

2. Being aggrieved by the aforesaid first appeal order, the assessee has preferred second appeal before this Tribunal challenging the order as bereft of consideration of material fact with the provisions of law for which the said order is arbitrary, illegal, baseless and bad in law liable to be set-aside.

3. The brief fact of the case at hand is that the appellant-company is a subsidiary of M/s. Hindustan Lever Ltd. It receives goods like soaps, detergents, food products, beverages etc. manufactured by M/s. Hindustan Lever Ltd. at Backbay Reclamation, Mumbai and also from other manufacturing Units of the company. The goods received are on stock transfer basis on 'F' Form and Govt. Waybill conditions. Besides, the appellant also purchases the very same goods from other companies like Abdos Oils Pvt. Ltd. The appellant was originally assessed U/s.12(4) of the OST Act by the LAO who raised an extra demand of Rs.38,44,549.00 for the impugned period in his assessment order dt.26.11.2001 which was set-aside by the ld. FAA for fresh assessment in the light of observations stated in the appeal order. In pursuance of such direction, the LAO re-assessed the appellant and found that against the value of goods purchased and received having disclosed at Rs.5,06,02,083.00, the appellant has shown receipt and purchase of such goods at Rs.5,66,23,727.00 as per returns filed under OET Act. Taking into consideration the opening balance and closing balance of goods for the impugned period together with value of goods transferred to outside the state depots, he found the value of goods

under OET Act at Rs.6,77,81,517.85, resulting in a discrepancy of Rs.2,32,13,222.92 which he added to the GTO returned. Further, due to non-submission of form-XXXIV for Rs.2,89,560.00 towards his claim of deduction as sales to registered dealers, he added the above amount to the TTO to be taxed at appropriate rate. All these resulted in an extra demand of Rs.37,66,909.00 in the assessment order passed by the LAO which was challenged by the assessee before Id. FAA who after proper examination of the case, reduced the said demand to Rs.18,00,887.00 for the relevant year in his reasoned order.

4. Being further aggrieved by the aforesaid order, the assessee now filed appeal before this Tribunal mainly on following grounds appended to the memorandum of appeal:-

“i. For that the allegation as to suppression of stocks is totally misconceived, erroneous, unreasonable, unfounded and based on no evidence.

ii. For that the appellant herein filed the trading accounts for the period 2000-01, which is already on record and in view of the same it is totally beyond any iota of doubt as to any suppression of stocks and as such, the impugned levy of tax on the alleged stocks is not maintainable.

iii. For that the Orissa Entry Tax Act is a separate legislation and has no application and/ or nexus with the Orissa Sales Tax Act. Further, entry tax is leviable of goods, the sales tax is leviable on the entry of goods, the sales tax is leviable on the sale of goods and the

GTO of both the Acts will never be similar and as such, the illegal inference as drawn by the Learned Sales Tax Officer and Assistant Commissioner of Sales Tax is in the eye of law.

iv. For that the appellant further humbly submits that it has never returned GTO as Rs.6,77,81,517.85 under the Orissa Entry Tax Act which can be well verifiable from the records. It is pertinent to mention here that under the Orissa Entry Tax Act for the aforesaid relevant period there was an estimation of turnover for three months and assessment order was passed.

v. For that being aggrieved by the said impugned order under Orissa Entry Tax Act the appellant herein filed an appeal challenging the wrong estimation of turnover and grant of refund of excess payment and the same has been set aside remanding the entire matter for fresh assessment. In the light of the above, the figures as taken from the Entry Tax assessment proceedings does not hold good in the eye of law.

vi. For that entry tax assessment has been set aside and the Learned Sales Tax Officer and the Learned Assistant Commissioner of Sales Tax cannot rely on figures of disputed assessment which has been set-aside as being illegal.

vii. For that the Learned Sales Tax Officer and Assistant Commissioner of Sales Tax acted beyond jurisdiction to take figures from an assessment under a separate legislation and apply the same under Orissa Sales Tax Act without application of mind.

viii. For that the Learned Sales Tax Officer and the Learned Assistant Commissioner of Sales Tax also acted beyond jurisdiction and illegally, without any basis as the Entry Tax figures are also disputed and pending in appeal before another forum.

ix. For that the Learned Sales Tax Officer and Assistant Commissioner of Sales Tax failed to appreciate that the act of taking figures of entry tax assessment for the purpose of sales tax assessment is illegal and conforming the same, although the matter is sub-judice is arbitrary and beyond the powers of quasi-judicial authority.

x. For that even otherwise, the said order is illegal, arbitrary, baseless and is liable to be set-aside.”

5. During the course of hearing, the ld. Counsel for the assessee vehemently argued against both the appeal order and assessment order stating these as unjust, illegal, improper, arbitrary and bad in law as they have wrongly taken the entry tax figure in assessing the appellant under the OST Act. He further argued that the assessee has never returned GTO at Rs.6,77,81,517.85 under the OET Act which can be well verifiable from records. Moreover, under the OET Act for the aforesaid relevant period, there was an estimation of turnover for three months and the assessment order was passed accordingly which was challenged in appeal, resulting in setting-aside the said order for fresh assessment. As such, the figures under OET Act relied on by the forums below don't have any legs to stand on. The ld. Counsel for the appellant further contended that the assessee has wrongly fed the All

India Price to the computer software and as per the figures generated by the computer which is a mistake in the computer system, they have filed the return under Entry Tax Act initially and after due notice of the mistake they have revised the programming in the computer system and have paid tax accordingly. As such, the figures under the OET Act cannot form a valid basis for assessment under the OST Act for the relevant year.

6. Per contra, the Id. Standing Counsel (C.T.) for the State argued in favour of the order of the Id. FAA being just and proper in the facts and circumstances of the case that doesn't warrant further interference by this Tribunal.

7. We, now, observe that at assessment stage, the appellant has disclosed his total purchase and receipt at Rs.5,06,02,083.00. But, as per returns filed under the OET Act, it has disclosed these at Rs.5,66,23,727.00. We, further observe that the appellant has claimed to have filed revised returns under OET Act finding his mistake in the computer system on value of goods received, taken at All India Price that consists of (i) Purchase Price; (ii) Sales Tax; (iii) Expenses; (iv) Transportation; (v) Entry Tax; (vi) Surcharge. However, since, the assessment made under the OET Act for the self-same period is stated to have been set-aside, the figures arrived at by the forums below cannot be fully relied upon as showing a true and correct picture of his actual transaction. What is primarily to be taken into consideration for a just and reasonable estimate of his actual transaction is the purchase

account of the assessee together with sale and stock account maintained. While making a true calculation of the goods actually sold, the opening balance together with closing balance and the goods transferred to outside the State depots are to be taken into consideration as per actuals as depicted in the books of account of the assessee as there is no adverse report against the appellant for the impugned year. Moreover, a best judgment assessment can't be made by the LAO without rejecting the Books of Account maintained by the assessee on valid grounds.

8. Accordingly, it is ordered.

The appeal order passed by the ld. FAA for the impugned year is set-aside and the case is remitted back to the LAO to make fresh assessment in the light of our above observations and pass necessary order preferably within three months from the date of receipt of this order after giving the assessee a reasonable opportunity of being heard.

Dictated & corrected by me,

Sd/-
(Srichandan Mishra)
Accounts Member-II

Sd/-
(Srichandan Mishra)
Accounts Member-II

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

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