BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A.No.84(ET) of 2015-16

(Arising out of the order of the learned DCST, Ganjam Range, Berhampur First Appeal Case No. AAE.23/2008-2009 disposed of on 17.08.2009)

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

M/s. Indian Rare Earths Ltd.,
Matikhalo, Chatrapur,
Dist-Ganjam. ... Appellant.

-Versus –

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

For the Appellant: : Mr. B.R. Panda, Advocate.
For the Respondent : Mr. D. Behura, S.C. (CT).
: Mr. S.K. Pradhan, Addl.S.C.(C.T.)

Date of Hearing : **02.01.2024** *** Date of Order : **03.02.2024**

O R D E R

The dealer is in appeal against the order dated 17.08.2009 of the Deputy Commissioner of Sales Tax, Ganja mange, Berhampur (in short, 'ld. FAA') passed in First Appeal Case No.AAE.23/2008-09 confirming the order of scrutiny passed under Section 10 of the OET Act read with Rule 10(6)(a) of the OET Rules by the learned Sales Tax Officer, Ganjam-II Circle, Berhampur (in short, 'ld. STO')

pertaining to the month endings June,2007 to March,2008 raising demand of ₹8,14,077.00 which includes interest of ₹15,962.00.

2. The factual background of the case is that the ld. STO took up scrutiny of the returns filed under Section 7(1) of the OET Act for the month endings June, 2007 to March, 2008 and could find that the dealer-company namely M/s. Indian Rare Earths Limited availed entry tax set off of ₹7,98,117.71 on purchases of furnace oil outside the state valuing ₹7,98,11,771.01. The ld. STO disallowed the said set off of entry tax holding that furnace oil being a consumable utilized in the ancillary activities for production of minerals and not as raw materials for manufacturing of finished product, the claim of set off of ₹7,98,115.00 would not be allowed. Accordingly, the ld. STO raised demand of ₹8,14,077.00 including penalty of ₹15,962.00 upon issuance of notice in Form E-24. The first appeal as preferred by the dealer resulted in confirming the order of the ld. STO. The dealer-company having not availed the relief as cherished for in the first appeal approached this forum for justice. Hence, this second appeal.

3. The grounds of appeal, additional grounds and the cross objection filed by the State are gone through. Mr. B.R. Panda, ld. Advocate appearing on behalf of the dealer-appellant submits that there was no opportunity of being heard was afforded to the dealer-

appellant before raising demand by the ld. STO unilaterally. It is further submitted that furnace oil is a raw material for production of minerals. Furnace oil is used in the process of manufacture without which the production of finished product such as minerals is not feasible. In filing additional grounds of appeal, the ld. Advocate pleads that in absence of assessment under Section 9(2) and 9(C) of the OET Act, the assessment made under Section 10 of the said Act is bad in law. On the other hand, the State supports the orders of the forums below holding that entry tax paid by the manufacturer of the scheduled goods on purchase of the raw materials which directly go into the composition of finished product by the manufacturer of the scheduled goods shall be set off against entry tax payable under Sub-Rule (2) of Rule 19 of the OET Rules. In view of the above mandate, the claim of entry tax set off on purchase of furnace oil is not at all admissible, as the same does not directly go into composition of the finished product.

4. Having gone through the orders of the forums below, it is relevant to note that the ld. STO on scrutiny of the returns for the month endings June,2007 to March,2008 found the dealer to have availed set off of entry tax for ₹7,98,115.00 and issued a notice in form E-24 as per sub-Rule 6 (a)(b) of Rule 10 of the OET Rules. Raising of demand unilaterally by the ld. STO by simply issuance of

notice in Form E-24 is against the principles of natural justice. There was no opportunity of being heard afforded to the dealer-company to defend. To the utter dismay, the ld. STO has held that scrutiny of returns filed by the dealer-appellant for the aforesaid month endings was made as required under Section 10 read with Rule 10(6)(a) of the Odisha Entry Tax Amendment Act, 2005. In this connection, it is pertinent to hold that the provision of Section 10 of the OET Act is about re-assessment of a dealer where the scheduled goods brought by the dealer has escaped assessment of tax or under-assessed or any deduction wrongly allowed. This provision of the OET Act is not applicable in the present fact and the circumstances of the case, as the ld. STO caused scrutiny of returns and alleged the dealer-appellant to have claimed inadmissible set off of entry tax.

Notwithstanding the above, Sub-Rule 6(a) and (b) of Rule 10 of the OET Rules provide as under:-

> *"(a) Each and every return in relation to any tax period furnished by a dealer shall be subject to manual or system based scrutiny.*
>
> *(b) If, as a result of such scrutiny, the dealer is found to have made payment of tax less than what is payable by him for the tax period, as per the return furnished, the assessing authority shall serve a notice in Form E-24 upon the dealer directing him to*

pay the balance tax and interest thereon by such date as may be specified in that notice."

The notice as issued under Rule 10(6)(b) of the OET Rules in Form E24 prescribes that

"*You are found to have filed the return for the tax period commencing from ---- to ---- on -----*

OR

Scrutiny of the return for the aforesaid tax period reveals that you have paid an amount of ₹----- (Rupees----) less than what is admitted in the return furnished towards tax for the said tax period.

Your are therefore, directed to pay the amount of ₹------ (Rupees-----) as due and admissible in accordance with the said return by dt.----- ."

5. On analysis of the aforesaid prescriptions outlined under the OET Act and Rules made thereunder, it is made clear that if a dealer pays the less amount of tax than what he admits to be payable by him as per the return furnished, the Assessing Authority shall and can ask the dealer to pay the differential amount in Form E-24. Form E-24 is only a notice to the dealer asking him to pay the differential tax admitted in the return. The decision of the Hon'ble High Court of Orissa delivered in case of ***Toyo Engineering India Ltd. Vs. Sale Tax Officer, Jagatsinghpur Circle, Paradeep and Another*** reported in (2012) 47 VST 109W (Ori) is relevant to the present issue wherein the Hon'ble Court has observed that notice in Form E-24 is sought to be issued in case of a dealer admitting tax in

the return has made less payment of tax. In the present case, the ld. Assessing Authority has calculated the tax due unilaterally giving his own interpretation and issued a notice in Form E-24. It is illegal out and out. There was also no opportunity of being heard afforded to the dealer-company before such issuance of notice. There is no provision under sub-rule 6 of Rule 10 of the OET Rules to give any opportunity of hearing to the dealer before issuing notice under that sub rule in Form E-24. For, notice in Form E-24 is issued in case of a situation where the dealer has made payment of entry tax less than that admitted in the return filed. Under the above premises, the impugned notice in Form E-24 issued in the instant case is rendered infructuous being devoid of any legal stand. In corollary, the order of scrutiny passed by the ld. Assessing Authority as well as the order of the ld.FAA is not sustainable in the eyes of law. In view of the above, other contentions taken in the grounds of appeals are rendered redundant.

6. In the result, the appeal filed by the dealer-company is allowed. The order of the ld. FAA is set-aside and the order of scrutiny of returns and the consequential notice in Form E-24 issued by the ld. Assessing Authority are quashed. Cross objection is accordingly disposed of.

Liberty is given to the Assessing Authority to proceed against the dealer-assessee in accordance with law, if he is of the opinion that the tax due on the return as furnished by, the dealer-assessee is not paid by it due to wrong/excessive claim of deduction(s) in the return.

Dictated & Corrected by me

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

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