BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.

(Arising out of the order of the learned Addl.CST(Appeal), South Zone, Berhampur in First Appeal Nos. AA-SNG-119/13-14 (OVAT) & AA-SNG-121/13-14(Orissa Entry Tax) disposed of on 21.07.2015 & 05.09.2015)

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

S.A. No.199(VAT) of 2015-16 &
S.A. No.161(ET) of 2015-16

M/s. Jai Balaji Jyoti Steels Limited,
Village-Tainser, Near Birkera,
Dist- Sundargarh, Odisha. ... Dealer

- Vrs. –

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

S.A. No.218(V) of 2015-16,

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

- Vrs. –

M/s. Jai Balaji Jyoti Steels Limited,
Village-Tainser, Near Birkera,
Dist- Sundargarh, Odisha. ... Dealer

For the Dealer: : Mr. B. B. Panda, ld. Advocate
For the State: : Mr. D. Behura, ld.S.C.(C.T.)
: Mr. S. K. Pradhan, ld. ASC(C.T)

Date of Hearing : 04.10.2023 * Date of Order : 25.10.2023**

O R D E R

Both the State and the dealer-assessee are in appeal challenging the order dated 21.07.2015 of the Additional Commissioner of Sales Tax (North Zone), Office of the Commissioner of Commercial taxes, Odisha, Cuttack (in short, ld.FAA) passed in Appeal No.AA-SNG-119/2013-14(OVAT) in relation to the assessment passed by the Deputy Commissioner Sales Tax, Rourkela-II Circle, Panposh (in short, 'ld. assessing authority') under Section 42 of the OVAT Act. This apart, the dealer-assessee is also in appeal at this forum against the first appeal order dated 05.09.2015 passed in Appeal No.AA-SNG-121/2013-14(OET) with respect to the assessment passed under section 9C of the OET Act by the same learned assessing authority. All these three second appeals involve identical question of facts and law. Thus, they are heard together and disposed of in a composite order for the sake of convenience.

2. The summary of the case in nutshell is that the dealer-assessee under the name and style of M/s. Jai Balaji Jyoti Steel Limited, Tainsar near Birkera, Uditnagar, Rourkela, TIN-21682000007 is engaged in manufacture and trading of Sponge Iron, MS Ingots and MS billets utilizing raw materials like iron ore, coal, dolomite, pig iron, pooled iron, manganese, MS scraps, ferro silicon etc. effecting purchases from both inside and outside the state of Odisha. Tax audit for the tax period from 01.04.2006 to 31.03.2011 was conducted alleging inadmissibility of claims disclosed in the returns filed that gave rise to less compliance of tax liability by the dealer-assessee. Basing on such allegations, assessment proceedings under Section 42 of the OVAT Act and under Section 9C of the OET

Act were initiated by the learned assessing authority for the tax period 01.04.2006 to 31.03.2011 which resulted in extra demand of ₹1,54,89,114.00 including penalty of ₹95,48,836.00 under the OVAT Act and ₹11,58,061.00 including penalty of ₹6,68,878.00 under the OET Act. The demands so raised at assessments were reduced to ₹7,55,187.00 and ₹10,10,902.00 (both inclusive of penalty) in the first appeals as preferred by the dealer-assessee. Being aggrieved, both the State and the dealer-assessee have approached this forum filing second appeals in respect of the first appeal order passed under the OVAT Act and the dealer-assessee sued for the demand under the OET Act.

3. The State assails the order of the ld.FAA as prejudiced. It is contended that the learned assessing authority has judiciously considered allowing 10% of the total production of Ingots from raw material like Sponge Iron and pig Iron towards burning loss for the year 2006-07 and 2007-08. On estimation, the learned assessing authority could find the dealer-company to have availed excess burning loss to the tune of ₹11,30,67,240.00. It was rightly added to the GTO and TTO at assessment. The ld.FAA has deleted the same terming such estimation as hypothetical assumption. The ld.FAA has allowed burning loss as disclosed by the dealer-assessee without any investigation either by any technical expert or by the Inspector of Factories and Boilers. Deletion of interest levied under Section 34 of the OVAT Act at assessment has also been protested.

4. Mr. B.B. Panda, learned Advocate representing the dealer-assessee has filed a written submission in addition to the

grounds of appeal. He advocates that there could be no assessment either under Section 42 of the OVAT Act or under Section 9C of the OET Act after completion of the assessments under Section 43 of the OVAT Act and under Section 10 of the OET Act for the self-same tax period. It is argued that in the impugned cases, the assessments under Section 43 of the OVAT Act and under Section 10 of the OET Act pertaining to the tax period from 01.04.2007 to 31.03.2010 have been completed on **30.03.2013** vide order No.3270 dated 02.04.2013 and vide order No.3271 dated 02.04.2013. Both the reassessment orders were served upon the dealer-company on 01.05.2013. On the other hand, the assessments under Section 42 of the OVAT Act and under Section 9C of the OET Act for the tax period from 01.04.2006 to 31.03.2011 have been completed on **12.04.2013** vide order No.3824 dated 25.04.2013 and order No.3825 dated 25.04.2013.The said orders were served upon the dealer-company on 01.08.2013. Accordingly, there being audit assessments subsequent to the re-assessments for the self-same tax period, the sustainability of audit assessments in law is vitiated. Mr. Panda places reliance on the decision of the Hon'ble High Court of Odisha in case of ***M/s. Balaji Tobacco Store Vs. The Sales Tax Officer, Cuttack-I East Circle, Cuttack*** reported in W.P.(C) No.31251 of 2011 which is quite relevant in the present cases. Since it is a pertinent issue raised confining to the maintainability of the audit assessments, we consider it ideal to dwell upon this aspect at the outset before concentrating on other disputes in the grounds of appeal filed by both the parties.

5. Gone through the rival submissions. The orders of assessment, first appeal orders, grounds of appeal, written submission together with its annexures and the materials available on record are gone through. It transpires on perusal of the record that, as rightly advocated, the assessments under Section 43 of the OVAT Act and under Section 10 of the OET Act have been passed on 30.03.2013 for the tax period from 01.04.2007 to 31.03.2010 whereas the assessments under Section 42 of the OVAT Act and under Section 9C of the OET Act for the tax period from 01.04.2006 to 31.03.2011 have been passed on 12.04.2013. From this, it is evident that a tax period from 01.04.2007 to 31.03.2010 that was earlier assessed under Section 43 of the OVAT Act and under Section 10 of the OET Act has been included in the audit assessments passed under both the Acts. It may amount to double taxation. The decision of the Hon'ble High Court of Odisha in case of ***M/s Balaji Tobacco Store Vs. The Sales Tax Officer, Cuttack-I East Circle, Cuttack*** (supra) is relevant in the present fact and circumstances of the cases. It is held by the Hon'ble Court that audit assessment under Section 42 of the OVAT Act cannot be made after completion of the assessment of escaped turnover under Section 43 of the OVAT Act read with Rule 50 of the OVAT Rules for the self-same tax period(s).

6. It is of the view that Section 42 of the OVAT Act is in pari materia with its counterpart Section 9C of the OET Act that provides provisions of audit assessment. Audit assessment under both the Acts can happen only after completion of tax audit under Section 41 of the OVAT Act and under Section 9B of the OET Act. In other words, audit assessment under both

the Acts treads along hand in hand. For the self-same tax period, escaped assessment may take place after audit assessment, but there could not be audit assessment after completion of escaped assessment. This may turn out to be double taxation. As discussed supra, in the present case, reassessment/escaped assessments under both the Acts were completed on 30.03.2013 for the tax period from 01.04.2007 to 31.03.2010 and the audit assessments for the tax period from 01.04.2006 to 31.03.2011 were completed on 12.04.2013. In consequence, the tax period assessed earlier under Section 43 of the OVAT Act and under Section 10 of the OET Act is found included in the audit assessments. Thus, the tax period from 01.4.2007 to 31.03.2010 is sought to be excluded from the purview of audit assessments under both the Acts.

7. Under this eventuality, it is opined that the contention taken by the State in the grounds of appeal is not considerable in view of non-sustainability of a part of tax period assessed under Section 42 of the OVAT Act. The submissions made by the learned Advocate in the additional grounds of appeal are partly acceptable. This apart, the points raised by the dealer-assessee in the grounds of appeal are rendered redundant.

8. Under the above backdrop, we are of the unanimous view that the appeal filed by the State is dismissed. The appeals filed by the dealer-assessee are partly allowed. The orders of the ld.FAA are set aside. The orders of assessments passed under Section 42 of the OVAT Act and under Section 9C of the OET Act are remitted back to the learned assessing authority to reassess the dealer-assessee excluding the tax period from 01.04.2007 to 31.03.2010 for which the dealer-assessee has

already been assessed under Section 43 of the OVAT Act and under Section 10 of the OET Act. The said exercise ought to be completed within a period of three months from the date of receipt of this order. Cross objections are accordingly disposed of.

Dictated and corrected by me.

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

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