

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:  
CUTTACK**

**S.A. No. 13 (ET) of 2019**

(Arising out of order of the learned JCST (Appeal), CT & GST Territorial  
Range, Bhubaneswar in Appeal No. AA-108221822000216,  
disposed of on 26.11.2018)

Present: **Shri G.C. Behera, Chairman**

M/s. Falguni Bricks,  
Plot No. 256, Dalua, Chandaka,  
Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri R.C. Jena, Advocate  
For the Respondent : Sri D. Behura, S.C. (CT) &  
Sri S.K. Pradhan, Addl. SC (CT)

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Date of hearing : 04.05.2023      \*\*\*      Date of order : 01.06.2023  
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**ORDER**

Dealer assails the order dated 26.11.2018 of the Joint Commissioner of Sales Tax (Appeal), CT & GST Territorial Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A No. AA-108221822000216 confirming the assessment order of the Sales Tax Officer, Bhubaneswar IV Circle, Bhubaneswar (in short, 'Assessing Authority').

2. The facts of the case, in short, are that –

M/s. Falguni Bricks is engaged in manufacturing and trading of fly ash bricks in the State. The assessment period relates to 01.04.2013 to 31.03.2016. The Assessing Authority raised tax and penalty of ₹29,484.00

u/s. 10(1) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') on the basis of Tax Evasion Report (TER).

The dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the tax demand and dismissed the appeal. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection supporting the orders of the First Appellate Authority and Assessing Authority to be just and proper.

3. Learned Counsel for the Dealer files additional grounds of appeal and submits that the Assessing Authority cannot issue notice for reassessment u/s. 10(1) of the OET Act read with Rule 15B of the OET Rules unless there is self assessment as per Section 9 of the OET Act. He further submits that in absence of acceptance of return as self-assessed by way of formal communication, the initiation of escape assessment proceeding u/s. 10 of the OET Act is without statutory backing, as such, demand arising out of such proceeding is deserved to be set aside. He also submits that the Assessing Authority without considering the payment of royalty on purchase of sand along with payment of labour and transportation cost thereof treated as purchase suppression, which is baseless and illegal. He relies on the decision of the Hon'ble Court in case of *M/s. ECMAS Resins Pvt. Ltd. and other v. State of Odisha* in WP(C) Nos. **7458 of 2015 & 7296 of 2013**. So, he submits that the orders of the Assessing Authority and the First Appellate Authority are liable to be set aside in the ends of justice.

4. On the other hand, the learned Standing Counsel (CT) for the State submits that the Dealer did not raise the issue regarding acceptance of self-assessment return either at the time of assessment or before the First Appellate Authority. He further submits that if the Dealer did not raise the

issue in the earliest opportunity, he is precluded to take such ground before the second appellate authority for the first time by way of additional grounds of appeal. He further submits that communication/acknowledgement of the order of acceptance of self-assessed return is a matter of fact and the same cannot be objected at this belated stage before this forum. So, he submits that the order of the First Appellate Authority requires no interference in appeal.

5. Having heard the rival submissions and on going through the materials on record, this forum feels it proper to deal with the preliminary issue raised on behalf of the Dealer regarding maintainability of the proceeding. In the case of *M/s. ECMAS Resins Pvt. Ltd. and other* cited supra, Hon'ble Court have been pleased to observe that unless the self assessment is accepted by the Department by a formal communication to the dealer, it cannot trigger a notice for reassessment u/s. 10(1) of the OET Act r/w. Rule 15B of the OET Rules. The relevant portion of the order of the Hon'ble Court is reproduced herein below for better appreciation :-

“43. The sum total of the above discussion is that as far as a return filed by way of self assessment under Section 9(1) read with Section 9(2) of the OET Act is concerned, unless it is ‘accepted’ by the Department by a formal communication to the dealer, it cannot be said to be an assessment that has been accepted and without such acceptance, it cannot trigger a notice for re-assessment under Section 10(1) of the OET Act read with 15 B of the OET Rules. This answers the question posed to the Court.”

Keeping in view the ratio laid down by the Hon'ble Court in the cited case, the Dealer has taken the additional grounds of appeal on the point of jurisdiction and maintainability of the assessment proceeding, which strikes the root. So, the same cannot be brushed aside merely on the ground that the Dealer took the same belatedly before this forum.

6. It is settled law that unless the self assessment is accepted by the Department by a formal communication to the dealer, it cannot trigger a

notice for reassessment u/s. 10(1) of the OET Act r/w. Rule 15B of the OET Rules.

In view of the ratio laid down above by the Hon'ble Court, I am of the considered view that the assessment for the impugned period is not sustainable in the eyes of law in absence of acceptance of return of self assessment u/s. 9(1) r/w Section 9(2) of the OET Act.

7. I have already rendered my views on preliminary issue regarding maintainability of proceeding u/s. 10 of the OET Act holding that the Assessing Authority is without jurisdiction in absence of acceptance of self-assessed return. So, it is not required to discuss other issues on merit. Hence, it is ordered.

8. Resultantly, the appeal stands allowed and the impugned order of the First Appellate Authority is set aside. The assessment order of the Assessing Authority is hereby quashed. Cross-objection is disposed of accordingly.

**Dictated & Corrected by me**

**Sd/-  
(G.C. Behera)  
Chairman**

**Sd/-  
(G.C. Behera)  
Chairman**