

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

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

S.A. No. 83 (ET) of 2015-16

(Arising out of order of the learned Deputy Commissioner of
Sales Tax, Ganjam Range, Berhampur,
in First Appeal Case No. AAE. 47/2007-2008,
disposed of on dated 17.08.2009)

S.A. No. 01 (ET) of 2015-16

(Arising out of order of the learned Addl. Commissioner of
Sales Tax (Revenue), in Appeal Case No.
AA109/OET/DCST/Assmt./GM-II/2013-2014,
disposed of on dated 28.02.2015)

M/s. Indian Rare Earth Ltd.,
OSCOM, At/P.O.- Matikhalo,
Chatrapur, Ganjam. ... Appellant

-Versus-

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

For the Dealer : Mr. B.R. Panda, Advocate
For the State : Mr. S.K. Pradhan, A.S.C.

Date of hearing:06.07.2023 *** Date of order: 01.08.2023

ORDER

Both these appeals are disposed of by this composite order as the same involve common question of fact and law and in between the same parties though for different periods.

S.A. No.83(ET) of 2015-16

The dealer prefers this appeal challenging the order dtd.17.08.2009 passed by the learned Deputy Commissioner of Sales Tax, Ganjam Range, Berhampur (hereinafter referred to as, DCST/first appellate authority) in First Appeal Case No. AAE. 47/2007-2008, thereby confirming the order of assessment passed by the learned Sales Tax Officer, Ward-A, Ganjam II Circle, Berhampur (hereinafter referred to as, STO/assessing authority) u/s.10 of the Orissa Entry Tax Act (hereinafter referred to as, the OET Act) r/w. Rule 10(6)(a) of the Orissa Entry Tax Rules, 2005 (hereinafter referred to as, the OET Rules) for the period 01.04.2005 to 31.05.2007 raising demand of ₹14,41,442.00.

S.A. No.01(ET) of 2015-16

The dealer prefers this appeal challenging the order dtd.28.02.2015 passed by the learned Addl. Commissioner of Sales Tax, (Revenue) (hereinafter referred to as, ACST/first appellate authority) in Appeal Case No. AA109/OET/DCST/Assmt./GM-II/2013-2014, thereby allowing the appeal in part and remanding the case to the learned assessing authority for recomputation of tax and penalty by deleting the turnover already assessed for the period under challenge against the order of assessment dtd.19.11.2013 passed by the learned Deputy Commissioner of Sales Tax, Ganjam II Circle, Berhampur (hereinafter referred to as, DCST/assessing authority) u/s.10 of the Orissa Entry Tax Act (hereinafter referred to as, the OET Act) raising demand of

₹2,36,30,838.00, ₹78,76,946.00 towards tax and ₹1,57,53,892.00 towards penalty u/s.10(2) of the said Act.

2. The case at hand is that, the dealer in the instant case M/s. Indian Rare Earth Ltd. having TIN-21431900962 is confined to mining of sand from the sea shore and extraction of minerals like Garnet, Limonite, Rutile, Zircon and Silimanite. The dealer effected purchase of goods from outside the State of Odisha as well as inside the State of Odisha. During the period under assessment, the dealer used to purchase goods like Aluminium wares, Ammonium Nitrate, Barium carbonate, Calcium, Caustic soda, Chemicals, Coal, Coke, colours, electrical goods and equipments, machineries, explosives, furnace oil, gunny bags, hydrochloric acid, lime, lime stone, lubricant, lubricating oil, other acids, paints, sand, safety equipments, soda ash, zinc etc. from outside the State of Odisha on the strength of Govt. Way bills which are schedule goods under the OET Act.

3. Against such tax demands, the dealer preferred first appeals before the learned first appellate authority in which in S.A. No.83(ET0 of 2015-16 the demand was confirmed and S.A. No.1(ET) of 2015-16 the demand was reduced.

4. Further being dissatisfied with the orders of the learned first appellate authority, the dealer has preferred these present second appeals as per the grounds stated in the grounds of appeal.

5. Cross objections in these cases are filed by the State-respondent.

6. During course of argument, learned Counsel for the dealer-company vehemently contended that the orders passed by the learned forum below are illegal and arbitrary. Further contention on behalf of the learned Counsel for the dealer is that, the position under the OET Act stands covered by the judgment of the Full Bench of the Hon'ble Court decided in the case of **M/s. ECMAS Resins Pvt. Ltd. v. State of Odisha and Ors.** in **W.P.(C) No.7458 of 2015 dtd.05.08.2022** in which it was held by the Hon'ble Court that unless the return filed by way of self-assessment u/s.9(1) r/w. Section 9(2) of the OET Act is "accepted" by the department by a formal communication, it cannot trigger a notice of reassessment u/s.10(1) of the OET Act r/w. Rule 15(b) of the OET Rules.

7. Per contra, learned Standing Counsel for the Revenue vehemently contended that the orders of the fora below are genuine and this case is not at all covered by M/s. ECMAS Resins Pvt. Ltd. case. Learned Standing Counsel also pointed out that the order of the first appellate authority clearly entails that the return so filed in form E-3 for the period under challenge was self assessed u/s.9(2) of the OET Act vide order dtd.10.07.2017 submitted by the Sales Tax Officer, Enforcement Range, Bhubaneswar and on that effect order-sheet is maintained. This apart learned Standing Counsel also argued stating that the same fact as stated by the learned first appellate authority in its order is also reflected in the order of assessment. So, in view of such, assessment proceeding initiated u/s.10 of the OET Act is just and proper.

8. Heard the contentions and submissions of both the parties in this regard. The sole question in the instant case to be adjudicated upon is, whether a formal communication of acceptance of return filed by way of self assessment u/s.9(2) of the Act is a pre-requisite for reopening of an assessment u/s.10(1) of the Act. On perusal of the case record it becomes quite evident that, nowhere it reveals that the return filed by the dealer by way of self-assessment is accepted by the department by a formal communication. On this score, the Hon'ble Court has clearly observed that the position under the OET Act stands covered by the judgment of Full Bench on 05.08.2022 in W.P.(C) No.7458 of 2015 (M/s. ECMAS Resins Pvt. Ltd. v. State of Odisha and Ors.) in which it was held by the Hon'ble Court that unless the return filed by way of self assessment u/s.9(1) r/w. Section 9(2) of the OET Act is "accepted" by the department by a formal communication, it cannot trigger a notice of reassessment u/s.10(1) of the OET Act r/w. Rule 15(b) of the OET Rules. In view of the above analysis, we are of the unanimous view to say that the orders of the fora below are not sustainable in the eye of law.

9. For the reasons assigned above, we are of the view that the learned first appellate authority is not correct in its approach pursuant to the verdict of the Hon'ble Court decided in the case of M/s. ECMAS Resins Pvt. Ltd. v. State of Odisha and Ors. and as such the orders warrant interference. Hence, order.

10. In the result, the appeals preferred by the dealer are allowed and the orders of the fora below are hereby quashed. Cross objections are disposed of accordingly.

Dictated & corrected by me

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

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

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

Sd/-
(B. Bhoi)
Accounts Member-II