

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

S.A. Nos. 79 (ET) & 80 (ET) of 2005-06

(Arising out of order of the learned ACST, Jajpur Range, Jajpur Road
in First Appeal No. AA- 916 (ET) & 918 (ET)/KJ/02-03,
disposed of on 16.10.2004)

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

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

... Appellant

-Versus-

M/s. OSIL Steel Works,
Palaspanga, Keonjhar

... Respondent

For the Appellant

: Sri D. Behura, S.C. (CT)

For the Respondent

: Sri A.N. Mohanty, Advocate

Date of hearing : 16.09.2022

Date of order : 29.09.2022

ORDER

Both the appeals are arising in between the same parties for
different periods. So, a common order is passed in these appeals.

SA No. 79 (ET) of 2005-06 :

2. State prefers this appeal against order of allowing the appeal in
part by the Assistant Commissioner of Sales Tax, Jajpur Range, Jajapur
Road (hereinafter called as 'First Appellate Authority') in F A No. AA- 916
(ET) & 918 (ET)/KJ/02-03 relating to the assessment period 12/1999 to
3/2000.

S.A. No. 809 (ET) of 2005-06 :

3. State also prefers this appeal against the order of allowing the appeal in part by the First Appellate Authority in F A No. AA- 916 (ET) & 918 (ET)/KJ/02-03 relating to the assessment period 2000-01.

4. Respondent is purchasing sponge iron for manufacturing of scheduled goods. The assessments relate to the periods 12/1999 to 2000 and 2000-01. The Sales Tax Officer, Keonjhar Circle, Keonjhar (in short, 'Assessing Authority') raised total tax of ₹18,31,694.00 including the penalty under the Odisha Entry Tax Act, 1999 (in short, 'OET Act') for the period of assessment 12/1999 to 2000. Likewise, the Assessing Authority raised demand of ₹23,28,341.00 including the penalty for the assessment period 2000-01.

The Dealer preferred first appeals before the First Appellate Authority against the finding of the Assessing Authority. The First Appellate Authority allowed the appeals in part and remanded the matters back to the Assessing Authority for fresh assessment.

Being aggrieved with the order of the First Appellate Authority, the State prefers two distinct appeals for two periods, i.e. S.A. No. 79 (ET) of 2005-06 relates to the period 12/1999 to 2000 and S.A. No. 80 (ET) of 2005-06 relates to the period 2000-01.

5. The respondent files cross-objection. But at the time of hearing, the respondent did not appear. Hence, the matters were heard on merit setting the Dealer *ex parte*.

6. Learned Standing Counsel (CT) for the State submits that the order of the First Appellate Authority is erroneous and contrary to the provisions of law and fact involved. He further submits that the finding of the First Appellate Authority that the Dealer is not liable to pay entry tax as the sponge iron comes from same local area is contrary to the provisions of Section 26 of the OET Act. He also submits that the liability cannot be

fastened on the selling manufacturer, appears to be a wrong finding and against the spirit of the Act. He further submits that the direction given in the order of First Appellate Authority is illegal and perverse and the same needs interference in appeal and the orders of the Assessing Authority may be restored to its file.

7. It is not in dispute that the tax demands relate to two periods, i.e. 12/1999 to 3/2000 and 2000-01, and the same are matter of dispute in these two appeals on the self-same ground. On the aforesaid factual aspect and the position of law, we formulate the following question for adjudication in appeal :-

“Whether in the facts and circumstances of the case the observation of the First Appellate Authority that the Dealer is not liable to pay entry tax as sponge iron comes from Orissa Sponge Iron in the same local area, is contravened the provision of Section 26 of the OET Act read with Rule 3(4) of the OET Rules ?”

8. As it relates to Section 26 of the OET Act, the same is reproduced herein below for better appreciation :-

“26. Manufacturers to collect and pay tax –

(1) Notwithstanding anything contained in this Act, every manufacturer of scheduled goods who is registered under the Sales Tax Act shall in respect of sale of its finished products effected by it to a buying dealer, either directly or through an intermediary, shall collect by way of tax an amount equal to the tax payable on the value of such finished products under Section 3 of this Act by the buying dealer in prescribed manner and shall pay the tax so collected into the Government Treasury :

Provided that the liability of the manufacturer for payment of tax under the sub-section during a year shall be reduced to the extent of tax paid under this Act on the raw materials which directly go into the composition of the finished products during that year in the prescribed manner.

(2) xxx xxx xxx”

Rule 3(4) of the Odisha Entry Tax Rules, 1999 as it stood then, is reproduced herein below for better appreciation :-

“3. Rate of tax –

The tax payable by a dealer or any other person under the Act shall be at the following rates :-

(1) xxx xxx xxx

(4) *Goods specified in Part I and II of the Schedule to the Act when used as raw material by a manufacturer on its first entry, -*

(a) *in a local area which is notified as a Municipality or Municipal Corporation or Notified Area Council, shall be exigible to tax at fifty per centum of the rate to which such goods is exigible under sub-rule (2) and (3) of this rule; and*

(b) *in a local area other than that specified in clause (a) above shall not be exigible to tax.”*

Section 2(f) of the OET Act deals with the definition of “Local area” and the same, as it stood then, is reproduced herein below :-

“(f) **Local area**” means the areas within the limits of any –

(i) *Municipal Corporation,*

(ii) *Municipality,*

(iii) *Notified Area Council,*

(iv) *Grama Panchayat, and*

(v) *Other local authority by whatever name called, constituted or continued in any law for the time being in force,*

and shall also include an industrial township constituted under Section 4 of the Orissa Municipal Act, 1950 (23 of 1950);”

9. It is not in dispute that the Dealer was dealing in purchasing sponge iron as raw materials for manufacturing of scheduled goods. It is also not in dispute that both the Assessing Authority and the First Appellate Authority made a clear finding that the raw material was purchased in the local area in a Panchayat area. The dealer has also produced a certificate from the B.D.O., Keonjhar certifying the petitioner’s Company that the same is situated in the Keonjhar Panchayat area. Section 2(f) of the OET Act defines ‘local area’ which includes ‘Gram Panchayat’.

A bare reading of the Rule 3(4) of the OET Rules exempts payment of entry tax if the raw materials are purchased in a local area. The First Appellate Authority committed no wrong in exempting the Dealer from levying entry tax for the assessment periods in question. So, the question is answered in affirmative.

10. Cross-objection reveals that the Dealer supports the finding of the First Appellate Authority and objects the part of refusal relating to remand of the proceeding for disposal afresh. Dealer has also taken a plea that when

the First Appellate Authority has already verified the documents he ought to have annulled the assessments instead of remitting back the matter to the assessing authority for disposal afresh.

The Dealer did not appear and could not show any materials as claimed in the cross-objection. So, the plea of the dealer in the cross-objection is devoid of any merit and the same cannot be accepted.

11. So, on the foregoing discussions, we are of the considered view that the First Appellate Authority committed no wrong and the finding of the First Appellate Authority needs no interference in these appeals. Hence, it is ordered.

12. Resultantly, the appeals at the instance of State stand dismissed and the cross objection at the instance of Dealer is also dismissed. As a necessary corollary thereof, the order passed on 16.10.2004 by 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**