



the purchases had not suffered Entry Tax separately. The allegation is invoices issued by M/s. Scan Steel though carry the endorsement like Entry Tax paid but the endorsement was not believed to be true, as a result the audit team suggested for levy of Entry Tax on the dealer. The assessing authority accepted the suggestion of the audit team in the assessment and by application of the provision u/s.26(4) of the OET Act calculated the tax liability and penalty totaling to Rs.38,134.00 against the dealer.

3. Being aggrieved with such enhancement, the dealer knocked the door of first appellate authority who in turn confirmed the order of assessing authority.

4. Felt aggrieved by the order of both the fora below, the dealer preferred this second appeal. The contention of the dealer is, the selling dealers are being manufacturers had collected tax from him and such collection was duly endorsed in the invoices and further the fact of collection was also confirmed by this manufacturers but even thereafter the taxing authority has levied tax which is untenable in law.

5. The appeal is heard without cross objection.

6. The question framed for decision in this case is, whether the first appellate authority is wrong in confirming the order of assessing authority levying Entry Tax on the dealer.

At the outset, it is pertinent to mention here that, the dealer is a purchaser of goods from the manufacturers like M/s. Scan Steel Ltd. and M/s. Prinky Steels. Both these dealers having manufacturers are obliged u/s.26 of the OET Act to collect tax. I failed to understand, how provision u/s.26(4) is applicable against the purchasing dealer (assessee-dealer in this case). Irrespective of the fact that, the selling dealer has collected tax from the purchasing dealer and those are intrastate transaction between two registered dealers, absolutely there is no scope under law to levy Entry Tax on the purchasing dealer. Whether tax is duly paid by the selling dealer or not is a matter related to selling dealer. Similarly, being a manufacturer to what extent he is liable to pay Entry Tax is the question relates to the manufacturer/selling dealer. Instant/purchasing dealer in the case in hand

is no way covered u/s.26 of the OET Act or not liable to u/s.26(4) of the OET Act. Further, when there a confirmation from the selling dealer regarding collection of tax then, the taxing authority should have proceeded with the selling dealer. Thus, in the case in hand it only can be said that, levy of Entry Tax on the instant dealer is not sustainable in law. Accordingly, it is ordered.

7. The appeal is allowed on contest. The impugned order as well as the order of assessing authority both are set aside.

Dictated & corrected by me,

Sd/-  
(S. Mohanty)  
1st Judicial Member

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(S. Mohanty)  
1<sup>st</sup> Judicial Member