BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A.No. 21(ET)/2015-16

(From the order of the ld. JCST(Appeal), Cutack-II Range, Cuttack, in Appeal No. AA/11/ET/CUII/2014-15, dtd.10.03.2015, confirming the assessment order of the Assessing Officer)

Present: Sri S. Mohanty
2nd Judicial Member

M/s. Shree Durga Petrochemicals,
Plot No.89A, Phase-II, N.I.E.,
Jagatpur, Dist. Cuttack. ... 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, ASC (C.T.)

(Assessment period : 01.04.2011 to 31.03.2013)

Date of Hearing: 03.12.2018 *** Date of Order: 03.12.2018

ORDER

This appeal is directed against a confirming order of learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack (in short, FAA/JCST holding thereby the assessment by the learned Assessing Authority/Sales Tax Officer, Cuttack-II Circle, Cuttack imposing entry tax liability with penalty on the appellant-dealer in a proceeding u/s.9C of the Odisha Entry Tax Act, 1999 (in short, OET Act) for the tax period 01.04.2011 to

31.03.2013. It was the dealer who was assessed u/s.9C of the OET Act on the basis of Audit Visit Report (AVR) for the period 2012-13. The dealer was found to have effected total purchase/receipt of goods and raw materials during the period amounting to Rs.1,15,99,681/-. There was inter-state purchases of goods from registered dealers amounting to Rs.77,68,779/- and purchases from unregistered dealers amounting to Rs.16,08,497/-. As against the purchases from registered dealer, set off was allowed to the dealer as the goods were entry tax suffered goods. The goods which were non-schedule amounting to Rs.16,08,497/- was also kept out of the tax net, but thereafter the TTO under the Entry Tax Act was calculated to Rs.22,22,405/- besides freight amount to the tune of Rs.14,30,335/- was added to it and thereby the total TTO was determined at Rs.36,52,740/-. Entry tax @1% on schedule goods amounting to Rs.34,45,575/- was calculated and entry tax @2% on the rest amount of schedule goods to the tune of Rs.2,07,165/- was also calculated and as such the total tax liability was fixed at Rs.38,599/- on the purchase point. Further, during the said audit period, the dealer had effected sale outside the local area of schedule goods amounting to Rs.9,98,236/- upon which tax liability @1% being levied became calculated to Rs.9,983/-. Thus, the total tax liability i.e. on purchase and sale became raised to Rs.48,582/-. The dealer was found to have

paid tax of Rs.44,203/-. Accordingly, he was determined to pay the balance tax due of Rs.4,379/-. Penalty u/s.9C(5) i.e. twice of the tax due was also imposed. As a result, the total tax due became Rs.13,137/-.

2. Being aggrieved with such demand, the dealer preferred appeal before the FAA/ld.JCST (Appeal), Cuttack-II Range, Cuttack vide impugned order in this appeal, did not interfere with the assessment of the AA and thereby the demand remained undisturbed.

3. With above backdrop, the dealer has filed this present second appeal. The contention of the dealer is, he was assessed under VAT, CST and ET simultaneously. The VAT appeal and CST appeal before the FAA were decided by remanding the matter to the AA for assessment afresh. The assessment under Entry Tax was a consequential to assessment under VAT and CST. So, it should have been remanded. It is further contended that, the FAA has ignored the proof towards payment of freight charges by the dealer while confirming the order of assessment and the authorities below have wrongly considered schedule goods purchased within the local area under the tax net. As such, the assessment is not tenable.

4. The appeal is heard without cross objection from the side of the Revenue.

5. Two questions are raised by the dealer in this appeal. (i) Whether the order of the FAA is not tenable for the reason that, the FAA has remanded the assessment of the dealer under VAT and CST for the self-same assessment period. (ii) Whether the assessment of tax liability under the Entry Tax Act in the case in hand by the AA which is confirmed by the FAA is wrong as the FAA ignored the claim like the proof of payment of freight and the authorities has ignored the purchases made from local dealer as not exigible to entry tax.

The appeal is heard setting the dealer ex-parte since the dealer did not participate in the hearing in spite of receipt of the notice. The dealer's claim is, connected VAT assessment and CST assessment is pending before the AA as per the direction of the FAA for assessment afresh. Unfortunately no documents like the orders of the First Appellate Authority is filed at the time of institution of the appeal and even thereafter. Perused the LCR produced by the Revenue. The LCR also does not contain any order in the connected VAT appeal or CST appeal. As such, this Tribunal is not in a position to form a definite opinion that, the assessment under VAT and CST both are remanded to the AA for fresh assessment. The Entry Tax calculated in the cash in hand is directly relatable to the assessment under VAT or CST. If that be, the plea of the dealer being not supported by any cogent evidence, it is not found established.

6. Delving to the merit of the case, the claim of the dealer is, the freight amount paid by the dealer was not taken into consideration by the fora below. Here again it is found that, the dealer has not filed a scrap of paper in support of his claim to show that the dealer has paid the freight. The LCR also does not reflect such facts. The orders of both the fora below rather confirmed that, the dealer had not shown any documents towards freight as included in the sale price or purchased price disclosed by the dealer. If that be, there is no alternative but to accept the view taken by fora below.

The next contention of the dealer is, the goods purchased from local dealer also taxed by the fora below. Needless to mention here that, the same plea also not supported by any document. Here it is found that, the dealer has remained casual for hearing before this Tribunal. The dealer did not bother to prosecute his own appeal. The plea taken by the dealer in the appeal are not supported by any documentary evidence, which could have necessarily filed by the dealer even at the time of filing of the appeal. Whether there is a remand assessment of the VAT and CST assessment is pending, is a matter of record and could have proved by document to that effect, whether the freight has been paid by the dealer is a matter of record similarly, which could have been proved by evidence, similarly, if the dealer has purchased any goods from out of the purchase amount

taken into consideration by the AA from local dealer not eligible to entry tax, then also it is a matter of document, which could have filed and proved before this Tribunal. To sum up here, it can safely be said that, the dealer remained callous to the second appeal. There is no reason either under law or fact involved in this case to delete the demand or to remand the matter for assessment afresh.

In the result, it is believed that, the assessment as done by the AA which is confirmed by the FAA in the impugned order calls for no interference. Accordingly, it is ordered.

The appeal by the dealer sans merit is, hence dismissed hereby.

Dictated and Corrected by me,

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

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