

THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No.15 (ET) of 2022

S.A. No.16 (ET) of 2022

S.A. No.17 (ET) of 2022

S.A. No.21 (ET) of 2022

S.A. No.22 (ET) of 2022

S.A. No.23 (ET) of 2022

(Arising out of the orders of the learned Addl.CST(Appeal) Rourkela in First Appeal Nos. AA 11 (ET) RL-I/ 2017-18 & AA 12 (ET) RL-I /2018-19 disposed of on 31.03.2022, First Appeal Nos. AA 14 (ET) RL-I/2018-19 & AA 19 (ET) RL-I/2018-19 disposed of on 28.04.2022, in First Appeal Nos. AA 13 (ET) RL-I/2018-19 & AA 21 (ET) RL-I/2018-19 disposed of on 30.03.2022.)

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

M/s. SAIL, (Rourkela Steel Plant),
At/Po- Rourkela, Dist-Sundergarh. Appellant.

-Vrs. -

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

For the Appellant : : Mr. K. Rath, Advocate.
For the Respondent : : Mr. D. Behura, S.C.(C.T.)
: : Mr. S.K. Pradhan, Addl. SC(C.T.)

Date of Hearing : 09.10.2023 * Date of Order : 08.11.2023**

O R D E R

The aforementioned six second appeals have been preferred by the dealer-company under Section 17(1) of the OET Act challenging the first appeal orders of the Additional Commissioner of Sales Tax (Appeal), Rourkela (in short, 'Id. FAA') passed in first appeal orders mentioned above confirming the orders of assessments passed under Section 10 of the OET Act by the Deputy Commissioner of Sales Tax, Rourkela-I Circle, Uditnagar

(in short ld. assessing authority). These appeals though relate to different tax periods involve common question of facts and law. For convenience, they are clubbed together for hearing and disposal made in a common order.

2. The facts leading to these second appeals are summarized in brief for better appreciation. M/s. Rourkela Steel Authority of India Ltd., Rourkela Steel Plant, Rourkela, a Govt. of India undertaking (hereinafter called the RSP) is engaged in manufacturing and sale of iron and steel goods. It imports scheduled goods like coal, refectories, spare parts, machineries and equipments, fire bricks etc. from outside the territory country of India and from outside the state of Odisha. The ld. assessing authority during the course of scrutiny of returns could find that although the dealer-company has filed returns disclosing turnover of scheduled goods brought in from outside the territory of India and scheduled goods procured from outside the state of Odisha, entry tax liability on this score has not been discharged. Assuming non-payment of entry tax on this account as under-assessed, the learned assessing authority has initiated proceedings under section 10(1) of the OET Act. A brief fact exhibiting tax periods and demands raised thereunder at assessments is as under:-

S.A. No. 15(ET) of 2022

M/s. RSP is learnt to have procured scheduled goods worth ₹1447,64,55,250.00 during the tax period from 01.06.2016 to 30.09.2016 from outside the country and from outside the State of Odisha. The ld. assessing authority initiated proceeding under section 10 of OET Act and raised the demand of ₹6,59,24,265.00 which includes interest of ₹9,51,499.00.

S.A. No. 16(ET) of 2022

The ld. assessing authority initiated proceedings under section 10 of OET Act for non-payment of entry tax on scheduled goods worth ₹813,28,06,600.00 procured abroad and from outside the State of Odisha during the tax period 01.10.2016 to

31.12.2016 and raised demand of ₹5,98,09,769.00 including interest of ₹10,48,438.00

S.A. No. 17(ET) of 2022

Similarly, on account of procurement of scheduled goods for ₹2086,20,52,796.00 from outside the territory of India as well as from outside the State of Odisha during the tax period from 01.02.2015 to 31.08.2015, the ld. assessing authority assessed the dealer-company under Section 10 of the OET Act raising demand of ₹14,79,36,627.00 including interest of ₹53,45,645.00.

S.A. No. 21(ET) of 2022

As to the tax period from 01.02.2017 to 30.06.2017, the scheduled goods procured from outside the country and from the outside the State has been disclosed at ₹1215,53,48,750.00 against which, no entry tax was reported to have been paid. The ld. assessing authority initiating proceedings under Section 10 of OET Act raised demand of ₹859,30,346.00 including interest of ₹10,85,760

S.A. No. 22(ET) of 2022

In respect of the turnover of scheduled goods worth ₹1447,64,55,250.00 purchased from abroad and outside the State of Odisha during the tax period 1.12.2015 to 31.05.2016 on which, no entry tax was paid, the ld. assessing authority raised demand of ₹10,68,34,913.00 including interest of ₹33,14,327.00 as per Section 10 of the OET Act.

S.A. No. 23(ET) of 2022

The ld. assessing authority initiated proceedings under section 10 of OET Act for non-payment of entry tax on scheduled goods worth ₹.865,67,50,591.00 procured abroad and from outside the State of Odisha during the tax period 01.09.2015 to 30.11.2015 and raised demand of ₹6,49,22,714.00 including interest of ₹9,81,526.00.

3. The dealer-company being aggrieved against the above orders of the ld. FAA filed second appeals before this forum

submitting the grounds of appeal. Mr. Kaniska Rath, learned Advocate appearing on behalf of the dealer-company has submitted additional grounds of appeal holding that initiation of proceedings under Section 10 of the OET Act in all the cases under appeal is not sustainable in law without completion of assessment under Section 9(1) of the OET Act. Reference has been placed on the decision of the Hon'ble High Court of Odisha passed in case of **M/s. ECMAS Resins Pvt. Ltd. Vs. State of Odisha and Others** reported in W.P.(C) No.7458 of 2015.

The State has filed cross objections supporting the orders of the Id. FAA. The State also objects to the additional grounds of appeals filed which were issued along with the notice of hearing.

4. Gone through the rival contentions. The orders of the forums below are gone through with reference to the grounds of appeals/additional grounds appeal and the cross/additional objections filed in defence. From the facts as emerging from records, it is unraveled that the Id. assessing authority has proceeded to assess the dealer-company under Section 10 of the OET Act on the plea that entry tax has not been paid on the turnover of scheduled goods procured from outside the State and from outside the territory of India. The prerequisite precedent to initiation of proceedings under Section 10 of the OET Act is not complied with inasmuch as that the re-assessment as per Section 10 of the OET Act cannot be taken up unless the scheduled goods brought by a dealer has escaped assessment of tax or value of the scheduled goods has been under-assessed or any deduction has been allowed wrongly. This apart, the returns filed by the dealer-company in the present case cannot be accorded as self-assessed, as the returns in question are not in order. For, the returns filed are not accompanied with the proof of deposit of tax. Thus, the viability of acceptance of self-assessment under Section 9(1) read with Section 9(2) of the OET Act by the assessing authority is vitiated. Accordingly, the initiation of proceedings with respect to

the aforesaid six second appeals under Section 10(1) of the OET Act is not sustainable being devoid of jurisdiction.

5. It is felt worthy to provide a brief account of the circumstances that led the learned assessing authority to raise demands of tax and interest on scheduled goods disclosed in returns without payment of tax. Notwithstanding the above observation of this forum with respect to non-sustainability of initiation of proceedings under section 10 of the OET Act, the facts evolve that, as it appears, the learned assessing authority on scrutiny of the returns as per sub-section 10 of Section 7 of the OET Act could find out non-payment of entry tax on turnover disclosed towards purchase of scheduled goods from outside the territory of India and scheduled goods purchased from outside the state of Odisha. The learned assessing authority instead of initiating proceeding under Section 10 of the OET Act ought to have proceeded under sub-section 11 of section 7 of the OET Act. Nevertheless, it not denying a fact that the dealer-company appears to have withheld payment of tax on these accounts in contravention of the decision dated 03.02.2010 of the Hon'ble Apex Court passed in I.A. No.327-651/2009 arising out of the SLP (C) No.14454-14778 of 2008 or decision of the said Court in SLP (C) No.33923 of 2012. The decisions of the Hon'ble Court in this regard meant for the dealers to deposit 1/3rd or 50% of the tax admitted in returns as the case may be till final disposal of the SLP (C) No.14454-14778 of 2008. Non-compliance of tax liability by the dealer-company in defiance of the conditions prescribed in the aforesaid judgments was reason for assessments made under section 10 of the OET Act. Such initiation of proceedings became infracted owing to non-adherence of the pre-conditions necessitated for assessment under section 10 of the OET Act.

6. However, the matter as regards levy of entry tax on scheduled goods brought in from outside the territory of India and such goods brought from outside the State that not produced in Odisha has been set to rest consequent upon outcome of the

verdict of the Hon'ble Apex Court vide order dated 28.03.2017 passed in case of the **State of Orissa Vs. Reliance Industries Ltd. and Others** in SLP (C) No.14454-14778 of 2008 pursuant to the decision dated 11.11.2016 rendered in Nine-Judge Bench in case of **Jindal Stainless Ltd. Vs. State of Haryana**, 2016 AIR SCW 5617 allowing the SLP filed by the State and thus, a tax on entry of goods into local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing State. The Division Bench of the Hon'ble Apex Court in case of the **State of Kerala and Others Vs. Fr. William Fernandez and Others** reported in (2018) 57 GSTR 6 (SC) relying on the judgment passed in the Nine-Judge Bench (supra) have observed that Odisha Entry Tax Act, 1999, Kerala Tax Act, 1994 and Bihar Tax Act on Entry of Goods in Local Area for Consumption, Use, or Sale, 1993 (before its amendment by Bihar Act, 2003 and 2006) do not exclude levy of entry tax on the goods imported from any place outside territories of India into a local area for consumption, use or sale. It is pertinent to mention here that the Hon'ble High Court of Odisha in case of **S.S. Steeoy Pvt. Ltd. Vs. Commissioner of Commercial Taxes, Odisha and Others** reported in W.P.(C) No.21007 of 2007 has directed to deposit the balance tax along with interest accrued on or after 28.03.2017.

7. The above being the settled legal position with respect to levy of entry tax on scheduled goods brought in either from abroad or from outside the State regardless to whether produced in Odisha or not, the dealer-company in the present cases is required to deposit the balance tax and interest thereon for the tax periods under appeal, if not paid yet. As is apparent from the first appeal orders, the dealer-company was made to deposit 50% of the tax demand and 20% of interest in order to avail interim stay on such demands raised in assessments passed by the learned assessing authority as per the orders of the Hon'ble Apex Court. In compliance, the dealer-company has deposited tax demand for ₹3,24,86,383.00 and interest for ₹1,90,300.00 during the tax

period 01.06.2016 to 30.09.2016. As for the tax period 01.10.2016 to 31.12.2016, the dealer company is reported to have deposited ₹2,93,80,666.00 towards tax demand and ₹2,09,688.00 towards interest. As for the tax period 01.02.2015 to 31.08.2015, a sum of ₹7,12,95,493.00 and ₹10,69,128.00 is reported as deposited towards tax demand and interest respectively. As per the tax period 01.02.2017 to 30.04.2017, the first appeal order reveals deposit of tax demand for ₹4,24,22,293.00 and interest of ₹2,17,152.00. Similarly, an amount of ₹5,17,60,293.00 towards tax demand and ₹6,62,865.00 towards interest is reported as deposited. As per the tax period 01.09.2015 to 30.11.2015, the first appeal order reveals deposit of ₹3,19,70,594.00 towards tax demand and ₹1,96,305.00 towards interest.

8. The above being the facts, we are of the view that the dealer-company has disclosed the turnover in returns admitting tax thereon but, has withheld payment of tax. Accordingly, assessments passed by the learned assessing authority under the provision of section 10(1) of the OET Act are not sustainable in law being lack of jurisdiction. The orders of assessments as well as the orders of the Id.FAA are, therefore, liable to be quashed. Other issues cited in the grounds of appeal are rendered redundant.

9. Admittedly, the present second appeals do not engulf disputes on self-assessments and payment made against tax admitted in returns. We, therefore, decline to offer any comments on its merit. We rather feel it proper to observe that the dealer-company is bound by law to abide by the decision rendered by the Hon'ble High Court of Odisha in case of ***M/s. Shree Bharat Motors and Another Vs. The Sales Tax Officer, Bhubaneswar-I Circle, Bhubaneswar and Others*** reported in W.P.(C) No.13736 of 2017 decided on 15.03.2023.

10. Resultantly, the appeals filed by the dealer-company are allowed. The orders of the Id.FAA are set aside. The orders of assessment are quashed. Cross objections are hereby disposed of accordingly.

However, we would like to observe that the finding of this Tribunal no way affects the payment of admitted tax. The payment of admitted tax, if any, shall be guided by the dictum of the Hon'ble High Court of Odisha passed in case of **M/s. Shree Bharat Motors Ltd** cited supra.

Dictated and corrected by me.

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

I agree,

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

Sd/-
(G.C. Behera)
Chairman

I agree,

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