BEFORE THE JUDICIAL MEMBER-I:
ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 21(E) of 2019
(Arising out of the order of the learned JCST (Appeal),
CT & GST, Territorial Range, Bhubaneswar,
in First Appeal Case No. AA-108221622000272 (OET),
disposed of on dtd.30.10.2018)

P r e s e n t: **Shri A.K. Dalbehera, O.S.J.S.**
M.A., LL.M.
1st Judicial Member

M/s. Lexus Paints Utkal,
Prop.:- Reshma Baig,
Plot No.87, 88, Bhagabanpur I.E.,
Patrapada, Bhubaneswar-751019. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. J. Mishra, Advocate
For the Respondent ... Mr. M.S. Raman, A.S.C.

Date of hearing: 21.01.2021 *** Date of order: 10.02.2021

O R D E R

This appeal is directed against the order dtd.30.10.2018 passed by the learned Joint Commissioner of Sales Tax (Appeal), CT & GST, Territorial Range, Bhubaneswar (hereinafter referred to as, the learned JCST) in First Appeal Case No. AA-108221622000272 (OET), wherein he reduced the tax demand to Rs.83,508.00 from Rs.2,03,190.00 raised

by the learned Assessing Authority (Entry Tax), Bhubaneswar IV Circle, Bhubaneswar (hereinafter referred to as, the learned AA) for the assessment period 01.01.2011 to 31.03.2013 u/s.10(1) of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act).

2. The brief facts of the case are that, the appellant-dealer is a proprietorship concern engaged in manufacturing and trading of paints of lexus and other items like putty, thinner, hardner etc. and was self-assessed u/s.9(2) of the OET Act. As per the tax evasion report submitted by the STO, Enforcement Range, Bhubaneswar, the evasion of entry tax on suppression of sales of finished products covered under Part-I of list of scheduled goods under the OET Act was established. Accordingly, a statutory notice in FormE-32 was issued in response to which the authorized person of the appellant-dealer appeared and produced the books of account which were examined in the light of the allegation lodged in the tax evasion report vis-à-vis the periodic returns filed by the appellant-dealer under the OET Act. The authorized person was also duly confronted with the allegation lodged in the tax evasion report. The learned AA calculated total interstate purchase of goods towards stock received from outside the State of Odisha at Rs.97,32,171.00 including freight charges and calculated Entry Tax thereon at Rs.97,322.00. The learned AA determined the GTO at Rs.68,38,549.00 and calculated entry tax thereon @ 1% at Rs.68,385.00. Thus, the learned AA calculated the total entry tax payable on purchase and sale of finished products of scheduled goods at

Rs.1,65,707.00. After adjustment of tax paid amount of Rs.97,977.00 at the time of filing of periodical returns the learned AA calculated the balance tax due as Rs.67,730.00 and imposed two times penalty amounting to Rs.1,35,460.00 which altogether came to Rs.2,03,190.00.

3. Being aggrieved by the order of the learned AA, the appellant-dealer preferred an appeal before the learned JCST who reduced the demand to Rs.83,508.00. Being aggrieved by the order of the learned JCST the appellant-dealer has preferred this second appeal.

4. The appellant-dealer has come up with the second appeal on the grounds that the learned JCST has erred in mentioning the period correctly as the period covered is from 01.01.2011 to 31.03.2013, whereas in the first appeal order the same has been mentioned as 01.04.2011 to 31.03.2013 thus making the order defective and is liable for set aside; that in the first appeal order there is no mention of determination of gross turnover and taxable turnover so as to compute the tax liability of the appellant-dealer under the OET Act, though during the impugned period the appellant-dealer had effected stock transfer of finished goods to the tune of Rs.47,32,000.00, interstate sales to the tune of Rs.84,338.00 and intrastate sales to tune of Rs.37,67,948.00 together totaling to Rs.85,84,286.00; that the learned JCST did not mention about the sales effected under the CST Act and only intrastate sales has been mentioned thus making the order erroneous in itself; that a correct computation is annexed from which it is revealed that no entry tax or nil entry tax is due for

payment on the part of the appellant-dealer; that an amount of Rs.37,041.00 determined towards sales suppression under the OVAT Act has also been taken into consideration under the OET Act for computing the tax liability of the appellant-dealer under the OET Act and that the appellant-dealer has already deposited entry tax @ 1% amounting to Rs.97,977.00 on gross purchase of raw materials to the tune of Rs.97,32,171.00 during the impugned period.

5. The respondent-State has filed cross objection stating that the appellant-dealer was assessed basing on the tax evasion report with suppression of purchase and sales therein, duly confronted at the assessment stage with the authorized person, statement was recorded and the suppression was established by both the fora below; that the grounds and averments taken by the appellant-dealer such as sale of interstate sale under CST Act and suppression of sale under OVAT Act of Rs.37,041.00 are not legally sustainable as because the same was confronted to the appellant-dealer; that the first appellate authority has rightly taxed the raw materials used in manufacturing process as claimed by the appellant-dealer without any documentary evidence; that the grounds taken by the appellant-dealer without any supporting documents were rightly disallowed and taxed basing on the finding of tax evasion report; that the escapement of turnover u/s.10(2) is established and *mens rea* of the appellant-dealer is proved for which the penalty is justified and that the grounds raised in the appeal petition are misconceived.

6. Heard the learned Counsel for the appellant-dealer and the learned Addl. Standing Counsel for the Revenue. Perused the materials available on record so also the orders of both the fora below. I also perused the grounds of appeal and the plea taken in the cross objection. On perusal of the grounds of appeal vis-à-vis the plea taken in the cross objection it is seen that the learned JCST has not mentioned about the GTO in the appeal order. The first page of the impugned order does not contain the figures such as GTO, TTO, tax assessed, tax paid, tax refund, penalty or the total amount of tax, interest and penalty due to be paid. The tax period in the impugned order is mentioned as 01.04.2011 to 31.03.2013 but the tax period under question relates to the period 01.01.2011 to 31.03.2013. In the impugned order there is no mention of GTO. All these omissions pointed out in the grounds of appeal were not denied in the cross objection. Facts which are not specifically denied are deemed to be admitted.

7. From the impugned order it is seen that the learned JCST verified the books of account and other documents in support of the business activities of the appellant-dealer and allowed partial relief to the tune of Rs.10,21,342.87 on account of sale of scheduled goods made within the local area. It was argued by the learned Counsel for the appellant-dealer that while passing the order the learned JCST forgot to allow set off of Entry Tax paid on purchase of raw materials of scheduled goods which directly go into the composition of finished products manufactured by the

appellant-dealer. It was submitted by the learned Addl. Standing Counsel that Rule 19 of the OET Rules prescribes about set off of Entry Tax. In view of the submission of the learned Addl. Standing Counsel it is pertinent to quote the relevant provision of Rule 19 of the OET Rules-

> "***19. Set off of entry tax.-***
>
> (1) Every manufacturer of scheduled goods who is registered under VAT Act shall, in respect of the finished products which are scheduled goods and are sold by it to a dealer or person, as the case may be, either directly or through an intermediary, collect tax payable under Section 3 of the Act from the buying dealer or person, as the case may be.
>
> (2) The tax so collected from the buying dealer or person, as the case may be shall be credited to the Government Treasury and the proof of payment thereof shall be submitted along with the statement and return, as the case may be, required to be filed under the Act.
>
> (3) The tax so collected shall be separately shown in the sale invoices issued by the selling dealer to the buying dealer or person, as the case may be.
>
> (4) The buying dealer shall furnish a detail list of sale invoice so issued as evidence of payment of entry tax along with the return under sub-rule (1) of Rule 10, for the tax period to which such transactions relate.
>
> (5) The entry tax paid by the manufacturer of the scheduled goods on the purchase of raw materials which directly go into the composition of finished products by the manufacturer of the scheduled goods shall be set off against the entry tax payable under sub-rule (2) above by the selling dealer.
>
> ***Explanation.-***
> Where no entry tax is payable under sub-rule (2) of this rule on a part of the sales effected

the set off admissible under this sub-rule shall be reduced proportionately."

8. In the instant case it is an admitted fact that the appellant-dealer while selling the finished goods (scheduled goods) within the State had not collected Entry Tax from the purchasing dealers for which the learned JCST raised Entry Tax demand on the value of finished goods sold. But while computing the tax the learned JCST did not allow set off of Entry Tax paid on purchase of scheduled goods on the plea that the appellant-dealer failed to produce the stock account of raw material purchased and manufacturing account for verification. However, it is to be noted that set off of Entry Tax is to be allowed strictly as per the provisions of Rule 19 of the OET Rules. It appears that the impugned order to that effect is not at all convincing. The appellant-dealer being a manufacturer is also covered u/s.26 of the OET Act. Section 26 of the OET Act reads as follows:-

"***26. Manufacturers to collect and pay tax.-***

(1) Notwithstanding anything contained in this Act, every manufacturer of scheduled goods who is registered under the VAT Act shall in respect of sale of its finished products effected by it to a buying dealer or person, either directly or through an intermediary, shall collect by way of tax an amount equal to the tax payable on the value of such finished products under Section 3 of this Act by the buying dealer or person in prescribed manner and shall pay the tax so collected into the Government Treasury:

Provided that the tax so payable by a manufacturer under this sub-section during a year shall be reduced by the amount of tax paid under this Act on the raw materials

which directly go into the composition of the finished products during that year in the prescribed manner.

Provided further that where a buying dealer, under the Rules providing for the rates of tax required to be specified with reference to Section 3, is entitled to pay tax at a concessional rate or not to pay any tax, as the case may be, in respect of such finished products, the manufacturer shall, on a declaration furnished by the buying dealer in the prescribed form, collect the tax at such concessional rate or shall not collect any tax, as the case may be.

Explanation.-

For the purposes of this section, *'MANUFACTURER'* shall include a person who is engaged in mining and sells goods produced or extracted therefrom.

(2) Every manufacturer collecting tax under sub-section (1) shall reflect in returns submitted under sub-section (1) of Section 7 the particulars of tax so collected along with the proof of payment of tax.

(3) The amount of tax collected under sub-section (1) and not paid as required under sub-section (2) shall for the purpose of Section 11 be deemed to be an amount due under this Act.

(4) Every manufacturer collecting tax under sub-section (1) shall reflect the amount of tax collected under this section in the cash memo or sale invoice issued to the buyer.

(5) Collection and payment of tax in accordance with sub-sections (1) and (2) shall be without prejudice to any other mode of recovery of tax under this Act from the buying dealer and shall be subject to such adjustments as may be necessary on the completion of assessment of such buying dealer.

(6) If any manufacturer contravenes the provisions of sub-section (1) or sub-section

> (2), the Assessing Authority may, after giving him an opportunity of being heard, impose on him by an order in writing, a penalty not exceeding twice the amount of tax required to be collected and paid by him."

The authority is required to see the liability of the appellant-dealer on application of Sec.26 of the OET Act. In view of such discussion this is a fit case where the matter should be remitted back to the learned JCST for computation afresh in view of the relevant provisions under law (as narrated above) after verifying the books of account and other relevant documents. In view of the principle of natural justice the appellant-dealer should be given a fair chance to appear before the learned JCST by producing all the relevant documents. The learned JCST shall also do well to pass a complete order by supplying the omissions such as GTO, TTO, tax due etc. as stated beforehand (including correction of tax period) along with the fresh computation. The calculation sheet appended to the grounds of second appeal should also be examined while making fresh computation. Hence, it is ordered.

9. The appeal is allowed on contest and the impugned order is set aside. The matter is remitted back to the learned JCST for fresh computation in view of the observation made above preferably within three months from the date of receipt of this order. The cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

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(A.K. Dalbehera)
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