

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

**S.A. No. 47 (ET) of 2021
&
S.A. No. 48 (ET) of 2021**

(Arising out of orders of the learned Addl. CST (Appeal), Commissionerate of CT & GST, Odisha (At Cuttack) in Appeal Nos. AA – 877 KJB(E)/ 2017-18 & AA – 878 KJB(E)/ 2017-18, disposed of on 04.09.2019)

Present: **Shri G.C. Behera, Chairman
Shri S.K. Rout, 2nd Judicial Member &
Shri B. Bhoi, Accounts Member-II**

M/s. Tata Sponge Iron Ltd.,
Beleipada, Joda, Barbil,
Dist. Keonjhar ... Appellant

-Versus-

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

For the Appellant : Sri Bibekananda Mohanti, Sr. Advocate &
Sri A.K. Samal, Advocate
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri N.K. Rout, Addl. SC (CT)

Date of hearing : 17.07.2023 *** Date of order : 07.08.2023

ORDER

Both these appeals relate to the same Dealer under the OET Act for different periods involving common question of facts and law. Therefore, they are taken up for disposal in this composite order for the sake of convenience.

S.A. No. 47 (ET) of 2021 :

2. Dealer is in appeal against the order dated 04.09.2019 of the Addl. Commissioner of Sales Tax (Appeal), Commissionerate of CT & GST, Odisha (At Cuttack) (hereinafter called as 'First Appellate Authority') in Appeal Case No. AA – 877 KJB(E)/ 2017-18 setting aside the assessment order of the Deputy Commissioner of Sales Tax, Barbil Circle, Barbil (in short, 'Assessing Authority').

S.A. No. 48 (ET) of 2021 :

3. Dealer also assails the order dated 04.09.2019 of the First Appellate Authority in Appeal Case No. AA – 878 KJB(E)/ 2017-18 setting aside the assessment order of the Assessing Authority.

4. Briefly stated, the facts of the cases are that –

M/s. Tata Sponge Iron Ltd. is engaged in manufacture and sale of sponge iron. It effects purchase of raw materials, input, consumables, packing materials, machineries and spares from within and outside the State as well as from outside the country. The assessment periods relate to 01.04.2008 to 31.03.2012 and 01.04.2012 to 31.08.2013. The Assessing Authority raised tax, interest and penalty of ₹34,32,29,646.00 for the period 01.04.2008 to 31.03.2012 and ₹11,55,84,963.00 for the period 01.04.2012 to 31.08.2013 u/s. 10 of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') on the basis of Tax Evasion Report (TER).

Dealer preferred first appeals against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority set aside the tax demands and remanded the assessments. Being aggrieved with the orders of the First Appellate Authority, the Dealer prefers these appeals. Hence, these appeals.

The State files cross-objections supporting the orders of the First Appellate Authority setting aside the orders of assessment as just and proper.

5. The learned Sr. Counsel for the Dealer submits that the proceedings u/s. 10 of the OET Act for both the periods under assessment are not maintainable in absence of proceedings u/s. 9(1) & (2) of the OET Act. He further submits that the Assessing Authority did not consider the point of maintainability in the remand assessment and passed the orders in contravention to the direction of the First Appellate Authority. So, he submits that the impugned orders and the remand assessments need interference in appeal.

6. Per contra, the learned Standing Counsel (CT) for the State submits that the remand assessments have already been completed in compliance to the direction of the First Appellate Authority. He further submits that the Dealer has preferred these appeals after completion of remand assessments by exhausting the proper forum. So, he submits that the appeals are liable to be dismissed *in limine* as infructuous.

7. Heard the rival submissions of the parties and gone through the orders of the First Appellate Authority and Assessing Authority vis-a-vis the materials on record. The impugned order reveals that the First Appellate Authority had remanded the matter to the Assessing Authority for disposal afresh as per law and in consonance with the observations made therein. Record further reveals that the Assessing Authority has already completed the remand assessments in compliance to the direction of the First Appellate Authority. It further reveals that the Dealer has preferred the second appeals even after completion of remand assessment on 16.12.2020. The remedy lies with the Dealer to prefer first appeals against the remand assessment, but instead of filing first appeals, the Dealer preferred the second appeals before this forum. So, the present second appeals are infructuous. The Dealer has raised the point of maintainability as per the decision of the Hon'ble Court in case of *M/s. ECMAS Resins Pvt. Ltd. and other v. State of Odisha* in **WP(C) Nos. 7458 of 2015 & 7296 of 2013**. As the second appeals are

infructuous, the Dealer is at liberty to file the first appeals and the Dealer is also at liberty to raise the legal plea before the First Appellate Authority. Section 14 of the Limitation Act provides exclusion of time of proceeding bonafide in Court without jurisdiction. So, the time since filing of second appeal till filing of first appeal, if any, shall be excluded. Hence, it is ordered.

8. Resultantly, the appeals are dismissed being infructuous. The Dealer is at liberty to file appeals at appropriate forum along with petition u/s. 5 of the Limitation Act for condonation of delay within a period of one month from the date of receipt of this order. The First Appellate Authority shall consider the delay petition as per law in view of Section 14 of the Limitation Act, if such a petition is filed and thereafter the appeals shall be disposed of on merits.

Cross-objections are 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/-
(B. Bhoi)
Accounts Member-II**