

**BEFORE THE JUDICIAL MEMBER-II:  
ODISHA SALES TAX TRIBUNAL: CUTTACK.**

**P r e s e n t:            Shri S.K. Rout,  
   2<sup>nd</sup> Judicial Member**

**S.A. No. 61(E) of 2019**

(Arising out of the order of the learned Joint Commissioner of Sales Tax (Appeal), Jajpur Range, Jajpur Road, in First Appeal Case No. AA BR/DCST/693/13-14, disposed of on dtd.30.11.2017)

M/s. Narayani Sons Pvt. Ltd.  
At:- Station Road, Barbil,  
Dist.- Keonjhar.

... Appellant

**- V e r s u s -**

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

... Respondent

For the Appellant	...	Mr. P.K. Harichandan, Advocate
For the Respondent	...	Mr. N.K. Rout, A.S.C.

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Date of hearing: 19.10.2023    \*\*\*    Date of order: 16.11.2023  
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**ORDER**

The dealer prefers this appeal challenging the order dtd.30.11.2017 passed by the learned Joint Commissioner of Sales Tax (Appeal), Jajpur Range, Jajpur Road (hereinafter referred to as, JCST/first appellate authority) in First Appeal Case No. AA BR/DCST/693/13-14, thereby confirming the order of assessment passed against the set aside assessment order dtd.30.08.2013 passed by the learned Deputy Commissioner of Sales Tax, Barbil Circle, Barbil (hereinafter

referred to as, DCST/assessing authority) u/s.10 of the Orissa Entry Tax Act, 1999 (in short, the OET Act) raising demand of ₹7,75,120.00 including interest of ₹5,82,421.00 and penalty of ₹90,000.00 for the tax period 01.04.2007 to 31.10.2010.

2. The case at hand is that, the dealer-appellant in the instant case is engaged in mining and trading of iron ore and iron ore fines. Pursuant to tax evasion report submitted by the DCST, Enforcement Range, Balasore, learned DCST, Barbil Circle 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. Being aggrieved 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 by filing a petition stating that in the instant case the learned assessing authority initiated the reassessment proceeding u/s.10 of the OET Act pursuant to tax evasion report without communicating the self assessment u/s.9C read with 9(2) of the OET Act to the appellant. Recently, 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.** has concluded that-

*“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 reassessment under Section 10(1) of the OET Act read with 15B of the OET Rules.”*

7. Learned Counsel for the dealer vehemently argued stating that in the instant case learned assessing authority initiated the reassessment u/s.10 of the OET Act without communicating the self assessment order u/s.9 of the OET Act for which question twinkles the maintainability of the initiation of assessment proceeding. So, in view of such the assessment proceeding be quashed.

8. Per contra, learned Addl. Standing Counsel for the Revenue vehemently opposed to the plea taken by the dealer-appellant relying upon the decision decided in the case 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..."*

9. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record vis-à-vis the grounds of appeal, cross objection and the orders of the fora below. 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 Addl. 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.

10. 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.

11. 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.**

12. 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 rendered 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)  
2<sup>nd</sup> Judicial Member

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