

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 14(ET)/2017-18**

(Arising out of order of the ld. JCST (Appeal), Bhubaneswar
Range, Bhubaneswar, in First Appeal Case No. AA-
108221622000059, disposed of on dtd.28.02.2017)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

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

.... Appellant

-Versus-

M/s. Anil Kumar Mahalik,
Bhubaneswar.

.... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)
For the Respondent : Mr. B.B. Panda, Advocate

(Assessment Period : 04/09 to 03/14)

Date of Hearing: 27.04.2021 *** Date of Order: 29.04.2021

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 Case No. 108221622000059 dtd.28.02.2017 in reducing the tax demand to nil in the assessment order passed by the learned Sales Tax Officer/Assessing Authority, Bhubaneswar-IV Circle, Bhubaneswar (in short, STO/AA) for the assessment period from 04/09 to 03/14 u/s. 9C of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. The brief facts of the case are that :

The dealer-respondent in the instant case is engaged in works contract such as construction of road and bridges under PWD Department, Government of Odisha under PMGSY scheme in the district of Cuttack, Nayagarh, Phulbani and Khurda etc. The dealer effects purchases of construction materials like steel, cement, bricks, chips, morum and stones from within the State of Odisha from registered and unregistered dealers. The place of business of the dealer was visited by the Audit Team of Bhubaneswar Range, Bhubaneswar to find out the correctness of the tax compliance during the period from 01.04.2009 to 31.03.2013. Consequent upon receipt of AVR, statutory notice in Form E-30 issued to the dealer, the authorised representative of the dealer appeared and produced books of accounts for verification. During verification it was found that, the dealer has effected total purchases of scheduled goods to the tune of Rs.9,11,94,496/- out of which Rs.72,20,282/- found to have effected from the registered dealer and suffered entry tax and the rest of Rs.39,74,294/- from unregistered dealers. Accordingly, the TTO of the dealer was determined at Rs.39,74,294/- and entry tax on the said TTO @1% came to Rs.39,743/-. The dealer having paid nothing at the time of return, is assessed to pay Rs.39,743/- along with the penalty twice of the tax due i.e. Rs.79,486/- u/s.9(c)5 of the OET Act. Thus, both the tax due and penalty altogether calculated to Rs.1,19,229/-, which the dealer is liable to pay at the assessment stage.

3. Being aggrieved with the order of the learned Assessing Authority, the dealer preferred first appeal before the learned JCST (Appeal), who in turn, after analysing the books of account and other relevant documents, modified the tax demand and thereby reduced the tax due to nil.

4. Being dis-satisfied with the order of the learned FAA/JCST (Appeal), the State-appellant has knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the ld.FAA/JCST is unjust, improper and not based on facts and law.

5. Cross objection has been filed by the dealer-respondent in this case.

6. Learned Advocate appearing on behalf of the dealer has supported the order passed by the learned FAA. He has vehemently argued that, the order of the learned FAA appears to be just and proper. In the first appellate forum, the books of accounts were duly examined in detail and order passed as per provisions of law. The sand, chips etc. in quantities are neither brings or causes to be brought into local area nor by the respondent by the so called unregistered dealer from outside the local area, which attracts levy of Entry Tax as per Sec.3(1) or Sec.3(2) of OET Act. Locally collected sand, chips etc. are purchased and utilised by the respondent during the period under second appeal, attracts no ET u/s.3(1) and Sec.3(2) of OET Act. Law is well settled by the Division Bench of this Tribunal in S.A.No.52(ET)/2008-09 dtd.10.09.2009 in case of **M/s. Radha Govinda Roy Jewellers –vrs.- State of Orissa** and the same has been confirmed in STRV No.70/2010 upholding the principles of law under the OET Act that if goods

were purchased from one Municipal area, in that case, no Entry Tax is leviable under the OET Act. So, the learned Advocate for the dealer has prayed before this Tribunal to dismiss the appeal filed by the State and to confirm 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 genuine. The order of the learned FAA appears to be unjust and improper. The observation of the learned FAA regarding levy of entry tax is partially correct. The learned FAA has simply swayed away by the contention of the dealer that, sand, chips are not minerals (Minor Minerals) under General Act to be included under Item No.59 of Schedule goods. As per Audit Visit Report, the dealer in the instant case has executed the works like construction of road and bridges assigned by different PWD offices of Government of Odisha in the districts of Nayagarh, Khurda, Cuttack, Phulbani and Bargarh etc. under the PMGSY Scheme of Government of India. In course of execution of works contract, the dealer has effected purchases of sand and chips from unregistered sources to the tune of Rs.39,74,294/- for use in course of execution of works contract but has not paid tax thereon for which the dealer is liable to pay ET of Rs.39,742/- and penalty of Rs.79,495/-. As there is no supporting evidence regarding the purchase of such goods within the local area as per the R.C. granted to the dealer, these goods so purchased are liable for the levy of entry tax as per the provisions laid u/s.3 of the OET Act. The learned FAA while disposing the first appeal observed “purchase of sand and

chips from the suppliers within the local area of work site which is examined at the time of assessment and paid VAT on such purchase at the time of filing of return". But the fact remains, as the dealer failed to adduce any evidence regarding purchase of schedule goods within the local area, the learned Assessing Officer imposed tax and penalty on him. The finding of the learned FAA that, the dealer has purchased the scheduled goods within the local area is without any basis or documentary evidence. Hence, the order of the learned FAA is bad in law and without the provisions of the statute. So, he has prayed to allow the appeal filed by the State and to set-aside the order of the learned FAA.

8. Heard the learned Advocate Mr. B.B. Panda appearing on behalf of the dealer and learned Addl. Standing Counsel Mr. S.K. Pradhan appearing on behalf of the State. Gone through the grounds of appeal, impugned orders of appeal and assessment, cross objection filed by the dealer-respondent and arguments of both the at the time of hearing. In view of the facts and circumstances of the case, after analysing the points raised in this appeal, I am of the view that, this is a fit case where the matter should be remanded back to the learned FAA to re-compute the tax liability of the dealer as per provisions of law after making proper verification. Accordingly, it is ordered.

9. The appeal filed by the State is allowed on contest. The order of the learned FAA is hereby set-aside. The matter is remanded back to the learned FAA and he is to re-compute the tax liability of the dealer as per provisions of law after making proper verification within a period of three months from the

date of receipt of this order and the dealer should be given a reasonable opportunity of being heard. The dealer is directed to produce relevant documents before the learned FAA. The cross objection filed by the dealer-respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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