

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

S.A. No. 120 (ET) of 2016-17

(Arising out of order of the learned Addl. Commissioner of
Sales Tax (Appeal), North Zone, Sambalpur,
in Appeal Case No. AA 95/12-13,
disposed of on dated 31.05.2016)

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

M/s. Sambalpur Roller Flour Mills (P) Ltd.,
At/P.O.- Dhankauda,
Dist.- Sambalpur. ... Appellant

-Versus-

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

For the Appellant : Mr. B.P. Mohanty, Advocate
For the Respondent : Mr. N.K. Rout, A.S.C.

Date of hearing: 31.07.2023 *** Date of order: 08.08.2023

ORDER

The dealer prefers this appeal challenging the order dtd.31.05.2016 passed by the learned Addl. Commissioner of Sales Tax (Appeal), North Zone, Sambalpur (hereinafter referred to as, ACST/first appellate authority) in Appeal Case No. AA 95/12-13, thereby confirming the order of assessment passed by the learned Deputy Commissioner of Sales Tax, Sambalpur I Circle, Sambalpur (hereinafter referred to as, DCST/assessing authority) u/s.10 of the Orissa Entry Tax Act,

1999 (hereinafter referred to as, the OET Act) raising demand of ₹11,83,956.00 including penalty for the tax period from 01.04.2006 to 31.03.2010.

2. The fact of the case is that, the dealer in the instant case being a private limited company in the name and style of M/s. Sambalpur Roller Flour Mill runs a roller flour mill and is engaged in manufacturing and sale of wheat products like atta, maida, suji, chhokad out of wheat used as raw material. Pursuant to fraud case report No.04 dtd.24.05.2010 received from the DCCT, Enforcement Range, Sambalpur, assessment proceeding was initiated u/s.10 of the OET Act and the demand as mentioned above was raised against the dealer.

3. Against such tax demand, the dealer preferred first appeal before the learned ACST/first appellate authority who confirmed the tax demand.

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

5. Cross objection in this case is 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 Addl. 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 Addl. 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 Addl. 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 order warrants interference. Hence, order.

10. In the result, the appeal preferred by the dealer is allowed and the orders of the fora below are hereby quashed. Cross objection is 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