BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 47(ET)/2016-17

(From the order of the ld. Addl.CST (Appeal), South Zone, Berhampur, in Appeal No. AA(ET) 317/2010-11, dtd.18.03.2016 modifying the assessment order of the Assessing Officer)

Present: **Smt. S. Mishra** **Sri R.K. Pattnaik**
2nd Judicial Member **Accounts Member-III**

M/s. Aerocom Private Ltd.,
At/P.O. Satasankha,
Dist. Puri. .... Appellant

-Versus-

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

For the Appellant : None
For the Respondent : Mr. M.L. Agarwal, Standing Counsel

(Assessment Period : 01.04.2007 to 31.12.2008)

Date of Hearing: 16.07.2019 *** Date of Order: 17.07.2019

ORDER

The present appeal is directed against the order of learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal) South Zone, Berhampur (in short, FAA/Addl. CST) in reducing the order of assessment passed by the Assessing Authority (E.T.), Puri Range, Bhubaneswar (in short, AA) for the assessment period from

01.04.2007 to 31.12.2008 u/s.15(1) of the Odisha Entry Tax Rules, 1999 (in short, OET Rules).

2. The facts of the case in brief is that :

The appellant-dealer in the instant case, M/s. Aerocom Pvt. Ltd., Satasankha, Puri is a registered dealer engaged in manufacturing and sale of rubberized coir beds and trading of synthetic pillows on wholesale basis and for this purpose he used to purchase schedule goods from outside the State of Odisha. Basing upon an Audit Visit Report (AVR) submitted by the Audit team during their audit visit to the dealer's business premises on 23.12.2008 for the above tax period, the AA initiated proceeding u/s.9(C) of the OET Act and the dealer was issued with statutory notice in Form E-30 for production of his books of account for verification before the AA. Accordingly, the Authorised person of the dealer made appearance before the AA with the requisite documents. The ld.AA while scrutinizing all the requisite documents noticed that, the dealer has effected sales inside the State and paid tax on sales after taking credit of input tax paid on purchases from the registered dealers of the State. Further, the AA found that, at the time of audit, the dealer has not paid entry tax @0.5% from 04/08 to 12/08 on the purchase value of raw materials effected from outside the State of Odisha.

The dealer has not paid entry tax @0.5% from 04/08 to 12/08 on purchase of raw materials from outside the State of Odisha but the dealer has paid entry tax @2% on the sale of their finished products. Further, the dealer should have collect entry tax @2% on sale of finished products and after deducting the entry tax paid at concessional rate of the raw materials which directly go into the composition of the finished products which has not been made by the dealer during the period in question. However, the dealer has deposited entry tax of Rs.3,18,000/- upto December, 2008. Hence, the AA completed the assessment with a tax due of Rs.66,806/- on the dealer besides imposing penalty twice of it i.e. to the tune of Rs.1,33,612/-. Thus, the tax due and penalty together came to Rs.2,09,820/-, which the dealer was ultimately became liable to pay at the assessment stage.

3. Being aggrieved with the order of assessment passed by the AA, the dealer-appellant choose to prefer appeal before the FAA as Addl.CST, who in turn, while giving relief to the dealer-appellant to certain extent, reduced the tax due from Rs.2,09,820/- to Rs.99,807/-.

4. Being further aggrieved, the dealer-appellant knocked the door of this Tribunal challenging the order of

the FAA as illegal, arbitrary and without application of mind.

5. Heard the appeal. None appeared on behalf of the dealer-appellant in spite of receipt of statutory notice to pursue his case, whereas Mr. M.L. Agarwal, learned Standing Counsel was present for the State-respondent during the course of hearing. Perused the order of assessment as well as first appeal order passed by the learned FAA. Gone through the grounds of appeal submitted by the learned Counsel for the dealer-appellant vis-à-vis cross objection filed by the State-respondent.

6. The main contention of the dealer-appellant is, the learned FAA as well as AA have committed gross error in allowing set off of entry tax paid at Rs.96,722/- on purchase of raw materials instead of Rs.1,57,707.52.

Contrary to the said lone point raised in the grounds of appeal by the dealer-appellant before this forum, State has filed written note of submission wherein it has firmly contended to reverse the set off of Rs.96,722/- already allowed wrongly by the dealer to the State-Revenue. In his intense argument, learned Standing Counsel Mr. Agarwal has stated that, the dealer-appellant is not liable to entry tax on goods purchased from outside the State is no more in *res integra* after the judgment

dtd.28.03.2017 rendered by the Apex Court in **State of Orissa Vrs. M/s. Reliance Industries Ltd. & Others in Civil Appeal No.6474-6798/2017**. Moreover, the dealer is liable to pay tax on entry into the local area which has been brought for use in manufacturing as settled by the Hon'ble Apex Court in **Bhaskar Textile Mills Ltd. Vrs. Jharsuguda Muncipality AIR 1984 SC 583**, even if the finished goods are exempted from tax and taken outside the local area, for use, consumption or sale. Further, he has submitted that, the claim of set-off of tax paid on raw materials is from the output tax collected on the taxable goods sold, which has been utilized for manufacture of finished product. The set-off is admissible u/s.26(1) of the OET Act r/w Rule 19(5) of the OET Rules. The limit of grant of set-off is subject to restriction and condition enunciated in the aforesaid provisions. The entire claim of entry tax paid on purchase of raw materials cannot be allowed but it is allowable proportionally to the extent of taxes collected on taxable sales. Thus, the total allowable set off is calculated at Rs.68,674.72 instead of Rs.96,722/-. Therefore, in this context, excess set-off of Rs.28,048.28 has been allowed to the dealer and it should be reversed.

After analyzing the aforesaid discussion, points and decisions raised by the learned Counsel for the State

elaborately, we are of the considered view that, the FAA has indeed passed a reasoned order following the due procedure of law and keeping in view the decisions rendered by different Hon'ble Courts. Hence, in the ultimate analysis, the set off allowed by both the fora below by due examination of entitlement of the dealer proportionate to sale of finished goods subjected to entry tax, is hereby upheld. Accordingly, it is ordered.

The appeal filed by the dealer is dismissed being devoid of merit. The cross objection is disposed of accordingly.

Dictated and Corrected by me,

Sd/-
(Sweta Mishra)
2nd Judicial Member

Sd/-
(Sweta Mishra)
2nd Judicial Member

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III