

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

S.A. No. 118 (ET) of 2015-16
&
S.A. No. 147 (ET) of 2015-16

(Arising out of order of the learned Addl.CST (Appeal),
South Zone, Berhampur in Appeal Case No. AA-
(ET) 25/2013-14, disposed of on dated 30.07.2015)

Present: **Shri A.K. Das, Chairman**
Smt. Sweta Mishra, 2nd Judicial Member
&
Shri S. Mishra, Accounts Member-II

S.A. No. 118 (ET) of 2015-16

M/s. Capital Marketing,
Plot No. F/51, Chandaka
Industrial Estate, Chandrasekharapur,
Bhubaneswar ... Appellant

-Versus-

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

S.A. No. 147 (ET) of 2015-16

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

-Versus-

M/s. Capital Marketing,
Plot No. F/51, Chandaka
Industrial Estate, Chandrasekharapur,
Bhubaneswar ... Respondent

For the Dealer : Sri C.R. Das, Advocate
For the State : Sri D. Behura, SC (CT)

Date of hearing: 02.08.2021 *** Date of order: 12.08.2021

O R D E R

These two appeals are heard analogously and disposed of by this common order as both the cases involve common question of fact and law.

2. The dealer-appellant filed S.A. No. 118 (ET) of 2015-16 challenging the order dated 30.07.2015 of the Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (hereinafter called as 'first appellate authority') in Appeal Case No. AA (ET) 25/2013-14 modifying the order of assessment dated 08.08.2013 passed by the Assessing Authority, Bhubaneswar-III Circle, Bhubaneswar (in short, 'assessing authority') u/s. 9C of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') for the assessment period 04.07.2009 to 30.11.2012 raising tax demand of ₹12,49,740.00 which includes penalty of ₹8,33,160.00. The State also preferred S.A. No. 147 (ET) of 2015-16 challenging the order of the first appellate authority for reducing the tax demand as assessed by the assessing authority.

3. The relevant facts leading to the filing of the present appeal are that the dealer-appellant in S.A. No. 118 (ET) of 2015-16 was engaged in trading of biscuits, waffles

and wafers on wholesale basis having its place of business at Chandrasekarpur, Bhubaneswar. On receipt of the tax audit visit report, the assessing authority initiated proceeding u/s. 9 of the OET Act having found incorrect tax compliance by the dealer and non-payment of entry tax on the freight charges amounting to ₹50,77,232.00 and other incidental expenses of ₹12,65,376.00. The dealer-assessee on receipt of the notice issued by the assessing authority took a plea that freight charges paid by the dealer have been reimbursed by the Company as per the terms and conditions of the agreement. On account of which it (the dealer) is not liable to pay entry tax on such amount. It was further asserted by the dealer that the labourers and staff engaged for unloading the goods to the godown also cannot be assessed to tax as the same was incurred after entry of the goods to the local area. The assessing authority on examination of the books of account produced by the dealer-appellant found that the dealer has effected total inter-State purchase of scheduled goods for ₹58,77,97,693.98 and has incurred expenses of ₹63,42,608.00 towards freight and other incidental charges for which it was liable to pay entry tax on freight and other incidental expenses as per the provisions of Section 2(j) of the OET Act, but the dealer

understating the purchase price by not adding the freight and incidental charges to the purchase price, diverted the entry tax liability due to the Government. The assessing authority determined the turnover at ₹59,41,40,301.98 and raised tax demand of ₹12,49,740.00 which includes penalty of ₹8,33,160.00.

3(a). The dealer-assessee challenging the aforesaid finding of the assessing authority filed an appeal before the first appellate authority who by its order dated 30.07.2015 partly modified the order of assessment dated 08.08.2013 reducing the demand of ₹12,49,740.00 to ₹3,04,601.00. The first appellate authority was of the view that for the purpose of calculation of entry tax freight charges is to be included in the purchase price as the same is part of purchase/receipt value of scheduled goods, but the other incidental expenses incurred for unloading of the purchase goods is to be excluded as the same was incurred after entry of the goods into the local area.

3(b). The dealer-assessee being aggrieved with the finding of the first appellate authority that it is liable to pay tax on freight charges incurred for bringing the goods into the local area filed the afore-numbered appeal whereas the State preferred appeal challenging the other part of the

finding of the first appellate authority that the dealer is not liable to pay tax on incidental expenses incurred after entry of the goods into the local area.

4. The learned Counsel for the dealer-assessee challenging the impugned orders of the forums below argued that the first appellate authority under misconception of law illegally held that the freight charges is to be included in the purchase price for the purpose of computation of entry tax. The first appellate authority while arriving at such conclusion did not take note of the law laid down in various judicial pronouncements and the fact that freight charges were borne by the company. He strenuously argued that there were sufficient materials on record to show that the company bore the charges of freight expenses for which the dealer is not liable to pay entry tax on the same. The provisions contained u/s. 2(j) of the OET Act does not say that when freight charges are paid by the principal, i.e. M/s. Anmol Biscuits Ltd., the same is to be included in the purchase value of the goods procured by the dealer-assessee for the purpose of computation of entry tax. The impugned order of the first appellate authority that included the freight charges of the purchase value of the goods procured by the dealer is illegal and unsustainable for which this Tribunal is

required to set aside the same and exonerate the dealer from paying tax as computed by the first appellate authority.

5. Per contra, learned Standing Counsel (CT) for the State challenging the finding of the first appellate authority that incidental expenses are not to be included in the purchase value of the goods argued that the first appellate authority has misconstrued the provisions contained in Section 2(j) of the OET Act and came to an erroneous conclusion that the dealer is not liable to pay entry tax on the incidental expenses incurred by him after entry of the goods to the local area. He strenuously argued that Section 2(j) specifically says 'purchase value' means the value of the scheduled goods as ascertained from original invoice or bill and includes insurance charges, excise duties, countervailing charges, sales tax, transport charges, freight charges and all other charges incidental to the purchase of such goods. It has been specifically mentioned in the statute that the incidental expenses incurred by the dealer in procuring the goods are to be included in the purchase value of the scheduled goods for the purpose of computation of entry tax. The impugned order of the first appellate authority excluding the dealer from paying entry tax on incidental expenses incurred by him for procuring the goods

from M/s. Anmol Biscuits Ltd. is illegal and against sanction of law. He submits to set aside the impugned order of the first appellate authority with respect to excluding the dealer from paying tax on unloading charges at godown and compute the entry tax afresh.

6. In view of the above rival contentions of the parties, the only point that emerges for consideration in both the appeals is whether the dealer is liable to pay entry tax on the freight charges and unloading charges at godown for procuring the goods from M/s. Anmol Biscuits Ltd.

7. The impugned orders of both the forums below reveal that for the assessment period 04.07.2009 to 30.11.2012, the dealer effected inter-State purchase of scheduled goods for ₹58,77,97,693.98 and incurred expenses of ₹63,42,608.00 towards freight and other incidental charges. Accordingly, learned assessing authority determined the TTO at ₹59,41,40,301.98 raising tax demand of ₹12,49,740.00 which includes penalty of ₹8,33,160.00. It further reveals from the record that an amount of ₹50,77,232.00 was spent towards freight charges and ₹12,65,376.00 was spent towards incidental expenses. The assessing authority assessed entry tax on both freight charges as well as incidental expenses incurred by the

dealer whereas the first appellate authority excluded the dealer from paying entry tax on incidental expenditure of ₹12,65,376.00 and confirmed the order of the assessing authority regarding payment of entry tax on freight charges amounting to ₹50,77,232.00.

8. Before answering the point that emerges from the rival contentions of the parties, it would be profitable to take note of the certain relevant provisions in the OET Act for better appreciation of the issue involved in the present appeal. Section 3 of the OET Act provides that-

“3. Levy of tax-

(1) 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 per centum of the purchase value of such goods from such date as may be specified by the State Government and different dates and different rates may be specified for different goods and local areas subject to such conditions as may be prescribed.

Provided that the State Government may direct that in such circumstances and under such conditions and for such period as may be prescribed, a dealer shall pay in lieu of tax payable under this Act a sum fixed in the prescribed manner, and in such a case the tax shall be deemed to have been compounded.”

Section 2(j) of the OET Act provides that-

“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 scheduled goods of like kind or quality is sold or is capable of being sold in open market;”

9. On conjoint reading of both the provisions, it is crystal clear that the dealer is liable to pay tax on entry of the scheduled goods into the local area for consumption, use or sale. Hon'ble Apex Court in the case of State of Karnataka and another Vs. Hansa Corporation, reported in AIR 1981 SC 463 in para-39 of the judgment observed that the tax becomes payable on the entry of the scheduled goods into a local area. The price of the scheduled goods at the time of

entry paid by the dealer who is the importer of goods within the scheduled area would be ad-valorem price on the basis of which tax would be computed. No subsequent rise or fall in price has any relevance to the computation of the tax. The charging section says that the tax shall be levied and collected on the entry of the scheduled goods into a local area at specified percentage not exceeding two per cent ad-valorem.

10. The learned Counsel for the dealer-assessee contended that the freight charges shall be borne by the manufacturing company and incidental expenses have been incurred after entry of the scheduled goods into the local area as those are not exigible to tax. On verification of the record, we find that the agreement signed between the parties as available in the record does not show that the company has agreed to bear the freight charges to be incurred for bringing the scheduled goods into the local area. The observation of the first appellate authority in page-2 of the impugned order is not based on the materials on record. When the agreement executed between the parties is silent regarding reimbursement of freight charges by the company to the dealer-assessee, the entire expenses of ₹50,77,232.00 towards freight charges is exigible to entry

tax being part of the purchase value of the scheduled goods. The provisions contained in Section 2(j) of the OET Act clearly say that the freight charges and other incidental expenses incurred are to be included in the purchase value of the scheduled goods. Therefore, the contentions raised by the learned Counsel for the dealer that the freight charges incurred by it (the dealer) is not exigible to tax is under misconception of law and must fall to the ground.

11. So far as unloading charges of ₹12,65,376.00 incurred by the dealer is concerned, the same is not exigible to entry tax as the same has been incurred after entry of the scheduled goods into the local area. Law is no more res integra that for the purpose of computation of entry tax, the price of the scheduled goods would be ad-valorem price on the basis of which tax would be computed. Therefore, the first appellate authority did not commit any error in including the freight charges for the purpose of computation of entry tax and excluding the incidental expenses of ₹12,65,376.00. So far as the penalty is concerned, the first appellate authority taking note of the aforesaid judicial pronouncements of Hon'ble Apex Court has imposed reasonable penalty of ₹2,03,064.04 as against

penalty of ₹12,49,740.00 imposed by the assessing authority.

12. In view of the discussions made above, we are of the considered view that the first appellate authority on consideration of fact and law rightly included the freight charges in the purchase value and excluded incidental expenses for the purpose of computation of entry tax. There is no illegality or impropriety in the impugned order warranting interference of this Tribunal. Accordingly, the appeals filed both by the dealer-assessee as well as State stand dismissed being devoid of merit. Cross-objections are disposed of accordingly.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(Sweta Mishra)
2nd Judicial Member

I agree,

Sd/-
(S. Mishra)
Accounts Member-II