

Tax Act, 1999 (in short, 'OET Act') in respect of the dealer-assessee pertaining to the tax period 2005-06.

2. The facts as revealed from the case record are as follows :

The dealer M/s. Sri Vishnu Cement Ltd. at Forest Park, Bhubaneswar is a Limited Company and deals in cement of 'Juari' and 'Vishnu' brand on wholesale basis. It had filed its return for the period from 01.04.2005 to 31.03.2006 under the OET Act in time. The return was accepted as self assessed u/S. 9 of the OET Act on 06.08.2006 since the same was found to be in order. However, an enquiry report was received from the Asst. Sales Tax Officer, Bhubaneswar-II Circle (ASTO) on 07.08.2006 with allegation regarding escapement of turnover by this dealer which led to less payment of entry tax. Pursuant to this report a reassessment proceeding u/S. 10 of the OET act was initiated against the dealer in which the authorized representative of the dealer-Company appeared before the assessing officer and produced its books of account for reassessment relating to the relevant period u/S. 10 of the OET Act. Accordingly the assessing officer verified the books of account produced by the dealer and came to know that the dealer had received goods on the basis of stock transfer notes from the company factory located at Nalgunda district of Andhra Pradesh against Form-'F' and Waybills for resale in the State of Odisha. The dealer had received

24,652.25 MT of cement having a value of ₹3,82,10,988.00 during the period under assessment and had disclosed GTO at ₹3,82,10,988.00 during the relevant period. The receipt price of the stock transfer price of 1 MT of cement was calculated at ₹1,550.00 which corresponds to one bag of cement worth ₹77.50. The dealer in the instant case had paid entry tax @ 1% on the stock transfer price of the scheduled goods brought into the State of Odisha. The ASTO had reported that this dealer was paying entry tax on the receipt price/stock transfer price of the goods but as the goods were brought other than by way of purchases the dealer-Company was liable to pay entry tax on the 'purchase price' as defined in the proviso to Section 2(j) of the OET Act in which case such value shall be construed as the sale price of the scheduled goods sold by the dealer-Company in the State of Odisha. Under this circumstance the assessing officer verified the documents of the dealer-assessee and found that it (the dealer) had effected sale of 22262.80 MT of cement at ₹7,04,38,280.00 (excluding VAT) during the year under assessment. He determined the GTO and TTO of the dealer accordingly. Then he calculated entry tax @ 1% on the TTO of the dealer which came to ₹7,79,942.00. Since the dealer had already paid ₹3,82,110.00 towards entry tax while submitting its return the assessing officer required it to pay the balance amount of ₹3,97,872.00 towards its tax liability. The assessing officer also imposed penalty on the dealer

as per the provision u/S. 10(2) of the OET Act on the ground that the dealer had wrongly disclosed the stock transfer price on which it had claimed to have paid the entry tax and had disclosed the 'assessable value' as mentioned in the excise invoice-cum-delivery chalan as the stock transfer price while omitting to add the excise duty and educational cess incurred by it to arrive at the stock transfer price correctly with the intention of evading the tax. The assessing officer thus imposed penalty of ₹7,95,744.00 i.e. twice the amount of entry tax to be paid by the dealer in the instant case and accordingly issued a demand notice requiring the dealer to pay a sum of ₹11,93,616.00 in toto towards tax liability for that relevant period.

Being aggrieved by this order of assessment the dealer-appellant preferred an appeal before the first appellate authority on the ground that the addition made to its GTO and TTO in course of reassessment proceeding held u/S. 10 of the OET Act was illegal. Determination of sale value in the instant case was not just and proper since the stock transfer price in the instant case should have been treated as the purchase price of the goods but the assessing officer taking a wrong figure of cement brought by the dealer enhanced the calculation of sale price per bag as well as per MT. It was also contended on behalf of the dealer that in the instant case penalty should not have been imposed on it as it had explained all the questions raised

by the assessing officer in course of reassessment. The first appellate authority examined the order of assessment vis-à-vis the grounds of appeal and materials available on record. He then came to a conclusion that in the instant case the assessing officer was fully justified in raising the demand against the dealer-assessee and imposition of penalty and he assigned the reasons for the same. According to his observation the dealer while bringing materials from its factory situated outside the State to inside the local area for sale on the strength of Form- 'F' on stock transfer basis had grossly under-valued the stock transfer value per bag which stood at ₹77.50 and it did the same purposefully for not paying due entry tax to the State exchequer. Usually the gap around 15% is anticipated between the purchase value and sale value but in the instant case when there was gross irregularity as wide gap between purchase price and sale price of the goods was inferred naturally by the assessing officer. Therefore, addition of certain amount to the GTO and TTO of the dealer by the assessing officer was just and proper since the same was based on the solid foundation of proper calculation of market value of cement and its corresponding purchase price. The assessing officer had determined the GTO and TTO of the dealer quite correctly following the statutory provision as envisaged u/S. 2(j) of the OET Act. So far as imposition of penalty twice the amount of tax assessed by the assessing officer is concerned the same was also upheld by the first

appellate authority on the ground that the dealer had some ulterior motive in suppressing the excise duty and educational cess on the stock transfer chalan which resulted in under- valuation of the purchase price of cement and payment of less entry tax to the State exchequer. Considering all these aspects the first appellate authority confirmed the order of assessment.

3. Being dissatisfied with the aforesaid order of the first appellate authority the dealer carried a second appeal before this forum on the grounds that the order of assessment as well as the impugned order were arbitrary and illegal. The authorities below had not applied their mind while interpreting Section 2(j) of the OET Act and as such determined the purchase value of the goods wrongly. The assessing officer did not accept the purchase price disclosed by the dealer but whimsically came to his own conclusion of the same. As the dealer- assessee had not wilfully evaded payment of tax due to the State exchequer the imposition of penalty on it by the assessing officer was also incorrect and visited with vindictiveness of the authorities concerned. Under such circumstances it is pleaded on behalf of the dealer- assessee to quash the orders of the forums below.

No cross-objection has been filed on behalf of the State in this appeal.

4. In course of hearing of the appeal it was found that none appeared on behalf of the dealer-assessee to participate in this proceeding before the Tribunal despite service of notice on the dealer by way of affixture as reported by the Circle Head, CT & GST Circle, Bhubaneswar-II and kept on record. Hence, the matter was heard exparte to be disposed of on merit as per Rule 60(1) of the OST Rules.

5. Learned Standing Counsel (CT) appearing on behalf of the State submitted that admittedly the dealer does the business of cement. It brings goods from outside the State. During the relevant period it was detected by the ASTO that it had suppressed the purchase value of the cement in order to evade the payment of entry tax on the goods brought by it. The dealer had not furnished any document to dispel this allegation of ASTO either before the assessing officer or before the first appellate authority. In such circumstances the assessing officer was compelled to determine the market value of the goods resorting to the provision of Section 2(j) of the OET Act for determination of the purchase price of the cement. Therefore, there is absolutely no reason to interfere with the impugned order in this appeal.

6. Admittedly the dealer did not appear before this forum to advance and substantiate its defence in the case. The observations of the assessing officer as well as the first appellate authority regarding tax liability of the dealer-assessee including imposition of penalty on the

dealer virtually remained uncontroverted and unchallenged in the present appeal. Apart from that we do not notice any sort of irregularity or illegality in the impugned order for which we are not inclined to disturb the same in any manner.

7. In the result, as per the discussion made above, the appeal preferred by the dealer-assessee being devoid of merit is dismissed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

I agree,

Sd/-
(Rabindra Ku. Pattnaik)
Accounts Member-III