

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 166(ET)/2015-16

(Arising out of order of the Id.JCST (Appeal), Ganjam Range, Berhampur, in
Appeal No. AA(E).10/2013-14,
disposed of on dtd.17.10.2015)

Present: Sri S. Mohanty
2nd Judicial Member

M/s. Saraswati Plastic,
Corporation Road, Berhampur,
Dist. Ganjam. ... Appellant

-Versus-

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

For the Appellant : None
For the Respondent : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

Date of Hearing: 05.05.2018 *** Date of Order: 05.05.2018

ORDER

This order arises out of a rectification petition by the State u/s.20 of the Odisha Entry Tax Act, 1999 (in short, OET Act). It is contended by the State-appellant that, learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Ganjam Range, Berhampur (in short, FAA/JCST) had remitted the matter to the AA for assessment afresh. However, the dealer had carried the matter before this Tribunal in S.A.No.166(ET)/2015-16. This Tribunal while disposing the Second Appeal vide it's Order dtd.27.06.2017, set-aside the order of FAA but at the same time given liberty to the STO to initiate further proceeding, if he desires in the interest of justice. Learned Addl. Standing Counsel, Mr. Pradhan placed the order passed by the Single Bench of this Tribunal dtd.27.06.2017 which reads as follows :

“In the result, the appeal is allowed. The order of Id. JCST with regard to direction relating to initiation of fresh proceedings against the appellant dealer is hereby set-a-side. However, it has been made clear that the Id. STO is at liberty to initiate any further proceeding against the appellant dealer in accordance with law, if he desires so in the interest of justice. The cross objection is disposed of accordingly”.

2. It is also found that, in connection with the same tax period basing the same tax evasion report, proceeding u/s.43 of the OVAT Act was also

initiated against the dealer. The First Appeal against the order of AO in that VAT proceeding was allowed and the FAA remanded the matter to the AO for assessment afresh. However, Single Bench of this Tribunal in S.A.No. 319(V)/2015-16 vide Order dtd.06.05.2017 set-aside the order of the FAA giving liberty to the STO to proceed further against the dealer in the interest of justice. The order passed in Second Appeal No.319(V)/2015-16 dtd.06.05.2017 reads as follows :

“In the result, the appeal is allowed. The order of the learned JCST with regard to the direction relating to initiation of fresh proceeding against the appellant-dealer is hereby set aside. However, it has been made clear that the learned STO is at liberty to initiate any further proceeding against the appellant-dealer in accordance with law if he desires so in the interest of justice. The cross objection is disposed of accordingly.”

3. From the above it is found that both in ET and VAT appeal, same order was passed by this Tribunal by different benches. State has not preferred to rectify the order in VAT appeal. The order in VAT proceeding has consequential effect on order in ET appeal. If the order in VAT appeal is accepted by the State, then there will be no reason to interfere in the order passed in ET appeal. Whether the orders suffers from ambiguity or if there is any manifest error apparent on the face of the order, all these arguments have no legs to stand, once the State has accepted the order passed in VAT appeal. Further well settled principle is, jurisdiction u/s.20 cannot extend to re-argue the matter on merit. In that view of the matter, I am of the considered view that, the present application is bad both in law and fact. Hence, ordered.

The petition stands rejected as of no merit.

Dictated and Corrected by me,

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

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