

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

S.A. No. 347 (ET) of 2006-07

(Arising out of order of the learned ACST (Appeal), Puri Range,
Bhubaneswar in First Appeal No. AA- (ET) 108/BH.II/06-07,
disposed of on dated 28.11.2006)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri M. Harichandan, Accounts Member-I

M/s. Gita Sales Corporation,
Jayadev Vihar, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : N o n e.
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl.SC (CT)

Date of hearing: 18.05.2022 *** Date of order: 21.05.2022

O R D E R

The dealer-assessee in the present second appeal has called in question the legality of the order dated 28.11.2006 passed by the learned Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter called as 'first appellate authority') in Appeal No. AA- (ET) 108/BH.II/06-07 thereby confirming the order dated

17.02.2006 passed by the Assessing Authority, Entry Tax, Bhubaneswar-II Circle, Bhubaneswar (in short, 'assessing authority') raising extra tax demand of ₹7,07,460.00 for the year 2002-03 in the assessment framed u/s. 7(4) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act').

2. The facts leading to filing of the present second appeal are that the dealer-assessee is engaged in purchase and sale of cooking coal. Its assessment under the OST Act was completed and proceeding was initiated for assessment under the OET Act. In course of assessment, the assessing authority on verification of books of account found that the appellant brought scheduled goods worth ₹6,82,67,875.87 out of the local area on which no entry tax was paid. When the dealer was confronted with non-payment of entry tax, it contended that in view of the provisions contained under Article 286 of the Constitution of India levy of entry tax on goods imported from outside the country is not permissible. There is no provision under the OET Act to levy tax by the State on imported goods. Therefore, it did not pay the entry tax on the same (imported goods). The appellant also could not produce any evidence before the assessing authority with regard to incidental and

transportation expenses incurred while bringing the goods into the local area. So, in the absence of any documentary evidence, the assessing authority estimated the incidental expenses at ₹20,60,563.88 and accordingly, determined the purchase value of goods at ₹7,07,46,026.75 on which entry tax @ 1% was computed at ₹7,07,460.00.

2(a). The dealer-appellant being aggrieved with the order of the assessing authority raising entry tax of ₹7,07,460.00 preferred appeal before the first appellate authority, who confirmed the order of the assessing authority dismissing the appeal. The present second appeal has been filed assailing the order of the first appellate authority rejecting the claim of the dealer-assessee that it was not liable to pay entry tax on goods imported from outside the country and the expenses incurred towards incidental charges. No cross-objection has been filed by the State.

3. When the appeal was called on for hearing, none appeared on behalf of the dealer-assessee despite due service of notice. Learned Counsel for the dealer-assessee though did not appear when the matter was called on for hearing, filed a memo along with written notes of

submission before this Tribunal with a prayer to consider his written notes of submission for granting relief. This appeal being of the year 2006-07 and pending adjudication for last 15 years, the Tribunal was compelled to proceed with hearing of the appeal in the presence of the learned Standing Counsel (CT) for the revenue and the written notes of submission filed by the dealer-assessee was considered for adjudication of the issue involved in the present second appeal.

4. We have heard learned Standing Counsel (CT) for the revenue, gone through the memorandum of appeal vis-a-vis the impugned orders of the forums below and the materials on record. On going through the memorandum of appeal filed by the dealer-assessee, we find that it has challenged the impugned orders of the forums below mainly on two grounds that it was not liable to pay entry tax on imported goods from outside the country and levying tax on incidental expenses was also not permissible under the OET Act. Learned Standing Counsel (CT) for the revenue supporting the impugned orders of the forums below vehemently urged that after the verdict of the Hon'ble Apex Court, there is no dispute at bar with regard to the

legal position that the goods imported from outside the country, which enters into the local area, is exigible to entry tax of the concerned State and in view of Section 2(j) of the OET Act, purchase value includes the incidental, freight charges and other expenses. The forums below having adjudicated the issue involved in the present appeal as per the statutory provisions governing the field and the law laid down by the Hon'ble Apex Court, there is no illegality or impropriety in the impugned orders of the forums below warranting interference of this Tribunal.

5. We have given our anxious consideration to the submission of the learned Standing Counsel (CT) for the revenue and the grounds of appeal as well as written notes of submission filed by the dealer-assessee in the present second appeal. In view of the law laid down by the Hon'ble Apex Court in the case of **State of Kerala and others Vs. Fr. William Fernandez Etc. Etc., reported in [2018] 57 GSTR 6 (SC)**, that goods imported by the dealer-assessee from territories outside the country is exigible to Entry tax when same enters the local area of a state. There is no dispute in the present case that the dealer has brought the scheduled goods worth ₹6,82,67,875.87 to the local area,

which is exigible to tax in view of the law laid down in the aforementioned decision. So far as the incidental charges are concerned, Section 2(j) of the OET Act provides that the purchase value means the value of scheduled goods as ascertained from the 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. The dealer-assessee having brought the goods worth ₹6,82,67,875.87 to the local area, it must have incurred incidental and transportation charges in connection with such purchase. The dealer failed to produce the relevant documents with regard to the expenditure incurred relating to the incidental and transportation charges before the assessing authority for which it estimated such expenses at ₹20,60,563.88, which in our considered opinion, is just and reasonable. The assessing authority did not commit any illegality in including the incidental and transportation charges while determining the purchase value of the goods brought to the local area. The first appellate authority also on due consideration of the materials on record rightly confirmed the order of the assessing authority imposing

entry tax on the value of the goods brought to the local area adding incidental and transportation charges to it. Both the forums below acted in conformity with law and there is no illegality in the impugned orders passed by them warranting interference of this Tribunal.

6. In view of the discussions made above, the appeal filed by the dealer-assessee being devoid of merit stands dismissed and the impugned orders of the forums below are hereby confirmed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I