

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 132(ET)/2016-17**

(Arising out of order of the ld. JCST (Appeal), Bhubaneswar  
Range, Bhubaneswar, in First Appeal Case No. AA-  
108221522000190/OET/BH-I, disposed of on dtd.27.07.2016)

**Present: Smt. Sweta Mishra  
2<sup>nd</sup> Judicial Member**

M/s. Utkal Plaster Private Limited,  
Shree Jagannath Saw Mill Campus,  
Cuttack Road, Bhubaneswar. .... Appellant

**-Versus-**

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

For the Appellant : Mr. P.L. Kar, Advocate  
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.04.2012 to 31.03.2014)

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Date of Hearing: 08.03.2021 \*\*\* Date of Order: 10.03.2021

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**ORDER**

This appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, FAA/JCST) in First Appeal No. AA-108221522000190/OET/BH-I dtd.27.07.2016 in confirming the assessment order passed by the learned Sales Tax Officer/Assessing Authority (Entry Tax), Bhubaneswar-I Circle, Bhubaneswar (in short, STO/AA) for the assessment period from 01.04.2012 to 31.03.2014 u/s. 9-C of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. The brief facts of the case is that :

The dealer-appellant, in the instant case, is a limited company, carries on business in manufacturing and trading of gypsum powder and fly ash bricks and has been assessed by the learned STO u/s.9-C of the OET Act for the aforementioned assessment period. During a surprise visit of STO, Tax Audit Unit, Bhubaneswar Range, Bhubaneswar, the dealer was confronted prima facie with two allegations i.e. the dealer company has effected unregistered purchases of sand worth Rs.8,75,800/- from the local unregistered dealers where the goods have not been suffered entry tax earlier. The company has also not paid entry tax on the said goods (sand), as the same is coming under minor mineral produce. Hence, it is to be taxed @1% under OET Act with due penalty thereon. Further, the dealer-company has not paid Entry Tax on freight and other incidental charges on interstate purchase of machinery worth Rs.3,20,900/- which has also been admitted by the authorised signatory of the company. Thus, freight and incidental expenses @20% may be added with the basic price and entry tax @2% may be demanded with due penalty at the time of assessment. Upon receipt of statutory notice in Form E-30, the learned Advocate appeared before the STO and produced the books of account and all other relevant documents for verification. After examination of the said books of account and other supporting documents connected with the matter, the learned STO considered the levy of entry tax @1% on sand which is purchased from the local area to be illegal and unjustified. Similarly regarding addition of freight and

incidental charges @20% on inter-state purchase of machinery worth Rs.3,20,900/-, the learned STO considered it to be very high and excessive and therefore brought it under @5% tax group. Accordingly, the entry tax payable on purchase and sales of schedule goods eventually came to Rs.83,203.45. Since the dealer have already paid Rs.57,033/- at the time of his return, now the balance tax due to be paid determined at Rs.26,170/-. Thereafter, penalty u/s.9-C(5) of the OET Act is levied thereon at the rate of twice of the tax demand, which became calculated at Rs.52,340/-. Thus, both tax due along with penalty altogether work out to be Rs.78,510/-, which the dealer is now liable to pay at the stage of assessment.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/JCST (Appeal), Bhubaneswar Range, Bhubaneswar, who in turn, dismissed the appeal and confirmed the order of assessment. Thus, the tax demand of the dealer remained unaltered at the first appellate stage also.

4. Being further aggrieved with the order of the learned FAA/JCST, the dealer knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the learned FAA/JCST is unjust, improper and not based on facts and law.

5. Cross objection has been filed by the State-Respondent in this case.

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned First Appellate Authority. He has vehemently argued that, the order

of the learned FAA is quite improper and prejudice to the very principle of natural justice. The learned Assessing Authority without going properly through books of account, written submission and other relevant documents produced at the time of assessment hearing, completed the assessment u/s.9(C) of the OET Act, which is illegal and bad in law. Levy of entry tax @1% on purchase of sand amounting Rs.8,75,800/- from local supplier by the learned Assessing Authority is illegal and bad in law for the fact that sand was purchased from local supplier belonging to the same local area, where the manufacturing-cum-processing unit is situated. In support of proof, purchase bills are enclosed by the dealer-appellant along with residential proof of the supplier for verification at the time of assessment. The learned Assessing Authority without taking into account the contentions made by the dealer and without verifying the documentary evidence produced, went on to levy entry tax @1% on Rs.8,75,800/- on pure assumption, which is illegal and bad in law. The additional tax of Rs.26,170/- and penalty thereon amounting to Rs.52,340/- total comes to Rs.78,510/- is excessive and bad in law for the reason that the taxable turnover determined by the learned Assessing Authority is not based on fact but purely on assumption, therefore, needs to be reversed. The learned Advocate for the dealer has filed one petition for additional evidence. Copy of the petition was served to the learned Addl. Standing Counsel. The petition was heard from both the sides and the petition was allowed. The learned Advocate for the dealer has prayed to

allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing learned Addl. Standing Counsel, Mr. Pradhan for the State argued that, the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The dealer-appellant was given sufficient opportunities to produce documentary evidence in favour of his stand taken in the grounds of appeal for disposal by the learned FAA, but the dealer failed to produce the same. Hence, his plea is not acceptable. The order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer-appellant, which is not sustainable in the eyes of law. So, he has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

8. Heard the learned Advocate, Mr. P.L. Kar appearing on behalf of the dealer and learned Addl. Standing Counsel, Mr. S.K. Pradhan on behalf of the State. Gone through the grounds of appeal, the impugned orders of appeal and assessment, cross objection filed by the State-respondent and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion that, the points raised by the learned Advocate for the dealer is quite satisfactory and this is a fit case, where the matter should be remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the learned First Appellate Authority is hereby set-aside. The matter is remanded back to the learned AO and he is to consider the additional evidence filed by the dealer after verifying the genuineness of the document thoroughly and accordingly re-compute the tax liability of the dealer after giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated and Corrected by me,

Sd/-  
(S. Mishra)  
2<sup>nd</sup> Judicial Member

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