing Authority and the Assessing Authority shall make reassessment within a period of three months from the date of receipt of this order. Cross-objection and additional cross-objection are disposed of accordingly.

**Dictated & Corrected by me**

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

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

**I agree,**

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

**I agree,**

**Sd/-  
(B. Bhoi)  
Accounts Member-I**