

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

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

**S.A. No. 320 (V) of 2015-16**

(Arising out of order of the learned Addl. Commissioner of  
Sales Tax (Appeal), South Zone, Berhampur,  
in Appeal Case No. AA(VAT) 171/2012-13,  
disposed of on dated 30.09.2015)

**S.A. No. 168 (ET) of 2015-16**

(Arising out of order of the learned Addl. Commissioner of  
Sales Tax (Appeal), South Zone, Berhampur,  
in Appeal Case No. AA(ET) 170/2012-13,  
disposed of on dated 30.09.2015)

M/s. Patnaik Steels and Alloys Ltd.,  
At:- A/22, Falcon House,  
Cuttack Road, Bhubaneswar. ... Appellant

**-Versus-**

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

**S.A. No. 287 (V) of 2015-16**

(Arising out of order of the learned Addl. Commissioner of  
Sales Tax (Appeal), South Zone, Berhampur,  
in Appeal Case No. AA(ET) 171/2012-13,  
disposed of on dated 30.09.2015)

**S.A. No. 154 (ET) of 2015-16**

(Arising out of order of the learned Addl. Commissioner of  
Sales Tax (Appeal), South Zone, Berhampur,  
in Appeal Case No. AA(ET) 170/2012-13,  
disposed of on dated 30.09.2015)

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

**-Versus-**

M/s. Patnaik Steels and Alloys Ltd.,  
At:- A/22, Falcon House,  
Cuttack Road, Bhubaneswar. ... Respondent

For the Dealer : Mr. D. Mohanty, Advocate  
For the State : Mr. N.K. Rout, A.S.C.

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Date of hearing:18.08.2023 \*\*\* Date of order: 05.09.2023  
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**ORDER**

All these four appeals in between the same parties being the outcome of one issue having the question of fact and law being akin to each other are disposed of by this composite order for the sake of brevity and convenience.

2. S.A. No.320(V) of 2015-16 and S.A. No.168(ET) of 2015-16 are preferred by the dealer, where as S.A. No.287(V) of 2015-16 and S.A. No.154(ET) of 2015-16 are preferred by the State. Challenge in these appeals are the orders dtd.30.09.2015 passed by the learned Addl. Commissioner of Sales (Appeal), South Zone, Berhampur (hereinafter referred to as, ACST/first appellate authority), thereby partly allowing the appeals against the order of assessment passed by the Deputy Commissioner of Sales Tax, Bhubaneswar I Circle, Bhubaneswar (hereinafter referred to as, DCST/assessing authority) for the period 04/05 to 08/10 raising demands of ₹76,77,218.00 including penalty imposed u/s.43(2) of the Orissa Value Added Tax Act, 2004 (in short, the OVAT Act) in VAT case and of ₹61,01,325.00 including penalty of

₹40,67,550.00 imposed u/s.10(2) of the Orissa Entry Tax Act, 1999 (in short, OET Act) in ET case.

3. The scenarios of the instant cases are that, M/s. Patnaik Steels and Alloys Ltd., Bhubaneswar is engaged in manufacture of Sponge Iron and MS Billet with captive power plant. The dealer has utilised raw materials like iron ore, coal etc. mostly procured from within the state of Odisha and sold the finished products both inter and intrastate. The dealer-company was assessed for the period 04/05 to 08/10 on exparte. Against such order of assessment, the dealer-company filed writ petition before the Hon'ble High Court of Orissa and the Hon'ble High Court remanded the assessment back to the assessing officer in W.P.(C) No.30549 of 2011 with the following directions:-

- “(a) To allow opportunity to the dealer company for production of books of accounts;
- (b) The Assessing Officer to furnish a copy of both the reports of Special Investigation Team and the Investigation Unit subject to the conditions that the petitioner shall produce books of accounts and deposit a sum of ₹1,60,00,000/- within a period of three weeks from the date of order of the Hon'ble High Court of Orissa;
- (c) The petitioner company to appear on 13.01.2022 before the assessing officer.”

4. Pursuant to the direction of the Hon'ble Court, the dealer-company appeared, deposited the conditional amount of the demanded tax and thereafter received the copy of the tax

evasion reports for production of accounts later. Then the dealer-company produced the books of account.

5. Noteworthy to mention that the instant firm was visited twice by the Sales Tax Authorities in the year 2010-11, once by the Sales Tax Officer, Investigation Unit, Jajpur Road on 11.05.2010 and then by the Asst. Commissioner of Sales Tax, Flying Squad, Vigilance Directorate on 18.08.2010. Consequently, two reports were communicated to the office of the learned assessing authority for assessment under the OVAT Act and OET Act relating to the tax period 04/05 to 08/10 and the demands as mentioned above were raised against the dealer.

6. Against such tax demands, the dealer preferred first appeals before the learned first appellate authority who partly allowed the appeals by reducing the demands to ₹82,91,052.00 in VAT case and ₹19,02,237.00 in ET case.

7. Further being dissatisfied with the orders of the learned first appellate authority, both the dealer and the State preferred these appeals as per the grounds stated in their grounds of appeals.

8. Cross objections are filed in these cases both by the dealer and the State being the respondents.

9. During course of argument, learned Counsel for the dealer vehemently argued stating that no order of assessment has been made/completed on 29.10.2010 either u/s.39/40/42 of the OVAT Act and communicated to the dealer. So, the ratio

decided by the Hon'ble High Court of Orissa in the case of **M/s. Keshab Automobiles v. State of Odisha (STREV No.64 of 2016 decided on 01.12.2021)** and upheld by the Hon'ble Apex Court is squarely applicable to this case. Likewise, learned Counsel for the dealer also contended stating that no order of assessment u/s.9(c) of the OET Act has been made/completed on 29.10.2010 under the OET Act and communicated to the dealer. So, the ratio decided by the Hon'ble High Court of Orissa in the case of **M/s. ECMAS Resins Pvt. Ltd. v. State of Odisha and Ors.** in **W.P.(C) No.7458 of 2015 dtd.05.08.2022** is applicable to this case.

Per contra, learned Addl. Standing Counsel for the Revenue argued stating that pursuant to notice dtd.11.05.2010 and 18.08.2010 in form VAT-401, the dealer participated in the proceeding on different dates and produced relevant documents before the authority and thereafter scrutiny of documents and returns, assessment u/s.39 of the OVAT Act and u/s.9 of the OET Act was completed on 29.10.2010. Further contention of the Revenue is that, from the assessment record and from the order-sheet it is seen that there has been self-assessment u/s.39 of the OVAT Act on 29.10.2010 and the same has been communicated vide notice in form VAT-307. Further contention of the Revenue is that, order of audit assessment u/s.42 of the OVAT Act was passed for the period 01.04.2005 to 31.03.2009 on dtd.30.08.2011 i.e. prior to order of assessment passed u/s.43 of the OVAT Act. Learned Addl. Standing Counsel also submitted that the assessment proceeding completed u/s.9 of the OET Act and the same has been communicated vide notice in E-32

simultaneously while issuing notice for reopening of assessment u/s.10 of the OET Act and after that only assessment proceeding u/s.10 of the OET Act was continued and completed. So, the case of the dealer is not covered by ECMAS Resins case.

10. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record vis-a-vis grounds of appeal and the orders of the fora below. On perusal of the case record, it is apparent that, the order of assessment u/s.42 of the OVAT Act for the period 01.04.2005 to 31.03.2009 was passed on dtd.30.08.2011 and notice was issued on dtd.08.09.2011 vide Issue No.5686. Likewise, notice was issued to the dealer for assessment of tax on escaped turnover in form VAT-307 u/s.43 of the OVAT Act for the period 01.04.2005 to 31.08.2010 vide letter No.1985 dtd.18.03.2011. Likewise, in ET case also order of assessment u/s.9C of the OET Act for the period 01.04.2005 to 31.08.2009 was passed on dtd.30.08.2011 and notice was issued on dtd.08.09.2011 vide issue No.5687. Likewise, notice was issued to the dealer for assessment of tax on escaped turnover in form E-32 u/s.10 of the OET Act for the period 01.04.2005 to 31.08.2010 on dtd.18.03.2011 vide letter No.1986 dtd.18.03.2011.

So, after have a glance to all these sequences, assessment u/s.42 of the OVAT Act and assessment u/s.9C of the OET Act for the period under challenge were alleged to have been initiated on dtd.08.09.2011 and thereafter reassessment proceeding u/s.43 of the OVAT Act and u/s.10 of the OET Act for the period under challenge were initiated on

dtd.18.03.2011. So, in view of such, the plea taken by the Revenue is out rightly rejected and on the other hand it becomes certain that both the cases of Keshab Automobiles v. State of Odisha (supra) and ECMAS Resins Pvt. Ltd. v. State of Odisha (supra) are squarely applicable to the cases of the dealer.

11. In view of the law expounded by the Hon'ble High Court in case of **M/s. Keshab Automobiles (supra)** and subsequently confirmed by the Hon'ble Apex Court, the proceeding u/s.43 of the OVAT Act has been initiated by the assessing authority without complying with the requirement of law and without giving any finding that the dealer-assessee was formally communicated about the acceptance of self-assessed return, the proceeding itself is not maintainable. Likewise, the present petition concerns the assessment under the OET Act for the same period. 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 verdicts of the Hon'ble Courts, we are of the unanimous view that the claim of the appellant deserves a merited acceptance.

12. In the result, the appeals preferred by the dealer both under the OVAT Act and OET Act are allowed, whereas the appeals preferred by the State are dismissed. As a corollary the impugned orders of the fora below passed in VAT and ET cases are hereby quashed. Cross objections are disposed of accordingly.

Dictated & corrected by me

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

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

I agree,

Sd/-  
(G.C. Behera)  
Chairman

I agree,

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