

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A.No.65(ET) of 2013-14

(Arising out of the order of the learned JCST, Cuttack-I
Range, Cuttack, in First Appeal Case No.
AA(ET)69/CUIC/2011-12, disposed of on 28.02.2013)

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

M/s. Tarun Trading Co.,
Cantonment Road, Cuttack.

... Appellant.

-Versus -

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

... Respondent.

**Extract of corrigendum order dtd.21.02.2023 passed by the Full Bench at
Serial No.15 in S.A. No..65(ET) of 2013-14**

15/21.02.2023

On perusal of record, it is seen that there are some errors on the face of record with regard to production of some invoice by the dealer-appellant before the FAA, but inadvertently it was mentioned in the order dated 14.02.2023 in S.A. No. 65 (ET) of 2013-14 that the dealer-appellant fails to produce any document in support of its claim. So, the same needs rectification as per the provisions of Section 81 of the OVAT Act r/w Rule 34 of the OET Rules.

2. Hence, the corrigendum order.

Sub-para of para-6 in page-4 is substituted as under :-

“In the instant case, the dealer-appellant fails to produce any material evidence before the Assessing

Authority regarding ET suffered on purchase of newsprint paper from local area. The order of the FAA reveals that on verification the FAA found that the dealer-appellant to have purchased the goods from some local unregistered dealers. The FAA further observed that the same requires proper verification for ascertaining the actual position. On such finding, he remitted the matter to the Assessing Authority for verification of purchase.

In the case of *Snow White Trading Corporation v. State of Orissa*, [2014] 71 VST 351 (Orissa), Hon'ble Court were pleased to observe as follows :-

“To get benefit from payment entry tax in respect of scheduled goods purchased by a dealer from another dealer/registered dealer of that locality, who has brought the goods into the local area, the dealer need not prove that its seller has in fact paid the entry tax. It will be enough for the dealer to show that its seller is identifiable and has in fact made entry of the scheduled goods into the local area and the tax is payable by its sellers.”

In the instant case, the dealer-appellant has discharged its liability by filing invoices in support of purchase of scheduled goods where from the seller is identifiable. In view of the decision cited supra, when the seller is identifiable, the dealer-appellant has discharged its burden of proof by showing the identifiable seller of local area. Now, it requires verification whether the seller has paid ET or not. On such finding, the FAA remitted the matter to the Assessing Authority for proper verification, which suffers from no infirmity. Hence, it is ordered.”

3. It is also seen that in the operative part of the order, inadvertently it has been mentioned that the order of the learned Assessing Authority is hereby restored, which is apparently an error on the face of record, especially when the appeal has been allowed. So, the same needs rectification. Therefore, para-7 of page-5 of the order is substituted as under :-

“Resultantly, the appeal is dismissed. The impugned order of the FAA is hereby confirmed. The matter is remitted to the Assessing Authority for disposal afresh as per law keeping in view the observations made supra within a period of three months from the date of receipt of this order. Cross-objection is disposed of accordingly.”

4. The record shows that the order has not been issued to the parties till date. So, the present corrigendum order shall be issued along with the order dated 14.02.2023 and in the first page of the order, the date of corrigendum shall be mentioned along with the original order for the sake of clarity and convenience.

Issue an extract of this order.

Sd/-
Accounts Member-II **Sd/-**
2nd Judicial Member **Sd/-**
Chairman

Memo No. _____ **Dt.** _____

Copy forwarded to the Appellant/Respondent for information.

Registrar,
Odisha Sales Tax Tribunal,
Cuttack.

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M/s. Tarun Trading Co.,
Cantonment Road, Cuttack. ... Appellant.

-Versus -

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

For the Appellant : :Mr. B.P. Mohanty, Ld. Advocate
For the Respondent: :Mr. D. Behura, ld. S.C.(C.T.)

Date of Hearing: 20.01.2023 *** Date of Order: 14.02.2023
Corrigendum Order : 21.02.2023

O R D E R

M/s. Tarun Tradiing Co, Cantonment Road, Cuttack prefers this second appeal challenging the first appeal order dated 28.02.2013 passed by the Joint Commissioner of Sales Tax, Cuttack-I Range, Cuttack (in short, 'learned FAA') in First Appeal Case No. AA(ET) 69/CUIC/2011-12. The Ld. FAA remanded the order of assessment passed u/s.9 C of the OET Act by the learned Sales Tax Officer, Cuttack I Circle, Cuttack (in short, 'learned 'STO') raising demand of Rs.23,26,536.00 including penalty of Rs.15,51,024.00 back to the STO concerned for fresh assessment.

2. The facts in brief are as below:-

M/s Tarun Trading Co, Cantonment Road, Cuttack, TIN-2152200912 deals in iron and steel goods, HDPE bags, cement, paper, handmade paper, paper board and news print in retail and wholesale basis effecting purchases both from outside and inside the state of Odisha. The dealer was assessed u/s 9 C of the OET Act for the assessment period from 1.4.2006 to 31.3.2010 basing on the Tax Audit Report. In absence of satisfactory evidence in support of the procurement of News Print from the unregistered dealers locally involving an amount of Rs.7,66,44,023.00, the Ld. STO assessed ET for Rs.23,26,536.00 which includes penalty of Rs.15,51,024.00.

3. The dealer-appellant on being aggrieved against the order of assessment passed by the Ld. STO preferred first appeal. The Ld. FAA undertook verification of certain invoices and remanded the case back to the Ld. STO for proper verification.

4. The dealer-appellant being not satisfied with the order passed in the first appeal filed second appeal at this forum. Mr B.P. Mohanty appearing on behalf of the dealer-appellant contends that the news prints were purchased in the local area of Cuttack Municipal Corporation and hence, levy of entry tax on such purchases is without jurisdiction and without authority of law. He argues that levy of entry tax in the instant case is contrary to section 3 of the OET Act. He relies on the verdict pronounced by the Hon'ble High Court of Odisha in case of M/s Snow White trading Corporation Vrs. State of Odisha which provides that no entry tax can be leviable in the sale or purchase made inside a local area and therefore, admittedly, in the present case the purchases were made inside the local area and, accordingly, the

impugned levy of entry tax is without jurisdiction and without any authority of law.

5. The State filed cross objection. It is contended that the Ld. Assessing officer as well as the Ld. FAA has rightly completed assessment and first appeal basing on the statutory provisions under the Act and Rules.

6. The rival submissions are heard. The assessment order, first appeal order, grounds of appeal and the materials on record are perused at length. The Ld. Counsel of the dealer-appellant vehemently challenges levy of entry tax by the Ld. STO on purchases of scheduled goods from the unregistered dealers within the local area i.e. within the jurisdictional area of Cuttack Municipal Corporation.

Section 3(1) of the OET Act, 1999 provides that “there shall be levied and collected a tax on **entry of the scheduled goods** into a local area for consumption, use or sale therein at such rate not exceeding twelve percentum of the purchase value of such goods from such date as may be specified by the state Government and different rates may be specified for different goods and local areas subject to such conditions as prescribed.”

‘Entry of goods’ in relation to the OET Act as provided under section 2(d) of the said Act reads “**Entry of Goods** with all its grammatical variations and cognate expressions, means entry of goods into a **local area** from any place outside that local area or any place outside the state for consumption, use or sale therein.”

Local area means as per section 2(f) of the OET Act, the area within the limits of any :-

- (i) Municipality constituted under the Orissa Municipal Act, 1950
- (ii) Grama panchayat constituted under the Orissa Grama Panchayat Act, 1964

(iii) Other local authority by whatever name called, constituted or continued in any law for the time being in force and includes the area within an industrial township constituted under section 4 of the Orissa Municipal Act, 1950.

‘Explanation’ to section 3(2) of the OET Act speaks that “where the goods are taken delivery of on their entry into a local area or brought into the local area by a person other than a dealer, the dealer who takes delivery of the goods from such person or makes carriage of the goods shall be deemed to have brought or caused to have brought the goods into the local area.”

In the present case, the dealer-appellant claims news prints to have been purchased from the unregistered dealers from the municipal area of Cuttack Municipal Corporation. Since entry of the news prints has not taken place from any place outside the area of Cuttack Municipal Corporation, the dealer-appellant rebuts levy of entry tax on such purchases. It is provided under statute as enunciated above to the effect that entry of declared goods into a local area from any place outside that local area or any place outside the state for consumption, use or sale therein is subject to levy of entry tax. In the present case, the dealer appellant utterly failed to adduce evidences such as bills or records in support of its purchases of news print within the Municipal area of Cuttack Municipal Corporation either at the time of assessment u/s 9 C or at first appeal before the Ld. FAA. In absence of any satisfactory documentary evidences adduced at assessment/first appeal, the said claim of the dealer-appellant was disallowed. Remitting the case back to the learned STO by the Ld.FAA is not justified with the clear provision specified in ‘Explanation to’ section 3(2) of the OET Act providing that where the goods are taken delivery of on their entry into a local area or brought into the local area by a person other than a dealer, the dealer who

takes delivery of the goods from such person or makes carriage of the goods shall be deemed to have brought or caused to have brought the goods into the local area. In view of this, the first appeal order setting aside the assessment order for fresh assessment warrants interference at this forum.

7. Resultantly, the appeal is allowed. The impugned order of the Id. FAA is hereby set-aside and the order of learned assessing authority is hereby restored. Cross objection is disposed of accordingly.

Dictated & 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