

2. It is felt worthwhile to provide a brief fact of the case that M/s. Steel Authority of India Limited is engaged in manufacturing and sale of iron and steel goods. For manufacturing of such goods, it imports schedule goods like coal, Refractories, spare parts, machinery and equipments, LPG Gas etc. from the outside the territory of India and outside the State of Odisha. The dealer-assessee was assessed under Section 10(1) of the of the OET Act for the tax period from 01.06.2014 to 30.11.2014 raising extra demand of ₹31,48,40,091.00 which includes penalty of ₹.21,43,922.00. The ld. FAA on first appeal as preferred by the dealer-assessee against the above order of assessment confirmed the demand as raised under Section 10 of the OET Act.

3. On being aggrieved, the dealer-assessee preferred this second appeal before this forum adducing the grounds of appeal and additional grounds of appeal. The additional grounds submitted by Mr. K. Rath, ld. Advocate read that there being no regular assessment (i.e. Neither u/S.9(A) nor u/S.9(C) of E.T. Act), there exist no scope to make any escaped assessment u/S.10 of E.T. Act. Therefore the present impugned reassessment made u/S.10 is liable to be quashed. The ld. Advocate placed reliance on the judgment pronounced in case of

M/s. ECMAS Resins Pvt. Ltd. –vrs- State of Orissa by the Hon'ble High Court of Orissa in W.P.C. No. 7458 of 2015, and the order of this Tribunal in S.A. No.84 (ET) of 2019 decided in case of M/s. Hariom Traders Vrs. State of Odisha.

4. The State has filed cross objection, additional cross objection supporting the orders passed by the forms below in the following manner:-

i) The dealer-appellant has filed additional grounds on 30.06.2023 pertaining to the matter. The additional grounds raised is

“.....That, as per the settled principle of law in absence of making any regular Assessment either U/s.9C of OET Ac, the initiation of Escaped Assessment U/s. of OET Act is arbitrary and unlawful.”

ii) The present second appeal is against the order dated 30.03.2022 passed by the Learned Appellate Authority in appeal case No. AA 16 (ET) RL-I/2018-19 wherein the issues raised by the appellant in the additional grounds was neither raised, adjudicated nor it was an issue while disposing of the appeal under section 16(7) of the OET Act in respect of the appeal filed under section 16(1) of the Act.

iii) In view of the order dated 30.03.2022 passed in appeal case number AA 16(ET) RL-I/2018-19 which has attained finality in law in view of operation of law as envisaged under section 16(8) and subject matter of dispute in the present Appeal.

iv) It is pertinent to state that the additional grounds are not pure question of law affecting the tax liability of the dealer. It is submitted that the pure question of law affecting the tax liability of the appellant can be raised at any stage and not question of fact or mixed question of fact and law which are unrelated to the tax liability can be raised, for the simple reason that assessment, Appeal and Second Appeal are mechanism or machinery provisions provided under law for determination and quantification of tax liabilities of a dealer. The liability to tax is created by charging section of the taxing statute and determination and quantification of tax liabilities of a dealer. The liability to tax is created by charging section of the taxing statute and determination and quantification of the tax liability is made by the machinery provisions i.e. assessment, Appeal and Second Appeal.

v) ***The provision under OVAT Act and Rules made there under shall mutatis mutandis apply under the OET***

Act as per Rule 34 of OET Rules. The additional grounds taken by the appellant may not be taken into consideration in view of Rule 102 of the OVAT Rules which has prescribed for restrictions to adduce fresh evidence before the Tribunal and in view of Section 98 of the OVAT Act which provides total production to the issues relating to non-communication of notice or order if not raised at the 1st instance cannot be raised at subsequent point of time.

vi) The additional grounds raised at the stage of hearing are not issues arising out of the order of appeal passed under section 16(1) of the OET Act. The additional grounds preferred by the tax payer by the tax payer is not justified since it is completely new justifying the afterthought action to avoid payment of due tax.

vii) In case of **State of Orissa vs. Lakhoo Varjang 1960 SCC OnLine Ori 110 : (1961) 12 STC 162**, the following observations were made by the Hon'ble Apex Court:

"...The tribunal may allow additional evidence to be taken, subject to the limitations prescribed in Rule 61 of the Orissa Sales Tax Rules. Bu this additional evidence must be limited only to the questions that were then pending before the Tribunal...

.....The Assistant Collector's order dealt solely with the question of penalty and did not go into the question of the liability of the assessee to be assessed because that question was never raised before him. The member, sales Tax Tribunal, should not therefore have allowed additional grounds to be taken or additional evidence to be led in respect of a matter that had been concluded between the parties even at the first appellate stage. If the aggrieved party had kept the question of assessment alive by raising it at the first appellate stage and also in the second appellate stage, the member, Sales Tax tribunal would have been justified in admitting additional evidence on the same and in relying on the aforesaid decision of the Supreme Court in Gannon Dunkerley's case, for setting aside the order of assessment. No subsequent change in case law can affect an order of assessment which has become final under the provisions of the Sales Tax Act...."

viii) In view of the above judgment passed by the Hon'ble Apex Court, the additional ground preferred by the appellant is not maintainable as per section 98 of the OVAT Act and Rule 102 of the OVAT Rules.

5. Heard the contentions and submissions of both the parties in this regard. The order of assessment and the order of the Id. FAA coupled with the materials on record are gone through. It is a fact that the dealer-assessee at the time of filing of this second appeal has not taken the ground of maintainability in the grounds of appeal. The dealer-assessee took the plea of maintainability in the additional grounds of appeal. This is accepted. It is obligatory to mention here that this Tribunal has discretion to consider the question of law arising in assessment proceeding although not raised earlier. For, the new/additional grounds became available on account of change of circumstances or law. The learned Counsel representing the dealer-assessee relies on the verdict pronounced by the Hon'ble High Court of Odisha in case of **M/s. ECMAS Resins Pvt. Ltd. -vrs- State of Orissa (Supra)**. Para 43 of the said judgment is relevant and quoted as under:-

“The sum total of the above discussion is that as far as a return filed by way of self assessment under Section 9(1) read with Section 9(2) of the OET Act is concerned, unless it is ‘accepted’ by the Department by a formal communication to the dealer, it cannot be said to be an assessment that has been accepted and without such acceptance, it cannot trigger a notice for re-assessment under Section 10(1) of the OET Act read with 15B of the OET Rules. This answers the question posed to the Court.”

Under the above settled provision of law, the argument made by the State on the facts and circumstances of the case is not acceptable. We are rather inclined to accept the averments of the learned Counsel of the dealer-assessee in the present case. Accordingly, the assessment passed under Section 10 of the OET Act in the instant case is without jurisdiction in absence of any assessment under Section 9(2) of the said Act. So, the orders of the learned Assessing Authority and the Id. FAA are not sustainable in the eyes of law as the same are without jurisdiction. Hence, it is ordered.

6. Resultantly, the appeal stands allowed and the orders of the learned Assessing Authority and the Id. FAA are hereby set-aside. As a necessary corollary thereof, the assessment order is hereby quashed. The cross-objection is disposed of accordingly.

Dictated and corrected by me.

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

I agree,

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

I agree,

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