

(hereinafter referred to as, STO/assessing authority) u/s.10 of the Orissa Entry Tax Act, 1999 (in short, the OET Act) raising demand of ₹10,19,349.00 including penalty of ₹6,79,566.00 imposed u/s.10(2) of the OET Act for the tax period 01.04.2011 to 30.11.2013.

2. The case at hand is that, the dealer-appellant in the instant case has undertaken real estate development works like construction of apartments in addition to executing electrical works contract. Pursuant to Audit Visit Report (in short, AVR), learned assessing authority initiated assessment proceeding u/s.10 of the OET Act and raised the demand as mentioned above.

3. Against such tax demands, the dealer preferred first appeal before the learned first appellate authority who confirmed the tax demand.

4. Further, being dissatisfied with the order of the learned first appellate authority, the dealer has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection in this case is filed by the State-respondents.

6. During pendency of this appeal, the dealer-appellant took the additional ground stating that the orders of assessment as well as order of first appellate authority are not sustainable in the eye of law. In the additional grounds of appeal the dealer-appellant raised the jurisdiction as well as maintainability of the initiation of reassessment u/s.10 of the OET Act by relying on the judgment of the Full Bench of the Hon'ble High Court of Orissa in the case of **M/s. ECMAS**

Resins Pvt. Ltd. v. State of Orissa reported in **AIR 2022 Ori. 169**, subsequently which has been confirmed by the Hon'ble Supreme Court of India vide order dtd.24.03.2023 by rejecting the SLP No.5856 of 2023 in the case of **State of Orissa Vrs. Shyam Mettalics & Energy Ltd.**

7. Per contra, learned Addl. Standing Counsel for the Revenue contended that the Tribunal has limited jurisdiction to entertain such plea. Furthermore, it is argued on behalf of the Revenue that the assessing authority has assessed the dealer u/s.10 of the OET Act for the tax period under challenge pursuant to Audit Visit Report and the additional ground preferred by the dealer-appellant is not justified since it is completely new with intention to avoid payment of due tax. Learned Addl. Standing Counsel for the Revenue also relied upon the case of State of **State of Orissa v. Lakhoo Varjang 1960 SCC Online Ori 110 (1961) 12 STC 162** in which 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. But 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..."

8. Heard the contentions and submissions of both the parties in this regard. Prior to adjudication it should be made clear that point of law can be raised at any time and as such the contention raised by the learned Standing Counsel for the Revenue holds not good. Perused the materials available on record vis-à-vis the grounds of appeal and the orders of the fora below.

9. The position under the OET Act stands covered by the judgment of the Full Bench of the Hon'ble Court dtd.05.08.2022 in W.P.(C) No.7458 of 2015 (**M/s. ECMAS Resins Pvt. Ltd. v. State of Orissa**) in which it was held by the Hon'ble Court that unless the return filed by way of self-assessment u/s.9(1) r/w. section 9(2) of the OET Act is "accepted" by the department by a formal communication, it cannot trigger a notice of reassessment u/s.10(1) of the OET Act r/w. Rule 15(b) of the OET Rules.

So in view of the above analysis and placing reliance to the verdict of the Hon'ble Courts, I am of the view that the claim of the appellant deserves a merited acceptance.

10. It should be made clear that I do not sit in this appeal of the dealer on the issue of self assessment and payment made against admitted tax. So, I do not express any opinion on its merit. To my considered view, I observe that the

dealer is bound by the law settled by the Hon'ble High Court of Odisha i.e. in case of **M/s. Shree Bharat Motors Ltd. and others vrs. Sales Tax Officer, Bhubaneswar I Circle, Bhubaneswar and others (W.P.(C) No.13736 of 2017 and batch)** decided on 15.03.2023 followed by the verdict of the Hon'ble Apex Court in case of **Jindal Stainless Ltd. vrs. Reliance Industries.**

11. In the result, the appeal preferred by the dealer is allowed and the orders of the fora below are hereby quashed. The payment of admitted tax, if any, shall be guided by the dictum of the Hon'ble Court referred in the case of **M/s. Shree Bharat Motors Ltd.** (supra). Cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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