BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 169 (ET) of 2004-05

(Arising out of order of the learned ACST, Sambalpur Range, Sambalpur in First Appeal No. AA – 31 (SAIET) of 2003-04, disposed of on 28.06.2004)

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. Priti Oil Ltd., Rengali, Dist. Sambalpur ... Respondent

For the Appellant : Sri M.L. Agarwal, S.C. (CT)
For the Respondent : Sri Uttam Behera, Advocate

Date of hearing : 29.11.2022 *** Date of order : 28.12.2022

O R D E R

State is in appeal against the order dated 28.06.2004 of the Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter called as 'First Appellate Authority') in F A No. AA – 31 (SAIET) of 2003-04 reducing the assessment order of the Sales Tax Officer, Sambalpur-I Circle, Sambalpur (in short, 'Assessing Authority).

2. Briefly stated, the facts of the case are that –

The Dealer is an oil extraction Unit. It uses crude rice bran and sal seed as raw materials for utilization in solvent extraction unit. Likewise, crude rice bran oil, soyabin oil, palm oil etc. are used as raw materials in the refinery Unit to obtain refined oil, soap stock, acid oil, wax, de-oiled cake

etc. for sale. The assessment period relates to 2001-02. The Assessing Authority raised tax demand of ₹5,67,714.00 exparte under the Odisha Entry Tax Act, 1999 (in short, 'OET Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority allowed the appeal and reduced the assessment to ₹26,840.00. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

3. The Dealer files cross-objection supporting the finding of the First Appellate Authority except levy of entry tax on the scheduled goods brought from outside the State but not manufactured or produced inside the State. He further submits that in view of the decision of the Hon'ble Court in the case of ***Reliance Industries Ltd. v. State of Orissa,*** reported in **[2008] 16 VST 85 (Orissa)**, the entry tax on scheduled goods is not exigible, so the same should be refunded to the Dealer. So, he submits that the order of the First Appellate Authority is erroneous and contrary to the provisions of law on this score and requires interference in appeal.

4. The learned Standing Counsel (CT) for the State submits that the GTO and TTO should include the sale value of finished products. He further submits that the tax on sale of vegetable ghee should not have been deleted. He further submits that the tax on vegetable ghee should have been determined as per Section 2(j) of the OET Act and the same is not subject to set off nor is liable to tax u/s. 26 of the said Act. So, he submits that the order of the First Appellate Authority is contrary to the provisions of law and fact involved and the same requires interference in appeal.

5. On the contrary, the learned Counsel for the Dealer vehemently opposes the contention of the State and submits that the order of the First Appellate Authority is a reasoned one except levy of entry tax on the scheduled goods not produced or manufactured inside the State. So, he

submits that levy of entry tax on the scheduled goods not produced or manufactured inside the State does not arise and entry tax so paid should be refunded to the Dealer.

He had also argued that the dealer should be given proper opportunity by the Assessing Authority to defend his case or else it will violate the principle of natural justice and the dealer shall be prejudiced. He relies upon the decision of the Hon'ble Orissa High Court in the case of ***Orissa Stores vs State of Orissa reported in (1990) 79 STC 359 (Orissa)*** and ***Ram Kishan Rajkumar vs Assessing Authority and another, reported in (2005) 139 STC 450 (Orissa)***.

6. On hearing rival submissions and on careful scrutiny of the record, the learned Counsel for the dealer advanced an argument that the dealer should be given proper opportunity to present his case. In support of his contention he relies on in the case of ***Orissa Stores vs State of Orissa (supra)*** and ***Ram Kishan Rajkumar vs Assessing Authority and another (supra)***. It is settled principle of law that the dealer should be given reasonable opportunity to present his case. In the case in hand, the dealer was absent before the Assessing Authority. The LCR shows that the dealer filed time petition on 25.06.2002 and the case was adjourned to 22.07.2002, 14.08.2002, 29.08.2002, 12.09.2002, 30.09.2002, 09.10.2002, 30.10.2002, 30.11.2002, 28.12.2002, 27.01.2003, 10.02.2003, 12.05.2003, 30.05.2003, 21.06.2003, 07.07.2003, 22.07.2003, 16.08.2003, 30.08.2003, 18.09.2003, 30.09.2003, 27.10.2003, 15.11.2003, 09.12.2003, 20.12.2003, 20.01.2004 and on 31.01.2004 on the prayer of the dealer. On 31.01.2004, the Assessing Authority specifically recorded a finding that in spite of several opportunities the dealer did not appear, so the Assessing Authority passed order finally on 31.01.2004. The order-sheet shows that sufficient opportunity was given to the dealer and many times were given to the dealer but the dealer did not cooperate, so the Assessing Authority rightly passed

the order which needs no interference in this appeal. So, the submission of the learned Counsel for the dealer cannot be accepted that the dealer was not given sufficient opportunity to defend his case.

7. The State assails the first appellate order on the ground that the GTO and TTO should include the sale value of the finished products and sales tax on vegetable ghee should not have been deleted. Whereas the Dealer claims that the entry tax should not be levied on the scheduled goods brought from outside the State, but not manufactured or produced inside the State.

The Assessing Authority determined the GTO after allowing deduction towards purchase of entry tax paid goods and determined the TTO on sale of finished products, on purchase of vegetable ghee and other scheduled goods and raised tax demand. The Assessing Authority allowed the set off of entry tax as per Rule 19 of the OET Rules.

The First Appellate Authority reduced the tax demand with a finding that the Assessing Authority is not justified to include the sale value of finished products in the GTO and TTO and the sale value of scheduled goods brought into the local area as per Section 3 of the OET Act.

8. The State claimed that GTO and TTO should include the sale value of the finished products and tax on sale of vegetable ghee should not have been deleted. So, we formulate the following questions for adjudication in appeal:-

(i) Whether in the facts and circumstances of the present case the First Appellate Authority is justified in excluding the sale value of finished products from the GTO and TTO ?

(ii) Whether in the facts and circumstances of the present case the First Appellate Authority is justified in deleting the tax on sale of vegetable ghee?

9. Section 26 of the OET Act provides collection of entry tax in respect of sale of its finished products effected by it to a buying dealer or person either directly or through an intermediary by way of tax an amount

equal to the tax payable on the value of such finished products u/s. 3 of the Act.

Rule 19 of the OET Rules deals in set off of entry tax. The same is reproduced herein below:-

> *"(1) Every manufacturer of scheduled goods who is registered under the Sales Tax Act shall, in respect of the finished products which are scheduled goods and are sold by it to a dealer, either directly or through an intermediary, shall collect tax payable under Section 3 of this Act from the buying dealer.*
> *(2) The tax so collected from the buying dealer shall be paid to the Government Treasury along with the statements and returns filed under the Act.*
> *(3) xxx xxx xxx*
> *(4) xxx xxx xxx*
> *(5) The entry tax paid by the manufacturer of the scheduled goods on the purchase of raw materials which directly go into the composition of finished products by the manufacturer of the scheduled goods shall be set off against the entry tax payable under sub-rule (2) above by the selling dealer:*
> ***Provided that** the amount set off shall be limited to the tax payable under sub-rule (1) above."*

Section 3 of the OET Act deals in levy of entry tax, which stipulates rate of tax not exceeding 12% of the purchase value of such goods from such date as may be specified by the State Govt. and different dates and different rates may be specified for different goods and local areas subject to such conditions as may be prescribed with an exception of compounding.

10. Bare reading of Section 26, Rule 19 and Section 3 shows that Section 3 is the charging section and Section 26 & Rule 19 provides the procedure of collection of entry tax and its set off. Rule 19(2) provides that the tax so collected by the selling dealer from the buying dealer shall be paid to the Government Treasury along with the statements and return.

11. In the case in hand the Assessing Authority determined the GTO and TTO of ₹26,28,56,866.53 and ₹26,05,74,986.53 respectively. The First

Appellate Authority recorded a categorical finding that the charging Section 3 of the Act provides for levy of tax on entry of scheduled goods into a local area at the specified percentage of the purchase value of such goods and as such, total purchase value of scheduled goods brought into the local area is the GTO of a dealer and the sale value of finished products by a manufacturer, which is the purchase value and part of the GTO of the purchaser, cannot form a part of the GTO of the manufacturer. Consequently, he observed that the Assessing Authority is not justified to include the sale value of finished products worth ₹3,98,05,920.00 in the GTO and TTO. The First Appellate Authority further recorded finding that the entry tax collected by the selling dealer from the buying dealer shall be paid as per the provision of Rule 19(2) of the OET Rules. So, we do not find illegality in the finding of the First Appellate Authority.

12. As regards deletion of tax on the vegetable ghee by the First Appellate Authority is concerned, it is not in dispute that the Assessing Authority has collected 1% entry tax on purchase of vegetable ghee worth of ₹5,91,08,619.25 and the same comes to a sum of ₹5,91,086.19. It is also not in dispute that the purchase value of vegetable ghee is ₹5,40,92,544.00 and the dealer has collected entry tax of ₹5,40,873.00 @ 1% on sale of the same.

Rule 3(5)(b) of the Rules provides the provision where the amount of tax collected by a dealer is higher than the tax payable, the dealer shall be liable to pay the amount of tax so collected.

In the case at hand, the First Appellate Authority has deleted the demand of entry tax on sale value of vegetable ghee as it is not higher than the tax payable. Therefore, we do not find any illegality on such finding of the First Appellate Authority on that score.

13. On the foregoing discussions, we came to an irresistible conclusion that the First Appellate Authority is justified in not including the sale value of the finished products in the GTO and TTO and also in deleting

the tax on vegetable ghee on the ground that the dealer had collected entry tax on vegetable ghee @ 1% and he had also paid the same @ 1%, so the same shall be set off as per Rule 19(2) of the OET Rules. Therefore, we do not find any illegality or impropriety in the said finding so as to call for any interference in this appeal. Accordingly, our answer to the above questions is affirmative and against the Revenue. Hence, it is ordered.

14. In the result, the appeal at the instance of the State is hereby dismissed and the finding of the First Appellate Authority is hereby confirmed. The cross objection is disposed of accordingly.

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