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

S.A. No. 197(E) of 2013-14

(From the order of the ld. DCST (Appeal), Cuttack I Range, Cuttack, in First Appeal Case No. AA-(ET)45/CUIC/2012-13, disposed of on 16.09.2013)

Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 1st Judicial Member
&
Sri R.K. Pattnaik, Accounts Member-III

M/s. Gillete India Limited,
C/o.- Sadana Agencies,
Near OSBCL, Nirgundi Depot,
P.O.- Harianta,
Dist.- Cuttack-754025. ... Appellant

- V e r s u s -

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

For the assessment period: 01.04.2006 to 31.03.2010

For the Appellant ... Mr. R.K. Kar, Advocate
For the Respondent ... Mr. M.L. Agarwal, S.C. &
Mr. M.S. Raman, A.S.C.

Date of hearing: 07.08.2019 ******** Date of order: 08.08.2019

O R D E R

A confirming order of assessment u/s.9C of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) is under challenge in this appeal at the instance of unsuccessful dealer before both the fora below with a prayer to delete the additional tax liability and penalty as imposed.

2. The dealer is engaged in dealing with razor, blades, knife, cutting blades, tooth brushes, saving creams, saving jels, saving foams, batteries etc. In normal course of its trade, it receives goods from its main office on branch transfer basis against form-F and sales it in local market. For the period under assessment from 01.04.2006 to 30.03.2010, there was audit assessment on the basis of Audit Visit Report (in short, the AVR) with the allegation of less payment of tax by the dealer. Acting upon the audit team, the assessing authority in course of assessment found the dealer had paid Entry Tax on the value depicted on the stock transfer receipt. The assessing authority on application of the provision u/s.2(j) of the OET Act determined the purchase value and accordingly it was calculated at Rs.35,36,46,705.57, ET on it @ 1% was calculated at Rs.35,36,467.05, the dealer was found to have paid Rs.25,25,259.00. Penalty on the tax due u/s.9C(5) of the OET Act was calculated at Rs.20,22,416.10 i.e. twice of the tax due. Thus, the demand and penalty raised against the dealer was at Rs.30,33,624.00.

3. Felt aggrieved by such demand, the dealer knocked the door of first appellate authority, but in turn vide impugned order learned first appellate authority confirmed the order of assessing authority by reiterating the views taken by the first appellate authority.

4. When the matter stood thus, the dealer knocked the door of this forum challenging the sustainability of the impugned order with the contentions like, the determination of purchase value on application of sec.2(j) of the OET Act is arbitrary and not sustainable in the eye of law, imposition of penalty is not warranted in the facts and circumstances of this case. In the argument, learned Counsel for the dealer advanced another ground that, the calculation of tax liability by the assessing authority is not correct as before the completion of audit assessment, the dealer had made a deposit in

furtherance to audit visit report, so that amount should have been adjusted from tax due.

5. The appeal is heard with Cross Objection from the side of the Revenue. Revenue has supported the impugned order in the cross objection as lawful, just and proper.

6. The questions raised for decision in this appeal as emerges from the rival contentions are,

(i) whether application of sec.2(j) of the OET Act to the case in hand for determination of purchase value is wrong;

(ii) whether imposition of penalty u/s.9C(5) of the OET Act is wrong?

(iii) whether a recalculation is necessary keeping view the deposit of tax before audit assessment?

7. The mode of business undertaken by the dealer as mentioned above is, the dealer receives goods on branch transfer basis against form 'F'. The dealer has paid Entry Tax on the value mentioned in the stock receipt. Price as per stock receipt value questioned by the audit team which is decided by the assessing authority in consonance to Revenue against the dealer. Purchase value has been defined u/s.2(j) of the OET Act which reads as follows:

> ***"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, 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 of 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 acquired 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;"

8. In a number of decisions, this Tribunal while dealing with the questions for determination of purchase value on application of sec.2(j) of the OET Act has categorically held that, when the goods are received otherwise then by way of purchase, the proviso appended to the section mentioned above is to be applied. In that event, in consonance to the earlier view of this Tribunal taken in many of the cases of similar nature, it only can be said that, the purchase value as claimed by the dealer on the basis of stock receipt value not to be accepted. It is also held that, the findings of both the fora below on this question of determination of purchase value on application of sec.2(j) of the OET Act is as per law, hence call for no interference.

9. So far as the next question raised by the dealer is, imposition of penalty u/s.9C(5) of the OET Act if unwarranted in the facts and circumstances of the case. Penalty u/s.9C(5) of the OET Act is a mandatory consequence when the dealer is found to be guilty of evasion of tax or underassessment on acted in contravention of any provision of the Act. Once an audit assessment is resulted with demand of tax from the dealer on the ground of evasion of tax, then penalty is the necessary consequence. In absence of any bonafideness or any facts which mislead to the dealer to form a different opinion or any fact which is still in fluid stage awaiting decision of competent constituent authority, the irresistible conclusion is, a dealer who has not paid appropriate tax on contravention of the provision of Act, penalty u/s.9C(5) of the OET Act is to follow as per law. It may be mentioned here that, ignorance of law has no excuse, so application of sec.2(j) of the OET Act which is a pure question of law never can be interpreted in any manner save and except the statutory mandate. Accordingly, it is held that, the penalty as imposed by the first appellate authority calls for no interference, hence confirmed.

10. The other plea of the dealer raised in course of the hearing is, the dealer had made payment immediately after the audit

visit which should have been taken into consideration while determining the tax due. But no document in support of the claim is produced. In that event, it is held that in impugned under is not interceptable in any manner.

Accordingly, it is ordered.

The appeal is dismissed on contest as of no merit. Consequentially, the impugned order is confirmed.

Dictated & corrected by me,

Sd/-
(Subrata Mohanty)
1st Judicial Member

Sd/-
(Subrata Mohanty)
1st Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III