BEFORE THE DIVISION BENCH : ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 349(V) of 17-18, S.A. No. 160(ET) of 17-18 & S.A. No.112(C) of 17-18

(Arising out of the order of the learned JCST (Appeal), Sundargarh Range, Rourkela in Appeal Case Nos. AA V 19 of 2016-17, AA V 13 ET of 2016-17 & AA 26(RL-IC) of 2016-17 disposed of on dtd.10.10.2017)

P r e s e n t: Shri S.K. Rout, & Shri B. Bhoi
2nd Judicial Member Accounts Member-II

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

- V e r s u s -

M/s. Simplex Casting Limited
Inside SAIL RSP, Rourkela.
Dist-Sundargarh. ... Respondent

For the Appellant : ... Mr. D. Behura, ld. S.C. (C.T.)
For the Respondent : ... Mr. R.K. Mishra, ld. Advocate

Date of hearing: 26.05.2023 *** Date of order : 30.06.2023

O R D E R

The State is in appeals against the orders of learned Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Sundargarh (hereinafter referred to as, FAA) passed on 10.10.2017 in First Appeal Case Nos. AA V 19 of 2016-17, AA V 13 ET of 2016-17 & AA 26(RL-IC) of 2016-17. Since all these three appeals involve common question of fact and law pertaining to the same tax period of the same assessee, these are hereby disposed of in a composite order.

2. Brief facts which are considered essential to appreciate the challenge is introduced at the outset. The

dealer-Company under the name and style of M/s. Simplex Castings Limited inside SAIL RSP, Rourkela, TIN-21572007876 was awarded a Consortium Turnkey Contract from SAIL(RSP) Rourkela. The Consortium contract was executed between Steel Authority of India Limited, Rourkela Steel Plant and Consortium comprising M/s. Simplex Casting Limited, Kolkata and M/s. Hyundai Heavy Industries Co. Limited, Ulsan, Korea, for Torpedo Ladles and Torpedo Ladle Repair Shop, (Package No. 104) at Rourkela Steel Plant, Rourkela. The value of contract awarded to the dealer-company stands at ₹56,14,90,000.00.

The respondent-Company was assessed U/S.42 of the OVAT Act, U/S. 9C of the OET Act and u/R.12(3) of the CST(O) Rules for the tax period from 01.04.2009 to 31.03.2014 by the learned Sales Tax Officer, Rourkela-I Circle, Udit Nagar (hereinafter called as Assessing Authority) as per the observations contained in the Audit Visit Report(AVR) and raised extra demand of ₹2,43,37,105.00, ₹26,27,803.00 and ₹4,34,03,436.00 respectively. Being aggrieved, the respondent-Company preferred first appeal before the ld. FAA. The first appeals resulted in refund of ₹43,03,614.00 under the OVAT Act, reduction of demand to ₹1,26,652.00 and ₹3,33,388.00 under the OET Act and CST Act respectively. The State being not satisfied with the first appeal orders of the ld.FAA preferred these appeals before this forum.

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3. For better appreciation of the case at hand, it is felt obligatory to put forth a summary of the assessment passed under section 42 of the OVAT Act and the order of the Ld.FAA passed thereunder in the first appeal. Tax Audit was conducted U/S. 41 of the OVAT Act. Basing on the recommendation made

in the Audit Visit Report (AVR), proceeding U/S. 42 of the OVAT Act was initiated. The forums below have accepted the gross receipt of payments during the tax period 01.04.2009 to 31.03.2014 as mentioned in the AVR at ₹30,04,04,037.00.The learned Assessing Authority is seen to have allowed deduction of ₹10,82,73,087.00 towards exempted sales U/S. 6(2) of the CST Act. Thus, the gross receipt stood at ₹19,21,30,950.00. On failure on the part of the dealer-Company to produce evidences in support of expenses towards labour and services and other ancillary charges, the learned Assessing Authority allowed deduction towards labour and service charges at 15% of the gross receipt in terms of Rule 6(e) of the OVAT Rules read with Appendix 3(a). Upon allowance of deduction as above, the taxable turnover stood determined at ₹16,33,11,308.00. The Learned Assessing Authority by virtue of a method of determination of sale price against different taxable purchases computed output tax of ₹1,76,13,125.00. After allowing deduction of ITC for ₹36,44,652.00, TDS for ₹20,45,080.00 and payment of tax earlier for ₹39,94,358.00, the balance tax due for payment calculated to ₹79,29,035.00. The learned Assessing Authority imposed penalty of ₹1,64,08,070.00 under Section 42(5) of the OVAT Act. Further, the learned Assessing Authority is seen to have imposed penalty of ₹5,50,000.00 under section 65(1) of the OVAT Act for non submission of audited accounts within the stipulated time. Thus, in total, the learned Assessing Authority assessed the dealer-Company to tax and penalty for an amount of ₹2,43,37,105.00.

The first appeal has been preferred by the respondent-Company against the above impugned order of assessment bearing demand of ₹2,43,37,105.00. The ld.FAA allowed deduction of ₹2,45,00,000.00 towards the value of Design and

Engineering and ₹2,90,00,000.00 towards Ocean freight, Custom and Port Clearance, inland transportation of imported materials and composite marine insurance holding the same as purely labour/services and there is no transfer of property in goods involved. The ld.FAA allowed ₹10,82,73,087.00 towards transit sales U/S. 6(2) of the CST Act as allowed in the order of assessment. Further, deductions towards labour and services charges @30% on ₹8,31,78,570.00 and @15% on ₹5,54,52,380.00 have been allowed at the first appellate stage. The TTO arrived at ₹10,53,59,522.00. Pursing method of deriving sale value as per the method in force against different taxable purchases, the output tax due stood at ₹53,80,476.00. After allowing deductions towards ITC, tax payments as have been allowed in the order of assessment, the dealer-Company was found refundable to ₹43,03,614.00. Imposition of penalty of ₹5,50,000.00 U/S. 65(2) of the OVAT Act at assessment has been deleted, as it attracts separate proceeding as per law.

4. The grounds of appeal filed by the State asserting first appeal order as unjust and improper are summarized. It is contended that without analysing the books of accounts, the ld.FAA has allowed deduction of ₹5,35,00,000.00 (being ₹2,45,00,000.00 towards designing and engineering works and ₹2,90,00,000.00 towards Ocean freight, custom & port clearance, inland transportation, transportation of imported materials and composite marine insurance). Before allowing such deductions, there was necessity to verify the materials imported by the dealer-company during the period under assessment and delivery of the same to M/s. SAIL, RSP during the tenure of work contract. Deduction of ₹10,82,73,087.00 as transit sales U/S.6(2) of the CST Act is uncalled for, with the issue of the alleged transit sale having now in appeal at this

forum. It is also argued that deduction towards labour and service charges @30% and 15% without verification of books of accounts is illegal. The derivation of sale value against taxable purchases adopting a method contrary to law is contested. Allowing ITC to the extent of ₹36,44,652.00 without going through the returns is also challenged by the State. Verification of TDS claimed by the dealer–company for the relevant tax period is urged upon. The State seeks interference of this forum for fresh assessments in the light of the above grounds.

4. The respondent-Company represented through Mr. R.K. Mishra, ld. Counsel filed cross objection. These are summarised hereunder in nutshell:-

a) That, the ld. Counsel of the respondent-Company holds that the value of goods which is being transferred by way of execution of contract alone can be subject to tax being in the nature of deemed sale and the service part shall be allowed deduction under labour and services. Receipt of payments against labour/services is not subject to tax. The values of Design and Engineering amounting to ₹2,45,00,000.00 and Ocean freight, Custom and Port Clearance, inland transportation, transportation of imported materials and composite marine insurance etc. amounting to ₹2,90,00,000.00 forming part of labour and services, are thus not subject to tax. The ld. FAA after being satisfied with the documentary evidences such as contract copy and other relevant documents produced before him allowed deduction of ₹2,45,00,000.00 and ₹2,90,00,000.00 respectively from the gross contract receipt to arrive at the value of works contract. The summery Price Schedule clearly indicates about the value of those imported plant and machinery which was directly imported by

SAIL (RSP) Rourkela for which the value has been separately indicated. However, the activity of releasing those goods from Customs and transportation etc is within the scope of the Respondent, for which provision for Service Tax has been quoted in Summery Price Schedule. Therefore, since the supply of imported goods to SAIL, RSP is not within the scope of the contract of the Respondent, there is no scope for the ld. FAA to verify the exact materials which was imported. There is a separate price break up for imported goods supplied to SAIL, RSP, Rourkela, which is not within the scope of the contract of the Respondent. This is vividly reflected in the **Summery Price Schedule**.

b) It is submitted that, the respondent-Company after receipt of turnkey consortium contract from SAIL(RSP) Rourkela, placed various orders to different vendors for manufacture and supply of goods directly to the Contractee SAIL(RSP), on behalf of the dealer company, thus the activity falls in the nature of interstate works contract. Those goods (Plants, Machinery and equipments) are manufactured as per the drawing and Design provided by SAIL(RSP) and after manufacturing, those goods were inspected by the consultant of SAIL(RSP), M/s. MECON ltd, and after receipt of the test certificate from MECON, the goods were allowed to move to the Contractee directly on account of the dealer contractor. This procedure of supply has been clearly indicated at Sl. No.23 of General Condition of Contract documents issued by SAIL(RSP) Rourkela and the dealer cannot deviate to the instructions spelt out in the contract document which would amount to breach of contract. Thus the goods which moved in this manner squarely fall under the category U/S. 6(2) of the CST Act and hence, exempted being in the nature of subsequent

sale in course of interstate trade and commerce. This aspect has been thoroughly verified by the ld. FAA before passing the order and allowed deduction. He has checked each transaction of it with the support of 'C' declaration Form received from SAIL(RSP) and certificate 'E-1' issued by the vendor to the dealer to allow such exemption.

c) It is submitted that the ld. Assessing Authority allowed deduction towards labour and services as per the Proviso to Rule-6(e) and Appendix to the VAT Rule, 2005 as per sl. 3(a), @15%. This was challenged in the Hon'ble High Court of Odisha. The Hon'ble Court while disposing writ petition W.P.(C) No.1923 of 2016 dt.11.08.2016 mentioned as under:

> **"However considering the submission made and, in particular, the fact that there is erroneous application of percentage of deduction towards labour & services as has been submitted, we grant liberty to the petitioners to file a statutory appeal within a period of four weeks xxx"**

The ld. FAA before allowing deduction towards labour and services have thoroughly verified and examined the contract document in details and convinced that Sl.3(a) of the Appendix never prescribed 15% prior to amendment or after amendment. Accordingly to his best of wisdom and after considering the contract document he allowed deduction towards labour and services at a varying scale of 30% on ₹8,31,78,570.00 and 15% on ₹5,54,52,380.00 respectively.

d) That as regards estimation of sale value against purchase value, and adjustment of ITC, the ld. Counsel for the dealer-company submits that the ld. Assessing Authority as well as the ld. FAA has allowed the same as per law and thus, the same require no interference.

5. Heard the rival submissions. The assessment record, first appeal order/record, AVR record and the materials available therein have been thoroughly examined. The Contract Agreement was executed between the Steel Authority of India Limited, Rourkela Steel Plant and Consortium comprising M/s. Simplex Casting Limited, a Company registered under the Companies Act, 1956 having its registered Office at 601/602A, Fair Link Centre, Andheri (W), Mumbai-400062 and M/s. Hyundai Heavy Industries Co. Limited, Korea, a Company registered under the laws of Korea. The respondent-Company was assigned to set up 350 Ton torpedo ladles, Torpedo Ladle repairs Shop, Heating & Cooling Stations and Torpedo Repair Shop Equipment (Package No.14) as per agreed technical specification under 4.2 Mipa Crude Steel Expansion programme at Rourkela steel Plant. The scope of works under the expansion programme includes designing and engineering, civil engineering work, dismantling of buildings, structures & equipment, fabrication & supply of steel structures, manufacture & supply of plant and equipments, manufacture & supply of refractories, intermediate storage, insurance & handling, erection work, testing, pre-commissioning, start-up & commissioning and demonstration and establishment of performance guarantee parameters of Rourkela Steel Plant on turnkey basis. The contract price as agreed upon was at ₹62,58,00,000.00. The contract price constitutes, as specified in the Summary Price Schedule of the Contract Agreement, as under:-

(i) Design & Engineering :-₹2,45,00,000.00

(ii) Supply of Plant and Equipments & Commissioning spares :- ₹38,39,51,000.00

(iii) Supply of refractories :- ₹7,83,16,000.00

(iv) Civil Engineering work including supplies	:- ₹5,01,34,000.00
(iv) Supply of Fabricated Building Steel Structures at site including sheeting, Galazing and Shop Painting	:-₹3,28,99,000.00
(v)Erection of Building Steel structures including Sheeting, Glazing and final painting	:-₹45,00,000.00
(vi)Storage, handling, erection, commissioning, and P.G. Tests of plant & Equipment	:-₹2,25,00,000.00
(vii)Ocean Freight, Customs Clearance, Port Clearance & inland Transportation for imported items	:-₹2,00,00,000.00
(viii)Comprehensive Marine cum Erection Insurance	:-₹90,00,000.00
Total Contract Price	**:-₹62,58,00,000.00**

The above contract price is subject to levy of Excise Duty for ₹4,99,53,000.00, Service Tax of ₹1,03,03,000.00 and Input Tax Credit on VAT for ₹40,57,000.00 only. The respondent-Company is learnt to have received gross payment of ₹30,04,04,037.00 from Rourkela Steel Plant during the tax period under appeal. From the facts as merging from the record, it is revealed that the respondent-Company during the period under appeal has received ₹2,45,00,000.0.00 towards design and basic engineering, ₹2,00,00,000.00 towards Ocean freight, Customs clearance, port Clearance and inland transportation of imported equipments and spares and ₹90,00,000.00 towards comprehensive marine cum insurance

culminating ₹5,35,00,000.00.Here lies the controversy as to whether an amount of ₹5,35,00,000.00 as stated above would be amenable to levy of VAT or allowable as labour/service having no transfer of property in goods. As rightly observed by the ld.FAA, the payment of ₹2,45,00,000.00 received on account of design and basis engineering involves only labour component. There is no involvement of transfer of property in goods. As to the payments of ₹2,00,00,000.00 and ₹90,00,000.00 totalling to ₹2,90,00,000.00 received by the respondent-Company were on account of rendering services towards Ocean freight, Customs clearance, port Clearance and inland transportation of imported equipments and spares and for Comprehensive Marine-cum- Erection Insurance. It is not out of place to mention here that the value of the imported plants and machineries as separately quoted in the Price Schedule destined to be paid in foreign currency is not relatable to the respondent-Company. Such plants and machineries were directly imported by SAIL, Rourkela. But the facts remain that the respondent-Company by virtue of the terms of the contract release the imported goods discharging services like ocean freight, custom clearance, inland transportation, comprehensive marine-cum-erection insurance etc. The imported goods were supplied to SAIL, Rourkela directly. The respondent-Company lacks scope to verify the materials imported. The details of payments received on the above score together with evidence of the same disclosed in the statutory returns filed during the tax period under appeal have been adduced at the time of hearing of the appeal. Under the above backdrop, the first appeal order with respect to allowance of ₹5,35,00,000.00 exclusively towards labour and service is not disputed in asmuch as the same do not involve

transfer of property in goods. We, therefore, find no justification to interfere in this regard.

6. So far as transit sale of ₹10,82,73,087.00 is concerned, the learned Counsel appearing for the respondent-company clarifies that supply of plants and machineries as specified in the drawings and designs were requisitioned from different vendors outside the state of Odisha. After the same were manufactured and the same having been inspected/tested by the Authorised Consultant i.e. M/s MECON Limited, the manufactured plants and machineries/equipments were directly transported to SAIL, Rourkela A/c of the respondent-Company. It is not in dispute that the respondent-assessee entered into an agreement with SAIL, RSP for the purpose of supply of certain goods and the project works like installation of machinery and supervision has to be completed within the time frame. The contract is thus composite in nature. There is no element of sale involved within the state of Odisha. It being an interstate contract, there is no liability to pay VAT. It is observed that the learned Assessing Authority as well as the ld. FAA has allowed transit sale of ₹10,82,73,087.00 and thus, deduction of the same has been effected from the gross receipt. Accordingly, the first appeal order passed in this regard justifies no interference.

7. It is observed that the respondent-Company having failed to produce evidences in support of expenses towards labour and services and other ancillary charges, the learned Assessing Authority determined the same as per Rule 6 (e) of the OVAT Rules read with Appendix 3(a) @ 15% which, the ld.FAA in pursuance of order of the Hon'ble High Court passed in W.P. (C) No.1923 of 2016 has considered allowance of deductions of labour and service charges @15% and @30%

respectively on ₹5,54,52,380.00 and ₹8,31,78,570.00 reasonably after examining the works executed including fabrication, installation/erection as well as civil works during the tax period under appeal. Under this backdrop, we find no justification to interfere.

8. It is observed that the learned Assessing Authority has allowed ITC to the tune of ₹36,44,652.00 and TDS for ₹20,45,080.00. The ld. FAA is seen to have accepted the same without dispute. Payment of tax for ₹39,94,358.00 either through Challan or cheque/DD is not disputed. The order of the ld.FFA in passing refund of ₹43,03,614.00 in the case under OVAT Act is held as justified requiring this forum not to interfere.

9. The deletion of penalty of ₹5,50,000.00 u/S. 65(2) of the OVAT Act by the ld.FAA is appropriate, as it attracts separate proceeding. We agree to the observation of the ld.FAA in this regard.

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10. As elaborately discussed under the OVAT Act supra, the State has preferred this appeal against the order of the ld.FAA under the CST Act reducing the demand to ₹3,34,388.00 as against the demand of ₹4,34,03,436.00 raised by the learned Sales Tax Officer, Rourkela-I Circle, Uditnagar (In short, ld. Assessing Authority) u/R. 12(3) of the CST(O) Rules in case of the instant respondent-Company for the tax period 01.04.2009 to 31.03.2014.

11. The State puts forth the grounds of appeal holding that the ld. FAA has allowed the 6(2) transaction under CST Act by way of citing certain judgments without properly going into the findings made in the order of assessment. The order of the ld. STO at page-8 clearly spelt that it is crystal clear that

the dealer has tried to use sale in transit which is seen at the stage of agreement as evident from purchase order between buyer & seller not in the subsequent sale i.e. in the stage while goods in transit. The action taken by the dealer is an arrangement to mask the intra-state sale under the guise of Section 6(2) of CST Act. The Audit Visit Authority has also raised the same issue after detailed verification. Further, it is submitted that the ld. FAA without investigating the above fact simply swayed by the contention of the dealer who cited the case law of A.G. Projects & Technology Ltd. Vrs. State of Karnataka and allowed the transaction in favour of the dealer.

12. Mr. R.K. Mishra, ld. Counsel representing the dealer-assessee filed cross objection. The ld. Counsel finds worthy to reiterate the discussion made supra in the case of OVAT Act holding that after receipt of turnkey consortium contract from SAIL(RSP) Rourkela, placed various orders to different vendors for manufacture and supply of goods directly to the Contractee SAIL(RSP), on behalf of the dealer-company, and thus, the said activity falls in the nature of interstate works contract. Those goods (Plants, Machinery and equipments) are manufactured as per the drawing and design provided by SAIL(RSP) and after manufacturing those goods were inspected by the consultant of SAIL(RSP), M/s. MECON Ltd., and after receipt of the test certificate from MECON, the goods were allowed to move to the Contractee directly on account of the dealer contractor. This procedure of supply has been clearly indicated at Sl.No23 of General Condition of Contract document issued by SAIL (RSP) Rourkela and the dealer cannot deviate to the instructions spelt out in the contract document which would amount to breach of contract. Thus, the goods which moved in this manner squarely qualify

for exemption u/S.6(2) of the CST Act being in the nature of subsequent sale in course of interstate trade and commerce. This aspect has been thoroughly verified by the ld. FAA before passing the order and allowed deduction. He has checked each transaction of it with the support of relevant declaration forms and certificates placed in the record. Therefore, the allegation of the Revenue has no merit in it. The transaction of the Respondent in the instant case is identical in nature as adjudged in case of A.G. Projects & Technology Ltd. Vrs. State of Karnataka. The ld.FAA has thus rightly allowed deduction of the impugned transit sale. Last but not the least, imposition of penalty u/R.12(3)(g) of the CST(O) Rules is not warranted under the present fact and circumstances of the case. It is submitted that as per Circular No.42/CT dtd.20.04.2015 issued by the Commissioner of Commercial Taxes, Odisha, Cuttack regarding non-levy of mandatory penalty on audit assessment under CST Act is clear and specific. Mere non-submission of declaration forms against bona-fide transaction does not constitute an offence under Rule 12(3)(a) of the CST(O) Rules so as to attract liability to imposition of penalty under Clause (g) of the said Rules. It is therefore prayed to delete penalty imposed by the ld. FAA in the present case.

13. The order of assessment passed u/R 12(3) of the CST(O) Rules, order of the first appellate authority, grounds of appeal, cross objection and the materials available on record are gone through. The ld.FAA while examining the assessment order passed by the learned Assessing Authority observed that the learned Assessing Authority declined to accept the declaration Form 'C' as well as the certificates in Forms 'E-I/E-II' on the pretext that the consignee M/s SAIL,RSP, Rourkela has issued waybills in favour of the vendors of the respondent-

Company who have directly despatched goods to SAIL,RSP, Rourkela as consignee of the goods and the respondent-company as the buyer of the goods. The learned Assessing Authority held that since the invoices raised by the vendor contain the names and addresses of the respondent-Company as well as the consignee M/s SAIL,RSP, Rourkela, it is a pre-determined contract qualifying not for exemption under Section 6(2) of the CST Act and that would rather fall under Section 3(a) of the CST Act. The ld.FAA on analyzing the alleged transit sale transactions and putting emphasis on clauses incorporated in the Contract Agreement was of the view that both sales under section 3(a) as well as 3(b) of the CST Act would qualify for exemption under section 6(2) of the CST Act subject to production of valid declaration in Form 'C' issued by the ultimate purchasing dealer and 'E-I/E-II' certificate issued by the vendor supplying the goods. The ld.FAA has rightly observed that as provided under Section 9(1) of the CST Act, the state from which the goods commences it journey is only entitled to levy tax and no other states have power to levy tax. On going through the order of assessment vis-a-vis the order passed in the first appellate stage, it is held that the learned assessing Authority has misconceived the provision of law envisaged under Section 6(2) of the CST Act. We are inclined to agree with the observations contained in the first appeal order. The ld. FAA after examining the gamut of declarations Forms 'C' as well as certificates in Forms 'E-I/E-II' furnished at the assessment stage as well as at the first appellate stage allowed ₹10,08,71,755.00 towards transit sale under section 6(2) of the CST Act except ₹36,81,940.00 which was not supported with required declaration Forms. The ld.FAA taxed @2% on ₹26,54,770.00 wherein 'C' Form has only been submitted and

taxed @13.5% on₹10,27,170.00 due to non submission of 'C' Form computing to ₹53,095.00 and ₹1,38,668.00 respectively. Thus, the total tax worked out at ₹1,91,763.00. Interest under Section 8(1) of the CST Act calculating to ₹36,435.00 has been charged. Besides, penalty of ₹1,06,190.00 under Rule 12(3)(g) of the CST(O) Rules has been imposed being twice the amount of tax due i.e. ₹ 53,095.00(where E-I certificate submitted). Law is settled that non-furnishing of declaration form by a dealer shall result in disallowance of concessional rate of tax/exemption of tax, but cannot be treated as violation so as to attract any penal liability. Therefore, the imposition of penalty by the ld.FAA for non submission of statutory declaration Form bears no merit. Accordingly, penalty of ₹1,06,190.00 is deleted. The respondent-assessee is required to pay the tax and penalty of ₹2,28,198.00.

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14. As vividly discussed above in the case under the CST Act, we feel it paramount to provide a brief account of the order of the first appellate authority passed against the order of assessment framed under Section 9(C) of the OET Act reducing the demand to ₹1,26,652.00. The State being aggrieved preferred this second appeal supporting the order of assessment passed u/S. 9(C) of the OET Act raising demand of ₹26,27,803.00 including penalty and interest.

15. Mr. R. K. Mishra, ld. Counsel filed cross objection in support of the Company assessee. In addition to the averments advanced in the cases under OVAT Act and CST Act as discussed supra, the learned Counsel appearing for the respondent-Company contends that the goods brought in either from the local area or from outside the state of Odisha have been directly delivered to M/s SAIL, RSP, Rourkela in

pursuance of the contract documents as agreed upon and discharged the Entry Tax liability to that effect. M/s SAIL, RSP issued road permit, statutory waybills, 'C' forms etc to the vendors of the respondent-assessee as and when required and thus, the dealer-assessee is not liable to pay entry tax as per the amendment made to the Contract Agreement No.643(14)/97003/54 dated 12.12.2008 issued by the SAIL,RSP, Rourkela.

16. However, as observed in the case under CST Act discussed supra, the transit sale for ₹10,08,71,755.00 executed under section 6(2) of the CST Act has been allowed. It needs no reiteration. The order of assessment passed by the learned assessing Authority under Section 9 C of the OET Act disallowing the impugned transit sale is not in consonance with of the provisions of the OET Act as observed by the ld.FAA. The ld.FAA on examination of the books of accounts and other ancillary documents and particularity the terms of contract entered into, allowed deduction of 3,76,97,418.00 towards declared goods purchased under section 6(2) of the CST Act out of the GTO returned at ₹3,95,70,958.00. The TTO thus arrived at ₹18,73,540.00 which being taxed @2% thereon calculated to ₹37,471.00. Penalty of ₹74,942.00 and interest of ₹14,239.00 have rightly been imposed. Thus, the total tax, penalty and interest taken together calculated to ₹1,26,652.00. The ld. FAA appears to have examined the case minutely relying upon the provision of law provided under the OET Act and basing upon the observations made in the cases under OVAT Act and the CST Act as discussed above. We find no justification to interfere in this regard.

17. We, therefore, order as under:-

The appeals filed by the State in respect of the first appeal orders under the OVAT Act, CST Act and OET Act are dismissed. The first appeal orders passed under OVAT Act and OET Act are confirmed. But, the first appeal order passed under CST Act and the demand raised thereunder is reduced to ₹2,28,198.00. Payments made, if any, in excess of that due are refundable to the dealer assessee as per the provision of law. Cross objections are disposed of accordingly.

Dictated & corrected by me,

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

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

I agree,

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