BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 17(ET) of 2019
(Arising out of the order of the learned JCCT,
Balasore Range, Balasore,
in First Appeal case No. AA-58/BA/2017-18 (ET)
disposed of on 06.04.2018)

P r e s e n t: **Sri. S.K.Rout**
Judicial Member-II

M/s. Neelam Robber,
Industrial Estate,
Ganeswarpur, Januganj,
Balasore. ... Appellant.

- V e r s u s –

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

For the Appellant ... Mr. S.R.Mishra, Advocate.
For the Respondent ... Mr. D.Behura, SC(CT).

Date of hearing: **12.08.2022** * * *Date of Order:**12.09.2022**

O R D E R

Challenge in this appeal is the order dated 06.04.2018 passed by the learned Joint Commissioner of Sales Tax, Balasore Range, Balasore (in short, JCST/ FAA) in first appeal case No.AA.58/BA/2017-18 (Entry Tax) thereby confirming the order of reassessment dated 31.12.2016 assessed under Section 9(C) of the OET Act, 1999 for the tax periods from 01.04.2007 to 31.12.2012 by the learned Sales Tax Officer, Balasore Circle, Balasore (in short, STO/AA) raising demand of Rs.6,15,702.00 which includes penalty of Rs.4,20,468.00 imposed under Section 10(2) of the OET Act.

2. The case at hand is that the dealer appellant is engaged in the business of processing of rubber scraps and china clay to produce rubber dust by using scrap rubber and china clay as raw materials. The dealer appellant also carries on trading business in china clay, rubber scraps and rubber dust. It purchases scrap

tyres of car, jeep and from factories and process those to rubber scraps and finally to rubber dust for sale. Purchases are effected both from inside and outside the State. Inside purchases are effected from registered dealers on payment of input tax and also from unregistered dealers In the assessment completed under Section 9(C) of the OET Act for the period 01.04.2007 to 31.12.2012 on dated 26.12.2013, the learned assessing authority has subjected interstate purchases of scheduled goods amounting to Rs.1,32,41,440.00 and Rs.87,27,509.00 to tax @1% and 2% respectively and has also levied tax @1% on intrastate sale of manufactured scheduled goods outside local area amounting to Rs.5,57,068.00. Against the total tax payable which calculated to Rs.3,12,535.00, the learned assessing officer has allowed adjustment of tax amounting to Rs.2,52,171.00 paid with returns. The balance tax assessed has been determined at Rs.60,364.00 on which two times penalty amounting to Rs.1,20,728.00 has been imposed under Section 9C(5) of the OET Act. Thus demand notice for Rs.1,81,092.00 (tax Rs.60,364.00 + penalty Rs,1,20,728.00) has been served on the dealer for satisfaction. Being aggrieved by the order passed earlier, the dealer preferred appeal before the JCST (first appellate authority), Balasore Range, Balasore wherein first appellate authority was observed that the learned assessing officer has not considered the amount of set off claimed on raw materials in the returns. The assessment is silent on this score. Even if the dealer has claimed set off on raw materials in the returns seen from the VATIS return module. Neither the audit nor the learned assessing officer has examined this aspect. As per the opinion of the first appellate authority, the dealer cannot be denied the benefit of set off without verifying his entitlement in accordance with law. Furthermore, the first appellate authority revealed from the assessment order that the dealer has made huge purchases amounting to Rs.4,38,39,219.00 form unregistered dealers. Whereas the leaned assessing officer has not examined these purchases to determine the entry tax liability of the dealer on such

purchases. Keeping in view the observation the learned assessing officer has completed the reassessment and raised the demand of Rs.6,15,702.00.

3. Being aggrieved with such re-assessment order, the dealer assessee again preferred the first appeal before the learned JCST, Balasore Range, Balasore, who confirmed the order of re-assessment.

4. Further being dis-satisfied with the order of the learned first appellate authority, the dealer appellant has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection has been filed in this case by the state respondent.

6. Heard the contentions and submissions of both the parties. Learned Counsel for the dealer appellant argued contending that the order of assessment passed by the learned STO is erroneous, illegal and not sustainable in the eye of law. That the assessing authority has not gone into veracity of the transactions although placed before him and the demand made is excessive and illegal. That the appellate authority has gone wrong in confirming the appeal in disallowance of adjustment tax deposited under OVAT Act.

7. Per contra, learned Standing Counsel Mr. D.Behura for the revenue refuted the claim of the dealer appellant and supported the order of confirmation of the re-assessment order by the learned first appellate authority. Mr. D. Behura supported that the purchases of scheduled goods within local area of Rs.4,40,74,389.00 and tax liability there on was confronted with the dealer appellant in course of hearing but the dealer appellant failed to produce any documentary evidence on that score for which the tax liability was determined and accordingly confirmed by the learned first appellate authority. This apart, Mr. Behura urged before this forum to instruct

the dealer to produce the audited balance sheet including statutory enclosures under Section 65 of the OVAT Act read with U/R.73 of OVAT Rules for better appreciation of the entry tax liability taking into account the raw materials purchased and consumed and output produced and sold. Lastly, Mr. D. Behura submitted that the escapement of turnover as per Under Section 10(2) of the act is established and the mensrea of the dealer appellant is proved by the learned first appellate authority, hence, penalty as per the statute is justified.

8. From the rival contentions of the parties, the issues emerged for adjudication in the instant case are such as:

(i) Whether the first appellate authority is genuine in confirming the appeal?

(ii) Whether, the fora below are right in disallowing of adjustment of tax deposited under OVAT Act?

With regard to issue no.1, from the case record it reveals that as per the instruction of the learned first appellate authority, the reassessment was completed by the learned assessing officer where there was no dispute on purchase turnover of scheduled goods and sale turnover of manufactured schedule goods by the dealer appellant. This apart, the reassessment order makes it clear that the dealer appellant has effected purchases of scheduled goods amounting to Rs.13,31,86,507.00 including freight charges amounting to Rs.11,65,721.00. During that period, the dealer appellant effected purchase from inside the State of Odisha amounting to Rs.6,71,13,220.20 which are entry tax suffered goods and the balance amount to the tune of Rs.6,60,73,286.00 are exigible to entry tax. Out of the above purchase of Rs.6,60,73,286.00, goods amounting to Rs.1,32,71,440.00 relates to purchase of raw materials effected from outside the State of Odisha and goods amounting to Rs.87,27,457.80 relates to purchase of plant and machineries which

includes freight and other charges. The dealer appellant has also effected purchase of rubber scraps from unregistered dealers amounting to Rs.4,40,74,389.00 which was not examined to levy entry tax at the time of earlier assessment. This apart, pursuant to the observation of the learned first appellate authority, the purchase turnover of Rs.4,40,74,389.00 is also added in the taxable turnover by the learned assessing officer. All these transactions were taken into account and the purchase turnover of scheduled goods calculated at Rs.6,60,73,286.00. Tax @ 0.5% on Rs.5,73,45,829.00 and @1% on Rs.87,27,457.80 calculated to Rs.2,86,729.15. This apart the dealer being a manufacturing unit of scheduled goods, also required to collect entry tax for its sale turnover. The dealer appellant has effected total sales amounting to Rs.17,82,42,981.70. So after deduction of trading sale amounting to Rs.2,00,88,463.00, the sale value of goods manufactured becomes Rs.15,81,54,519.70. So after deductions towards sales made to SEZ and export sale amounts to Rs.4,73,581.00, sale within the local area amounts to Rs.2,75,50,504.10 and sales made in course of interstate trade and commerce amounts to Rs.12,95,73,366.60 in toto becomes Rs.15,57,08,027.60, the sale turnover on which ET payable is determined at Rs.5,57,068.00. Tax @ 1% on Rs.5,57,068.00 calculates to Rs.5,57,068.00. Thus, the total entry tax payable is determined at Rs.4,66,848.98. Apart from this, pursuant to the observation of the first appellate authority, the learned assessing officer has allowed set off of ET of Rs.4,444.30 under Rule 19 of the OET Rules. So, the total entry tax assessed to Rs,4,62,404.68 as against which the dealer appellant has paid entry tax amounting to Rs.2,52,171.00 resulting in entry tax due after reassessment is determined at Rs.2,10,233.68. In addition to tax, penalty of Rs.4,20,468.00 is imposed under Section 9C(5) of the OET Act. So in view of such, in toto the tax and penalty becomes Rs.6,30,702.00. Earlier an amount of Rs.15,000.00 has already been deposited by the dealer after assessment for which now it (dealer appellant) has to pay

the balance amount of Rs.6,15,702.00. So after thorough analysis of the observation of the learned first appellate authority including the reassessment order, to my view, the learned first appellate authority has rightly appreciated the reassessment order and confirmed the same.

With regard to question No.2 relating to disallowance of adjustment of tax deposited under OVAT Act, as per the say of the dealer appellant, it (dealer appellant) has deposited an amount of Rs.4 lakhs under OVAT Act which he claims to be adjusted against ET demand.

At this juncture, question comes as to why and what for the amount will be adjusted as against ET demand. As the VAT Act never provides for a scheme whereby an amount due by way of refund could be adjusted against dues of ET Act. The object of VAT Act could only be to impose, determine and recover VAT in accordance with that Act. There is no legislative intent shown to exist under that Act to recover dues of ET Act. So the first appellate authority has rightly observed it as unsustainable.

In view of the above analysis, when all the aspects of this case have rightly been adjudicated upon by the learned first appellate authority in consonance with the provisions of law, the same needs no interference.

9. In the result, the appeal preferred by the dealer appellant is dismissed and the order passed by the learned first appellate authority on dated 06.04.2018 in first appeal case No.AA 58/BA/2017-18(Entry Tax) is hereby confirmed. Accordingly, the cross objection is disposed of.

Dictated and Corrected by me,

Sd/-
(Shri S.K.Rout)
Judicial Member-II

Sd/-
(Shri S.K.Rout)
Judicial Member-II