

THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No.177 (ET) of 2014-15

(From the order of the Id. DCST (Appeal), Balasore Range,
Balasore, in First Appeal Case No. AA 376-BA-2004-2005 (OET),
disposed of on 22.09.2014)

Present: Sri S. Mohanty
2nd Judicial Member

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

.... Appellant

- V e r s u s -

M/s. Diamond Chemical Ind. (P) Ltd.,
Januganj, Balasore.

... Respondent

For the assessment year: 2001-02

For the Appellant : Mr. M.L. Agarwal, S.C.
For the Respondent : N o n e

Date of hearing: 20.04.2019 **** Date of order: 20.04.2019

ORDER

This appeal is directed against the order of first appellate authority deleting thereby the tax liability fixed by the assessing authority in an assessment u/s.7 of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) for the assessment year 2001-02 relating to the respondent-dealer.

2. The facts in brief relevant for the purpose of disposal of this appeal are, the assessee-dealer was subjected to assessment under OET Act i.e. in consequence to assessment under OST Act relating to the dealer for

the assessment year 2001-02. The purchase turnover of the raw materials of the dealer was determined by the assessing authority at Rs.44,05,399.87 out of that, tax suffered goods/raw materials was Rs.10,57,575.70. Similarly, the dealer being a manufacturer had affected sale of manufactured goods to the tune of Rs.36,96,977.83. The total tax liability under the OET Act was determined at Rs.46,793.75, set off u/r.19(5) of the OET Rules to the tune of Rs.12,9393.42 was allowed. The dealer having paid Rs.25,441.00 was adjusted from the tax due along with the set off and ultimately the dealer was asked to pay the rest amount of tax i.e. Rs.8,413.00.

3. The dealer preferred appeal against the assessment. The first appellate authority in the appeal found there was wrong calculation of set off. It has allowed the set off of Rs.16,612.78. However, it has also reduced the sale turnover from Rs.36,96,977.83 to Rs.35,16,977.83 treating it as an enhancement without any basis by the assessing authority. In the result, the first appellate authority re-determined the tax liability and according to him the assessment was reduced to return figure.

4. When the matter stood thus, State has preferred this appeal on the sole ground that, the deletion of the enhancement of Rs.1,00,000.00 by the first appellate authority is erroneous.

5. The appeal is heard without cross objection as well as in absence of the dealer since the dealer did not turn up in spite of receipt of notice of hearing.

6. In the case in hand, it is found that, consequent upon the assessment under the OST Act the dealer was assessed under the OET Act. There was enhancement of the dealer's turnover by Rs.1,00,000.00 as per the assessing authority. However, the first appellate authority deleted that enhancement. Deletion of that enhancement by the first appellate authority is challenged by the Revenue in this appeal.

In the hearing when being asked, neither the Revenue nor the office could ascertain that, what has happened to the assessment under

OST Act relating to the dealer. Whether any first appeal and whether the order of the first appellate authority deleting the enhancement is challenged by the Revenue is not known. As it revealed from the LCR, the assessment under OET Act is consequential to the assessment under OST Act. The GTO determined in OST Act is the GTO under the OET Act. The appellant is duty bound to apprise this Tribunal what is the exact outcome of the appeal under the OST Act. In absence of that and without any evidence it cannot be said that, the determination of the GTO and TTO under the OET Act by the first appellate authority is wrong. On the other hand, on close scrutiny of the assessment order as well as order of the first appellate authority, it is found that, both the authorities have gone in a slipshod manner and in the cryptic order they have not stated what was the assessment under OST Appeal or OST assessment.

7. In that view of the matter, in absence of any cogent evidence, it is held that, the Revenue has failed to establish the calculation by the first appellate authority is erroneous. The first appellate authority being an extended forum of assessment has the jurisdiction under the law to re-calculate the tax liability of the dealer. Without any rebuttal evidence, assessment of the first appellate authority cannot be doubted. If that be, the irresistible conclusion is, the appeal sans merit. Hence, ordered.

8. The appeal is dismissed as of no merit.

Dictated & corrected by me,

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

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