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

S.A.No. 133(ET)/2012-13

(From the order of the ld.Addl.CST (Appeal), Central Zone, Cuttack, in Appeal No. AA-CU-II-1-1207/JCST/2011-12, dtd.30.09.2012, confirming the assessment order of the Assessing Officer)

Present: Sri S. Mohanty
2nd Judicial Member

M/s. S.M.V. Beverages,
Jamsedpur, N.I.E., Jagatpur,
Dist. Cuttack. ... Appellant

-Versus-

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

For the Appellant : Mr. S.K. Mishra, Advocate
For the Respondent : Mr. S.K. Pradhan, ASC (C.T.)

(Assessment Period : 01.07.2007 to 31.07.2010)

Date of Hearing: 24.11.2018 Date of Order: 28.11.2018

ORDER

This second appeal has been directed against the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), Central Zone, Cuttack (in short, FAA/Addl.CST) in First Appeal Case No.AA-CU-II-1207/JCST/2011-12 dtd.30.09.2012 in confirming the order of assessment passed by the learned Joint Commissioner of Sales Tax/Assessing Authority, Cuttack-II Range, Cuttack (in short, JCST/AA) for the assessment period from 01.07.2007 to 31.07.2010 u/s.9C of the Odisha Entry Tax Act, 1947 (in short, OET Act).

2. The fact in brief giving rise to the present appeal are, the appellant-dealer who is a trader of soft drinks on wholesale basis was subjected to audit assessment u/s.9(C) of the OET Act for the period

dt.01.07.2007 to 31.07.2010. The dealer was found to have received goods on stock transfer basis. The AA did not accept the method of calculation of entry tax adopted by the dealer i.e. the value of the goods as per the stock transfer noted with addition of freight charges and consequently he adopted the proviso to Sec. 2(j) of the OET Act to determine the Entry Tax liability in case of goods received otherwise than purchase. Resultantly, he calculated the tax due on the sale price leading to demand of tax of Rs.32,991.72. In addition to this, penalty u/s.9C(5) of the OET Act i.e. twice of the tax due was also imposed thereby the total demand of tax with penalty raised to Rs.1,14,318/-.

3. The matter was carried in appeal before the ld.ACST whereby the FAA/ACST accepted the view taken by the AA i.e. application of proviso to Section 2(j) of the OET Act to determine the entry tax liability and thus the demand remained unaffected.

4. When the matters stood thus, being aggrieved by the orders of both the fora below, the dealer preferred to file this second appeal on the contentions like, the dealer had received the goods on stock transfer. The value of the goods were ascertainable on the stock transfer note reflecting the payment of the excise duty and freight duly paid by the dealer. Thus, when the value of the goods and freight charges are explicit on the stock transfer note and connected documents, the fora below should have levied tax on the said amount but in ignorance of the provision of law and tax liability taking resort to the proviso to Sec.2(j) was imposed by AA and the same was also mechanically confirmed by the FAA.

5. It is contended by the dealer that, the AA and thereafter the FAA have committed error in law by applying proviso to Clause (j) of Sec.2 of the OET Act for determination of the tax liability in the case in hand. The dealer is obliged under the statute to deposit the entry tax on entry of goods to the local area. As such entry tax is exigible on

purchase value if the goods are brought into the local area for consumption, use or sale. If the dealer having paid entry tax on the value including freight therein, there is no scope for the authority to apply the proviso of the Sec.2(j) of the OET Act.

6. The appeal is heard without cross objection from the side of the State. The crux of the dispute between the parties involved in this appeal for decision is, what should be the purchase value of the goods which are obtained otherwise by way of purchase, since admittedly the dealer had received the goods as stock transfer basis in the case in hand. The plea of the dealer is, tax is to be imposed on the entry point and at the entry point the value as well as the freight whatever paid by the dealer are the consideration before the AA to calculate the entry tax. It is the dealer, who can use or consume or sale the goods or even it can again transfer the goods outside the State. In all these cases, sale value cannot be treated as purchase value for the purpose of calculation of entry tax. Learned Counsel for the dealer argued that, the statute cannot be stretched to the extent to levy entry tax on sale price. The dealer is to file entry tax return after entry of the goods to the local area. So, it is not possible for the dealer under practical sense to say the sale price and it is also not possible in practical sense to calculate tax basing the sale price. For better appreciation of the question of law involved in this appeal, provision u/s.2(j) is reproduced below.

> "(j) "PURCHASE VALUE" means the value of scheduled goods as ascertained from original invoice or bill and includes insurance charges, excise duties, countervailing charges, sales tax, [value added tax or, as the case may be, turnover tax] transport charges, freight charges and all other charges incidental to the purchase of such goods:
>
> ***Provided that*** where purchase value of any scheduled goods is not ascertainable on account of non-availability or non-production of the original invoice or bill or when the invoice or bill produced is proved to be false or if the scheduled goods are [required] or obtained

> otherwise than by way of purchase, then the purchase value shall be the value or the price at which the schedule goods of like kind or quality is sold or is capable of being sold in open market:"

As per the proviso above, which is a guiding force to the section, it is when the dealer acquired or obtained goods otherwise by way of purchase then the purchase value shall be the value or the price at which the schedule goods of all kinds or all quality is sold or is capable of being sold in the open market. Here the term "capable of being sold" in open market as engrafted in the provision itself indicates, in the event actual sale price is not known, the dealer can take consideration of possible market price of goods for the purpose of calculation of entry tax more to say, particularly when it is acquired or obtained otherwise than purchase. Thus, the proviso appended to Sec.2(j) denotes, in the event the goods are brought into the local area otherwise than by way of purchase, then the last clause as per the proviso is to be applied. In the case in hand, the admitted fact is the goods are received by the dealer on stock transfer basis. If that be, then there is no escape from the conclusion that, the goods are to be taxed as per the market value or the value in which it is capable of being sold in the open market. Accordingly, it is held that, the application of Sec.2(j) proviso by the AA, which is latter confirmed by the FAA in the case in hand, is not illegal. Hence, ordered.

The appeal being devoid of merit is dismissed on contest.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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