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

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

S.A. No. 43(ET) of 2019
(Arising out of the order of the learned Addl. Commissioner of Sales Tax (Appeal), North Zone, Odisha, Sambalpur, in Appeal Case No. AA-70(E)/18-19, disposed of on dtd.31.12.2018)

M/s. Gayatri Agro Oil & Food Products,
At:- Podkham, P.O.- Sirol, Kesinga,
Dist.- Kalahandi. ... Appellant

- V e r s u s -

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

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

Date of hearing: 18.11.2023 *** Date of order: 22.11.2023

O R D E R

The dealer prefers this appeal challenging the order dtd.31.12.2018 passed by the learned Addl. Commissioner of Sales Tax (Appeal), North Zone, Odisha, Sambalpur (hereinafter referred to as, ACST/first appellate authority) in Appeal Case No. AA-70(E)/18-19, thereby allowing the appeal in part and reducing the demand against the order of assessment passed by the learned Deputy Commissioner of

Sales Tax, Kalahandi Circle, Bhawanipatna (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 ₹33,64,962.00 including penalty of ₹22,43,308.00 for the tax period from 01.04.2013 to 30.06.2017.

2. The case at hand is that, the dealer-appellant being a partnership concerned is engaged in manufacturing of refined rice bran oil and sunflower oil and sold refined rice bran oil in bulk through oil tanker under the brand name of "Sobha and Sankha". The dealer-appellant also purchased goods from within the State as well as from unregistered dealers. Pursuant to fraud case report submitted by the DCST, Vigilance, Koraput Division, Jeypore proceeding was initiated u/s.10 of the OET Act and the demand as mentioned above was raised against the dealer.

3. Against such tax demands, the dealer preferred first appeal before the learned first appellate authority who allowed the appeal in part and reduced the demand to ₹18,67,424.00.

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 raised the point of maintainability stating that in absence of completion of assessment u/s.9, 9A or 9C of the OET Act for the tax period under challenge, the assessment u/s.10 of the

OET Act made by the learned assessing authority for such tax period is not sustainable in law. Furthermore, learned Counsel for the dealer also relied upon the case of **M/s. *ECMAS Resins Pvt. Ltd. v. State of Orissa*** and prayed to quash the demand as raised against it.

7. Per contra, learned Standing Counsel for the Revenue argued that the assessing authority has assessed the dealer-company u/s.10 of the OET Act for the tax period under challenge on receipt of tax evasion report submitted by the Sales Tax Officer, Vigilance Division, Bhubaneswar which is found to be in order as per the provision of law. The additional ground preferred by the dealer-assessee is not justified since it is completely new with intention to avoid payment of due tax. Learned Standing Counsel for the Revenue also relied upon 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…"*

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 my 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 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)
2nd Judicial Member

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