

D.F.O. had paid local tax under OST Act but not under OET Act. The assessing authority in an ex parte order of assessment held that, the dealer is liable to pay Entry Tax as a consequential to the liability under OST Act and accordingly he raised demand of Rs.23,804.33 as tax due payable by the dealer.

3. Being aggrieved, the dealer M/s. D.F.O., Athagarh Division preferred appeal before the first appellate authority. Learned Deputy Commissioner of Sales Tax (Appeal), Cuttack II Range, Cuttack as first appellate authority reversed the findings of the assessing authority with his view that, the dealer had not caused entry of scheduled goods to any local area for the purpose of use, sale or consumption. So, liability under Entry Tax did not arise.

4. When the matter stood thus, Revenue being aggrieved with the order of first appellate authority knocked the door of this Tribunal. The main contention of the Revenue is, the order of the first appellate authority is not based on provisions of law, hence illegal. It is prayed for restoration of the order of assessing authority by setting aside the order of first appellate authority.

5. At the outset, it is pertinent to mention here that, the dealer is a government department. The D.F.O. concerned has seized some timber inside the jurisdiction of the Athagarh Forest. It had affected sale of those timbers to M/s. OFDC Ltd. M/s. OFDC Ltd., the purchaser shifted the purchased timbers from the seized point. Now, such being the admitted facts in this case. It is surprising to take note of the fact that, the Revenue has taxed the dealer under OET Act and even by preferring this appeal wants to set aside the order of first appellate authority. This is an appeal for sake of appeal.

6. Learned Standing Counsel raised two fold argument, one is the timbers are sized timber, so it covered u/s.26 of the OET Act as on sale the dealer is liable to pay tax. His another argument is, the notification No.5285/CTA/111/95 dtd.08.02.1999 is applicable to the

assessment under OST Act. So, the liability under OET Act cannot be exonerated on the basis of that notification.

Per contra, learned counsel for the dealer argued that, it is not sized timber but the timber seized on detection while in illegal transportation. After seizure the D.F.O. sold these logs to OFDC Ltd. and the purchaser (M/s. OFDC Ltd.) shifted the seized logs from the purchase point. If the goods were not sent out of local area or brought into local area, where is the question of liability under the OET Act? In the cross objection, the dealer has supported the findings of the first appellate authority with the argument that, there was no question of bringing the goods into the local area by the dealer. So, the tax liability under OET Act is not sustainable in law. It is noticed from the documents filed by the dealer that, M/s. OFDC Ltd. has paid Entry Tax on such transportation of the goods from the seized point/sale point. So, in no case it can be said that, the order of the first appellate authority is wrong.

Resultantly, it can safely be said that, the order of first appellate authority calls for no interference, it is legal and binding on the parties. The Revenue has filed this appeal only for sake of appeal and the appeal lacks merit both in law and fact, hence ordered.

7. The appeal is dismissed on contest as of no merit on contest.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

Sd/-
(S. Mohanty)
1st Judicial Member