BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No. 62 (ET) OF 2009-10

(Arising out of order of the learned ACST, Balangir Range,
Balangir in First Appeal Case No. AA.- 100(KA) of 2008-09
disposed of on dated 18.03.2009)

Present: Shri R.K. Pattanaik, Chairman,
Smt. S. Mishra, 2nd Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

M/s. Vedanta Aluminium Limited,
Lanjigarh, Kalahandi ... Appellant

-Versus-

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

For the Appellant : Sri S.C. Sahoo, Advocate
For the Respondent : Sri M.S. Raman, Additional Standing Counsel (CT)

Date of hearing: 14.10.2020 ***** Date of order: 11.11.2020

O R D E R

Instant appeal under Section 17(1) of the Odisha Entry Tax Act, 1999 (in short, 'the Act') is at the behest of the dealer assessee assailing the impugned order dated 18.03.2009 promulgated in Appeal No. AA- 100(KA) of 2008-09 by the learned Assistant Commissioner of Sales Tax, Balangir Range, Balangir (in short, 'FAA') vis-a-vis order of assessment dated 05.08.2008 passed by the learned Sales Tax Officer, Kalahandi Circle, Bhawanipatna (in short, 'AA') under Section 7(4) of the Act for the tax period 2004-05 on the grounds inter alia that the findings of the

authorities below are not untenable and thus, liable to be set aside in the interest of justice.

2. In the instant case, the dealer assessee is a manufacturing unit. It was subjected to assessment for the year 2004-05 under the OST Act, 1947. For the same period, assessment under Section 7(4) of the Act was taken up and by order dated 05.08.2008, the AA raised additional tax to the tune of ₹9,48,819.00 payable as per the terms and conditions of the demand notice, which was challenged before the FAA, who, however, confirmed the assessment by the impugned order dated 18.03.2009. The dealer assessee questioned the legality of the findings of the FAA and claimed that the differential tax which has been demanded under the assessment dated 05.08.2008 is liable to be interfered with on the following grounds, such as; (i) for the year 2004-05, return was filed on purchase of scheduled goods @ 1% amounting to ₹68,87,31,279.00 and @ 2% to ₹32,31,76,890.00 and paid tax under protest and as such, determination @ 1% to ₹77,21,05,366.00 and @ 2% to ₹32,89,37,156.00 as held by the AA and confirmed by the FAA with reference to the utilization statement of the way bills to be arbitrary; (ii) return was filed disclosing purchases made by import as well as inter-State vis-a-vis the books of account but the authorities below placed reliance on the statement of way bills which is not tenable in law, inasmuch as, by inadvertent mistake entries in the way bills were wrongly made by mentioning each way bill at ₹50,36,398.00 instead of ₹18,63,384.00, the fact which was informed to the AA on 11.05.2005, but the same was not considered, so also failed to be appreciated by the FAA; (iii) besides 57 way bills, 6 more have been utilized for transportation of

the imported goods on which no entry tax is paid for not being manufactured within the State which was also not duly taken cognizance of by the FAA in spite of all materials being produced; (iv) likewise, a particular way bill by which the dealer assessee procured goods worth of ₹25,76,629.00 out of which ₹13,76,629.00 is subject to entry tax @ 1% and the remainder at @ 2% but the AA treated and applied the rates of tax to ₹12.00,000.00 @ 1% and ₹25,76,629.00 @ 2% thereby resulting in short and excess demands in the respective tax groups, which could have been corrected by the FAA; (v) despite a direction in W.P. (C) No. 2248 of 2007 disposed of on 18.02.2008 by the Hon'ble High Court of Orissa in the case of Reliance Industries Ltd. and another Vs. State of Orissa and others, when the dealer assessee applied for refund of entry tax as the State had no jurisdiction to impose it for the goods were imported and not manufactured within the State, the same was not considered and duly obliged by the FAA; and (vi) for non-consideration of the aforesaid facts, the impugned order dated 18.03.2009 is not tenable and thus, susceptible in appeal subject to exercise of jurisdiction by the Tribunal.

3. On the contrary, the respondent State justified the findings of the authorities contending that the impugned order dated 18.03.2009 has dealt with the claim of the dealer assessee with regard to the discrepancies on the way bills and rejected it with valid reasons not for being supported by documentary evidence. On the point of law, as contended by the respondent State, the FAA did not commit any illegality and therefore, the order of assessment dated 05.08.2008 needs no interference. .

4. As regards the entry tax on the imported goods, it is claimed that the order of the Hon'ble Court dated 18.02.2008 ibid was not complied with. For now, the exigibility to entry tax vis-a-vis the imported goods is more res integra, as the Hon'ble Apex Court, in the meantime, upheld the State's competence to levy it and enunciated the law in State of Kerala and others Vs. Fr. William Fernandez and others reported in (2018) 57 GSTR 6 (SC). As per the decision (supra), the Act held not to exclude levy of entry tax on the goods imported from any place outside the territory of India into the local area for consumption, use or sale and furthermore, the law to be within the legislative competence of the State and does not intrude the domain of the Parliament as earmarked in Entries 41 and 83 of List-I. It has also been categorically held therein that import of goods from outside India comes to an end when the goods enter into the custom frontiers of India and are released for home consumption; later to which, the State legislature assumes the legislative competence to impose entry tax under Entry 52 of List-II; and the 'Original Package Theory' as developed and propounded by the American Supreme Court in the case of Brown Vs. State of Maryland to be clearly inapplicable in India and thus, observed that the imported goods are not exempted from entry tax till it reaches to the destination of its consumption, use or sale. So, in view of the settled position of law, the dealer assessee is liable to pay entry tax even on the imported goods.

5. The learned Counsel for the dealer assessee strongly urged that in spite of intimation to the authorities below regarding the clerical error which inadvertently creeped in on the way bills mentioning in detail about the alleged consignments, the same was not taken into account, which resulted in demand of

additional tax for the assessment period 2004-05. While claiming so, copies of a letter dated 11.05.2005 sent by the dealer assessee addressed to the CTO, Bhawanipatna, Kalahandi, Orissa with full detail of the consignments and an invoice besides bill of entry were produced before the Tribunal. It is contended that due to oversight, as is indicated in the said correspondence, the value of the consignments dated 21.02.2005 and 04.03.2005 were wrongly declared on the way bills by the clearing and forwarding agent of the dealer assessee. The contention of the dealer assessee is that the value of each way bill ought to have been ₹18,20,865.00, but inadvertently, ₹50,36,398.00 was mentioned and in the utilization statement, it was simply carried forward. The consignments detail with a request by the dealer assessee to correct the records and to charge the entry tax accordingly as per the assessable value for ₹9,87,52,909.00 and ₹14,64,12,676.89 was advanced but it was not acceded to. In fact, the order of assessment dated 05.08.2008 is not explanatory enough as to the claim of the dealer assessee with regard to the error or mistake on the way bills and utilization statement. But, the FAA did consider, however, rejected it on the ground that no documentary evidence in support thereof was produced by the dealer assessee. It appears that the FAA referring to Rule 94(3)(a) of the OST Rules held that it was the statutory obligation on the part of the dealer assessee to declare the particulars correctly and the way bills so produced were accepted at its face value for having been duly authenticated for transportation of goods. The fact of error with respect to the way bills and statement of utilization was brought to the notice of the FAA and there is no denial to it. According to the FAA, the dealer assessee did not produce any document,

such as, the despatch register and delivery register to show the error, if any, on the transactions in question. So, in absence of any evidence in support of the error on the way bills, the FAA appeared to have rejected such a claim of the dealer assessee. Under the above circumstances and having regard to the fact that the FAA was indeed intimated about the alleged error and when a copy of the correspondence which it had with the CTO, Bhawanipatna, Kalahandi, Orissa having been produced, the Tribunal is of the humble view that in the fitness of things, it would be just and proper to provide an opportunity to the dealer assessee to produce all such documentary evidence necessary to meet the error vis-a-vis the alleged consignments. The Tribunal is also of the considered view that any such denial to the dealer assessee clarifying the error and setting the record straight with respect to the alleged consignments might result in miscarriage of justice. In other words, a reasonable opportunity of hearing should be provided to the dealer assessee in order to clarify its position and to satisfy and explain as to in what manner the error or mistake on the way bills sneaked in for the due consideration and order in that respect which would rather subserve the purpose and meet the ends of justice. The other grounds raised by the dealer assessee in the appeal but not attended to, as the argument was confined to the issues advanced and dealt with, are deemed to have been abandoned and thus, not taken up and considered by the Tribunal.

6. Hence, it is ordered.

7. In the result, the appeal stands allowed. As a logical sequitur, the impugned order dated 18.03.2009 promulgated in Appeal No. AA- 100(KA) of

2008-09 is hereby set aside to the extent indicated. The AA is, thus, directed to undertake recomputation vis-a-vis the tax liability under the Act for the assessment period 2004-05 after providing the dealer assessee a reasonable opportunity to submit all such material evidence relevant for the purpose with respect to the consignments in question and thereafter, to pass appropriate order in accordance with law preferably within a period of three months from the date of receipt of a copy of the above order.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(Smt. S. Mishra)
2nd Judicial Member

I agree, Sd/-
(P.C. Pathy)
Accounts Member-I