

THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No.205 (E) of 2004-05

(From the order of the Id. ACST, Appellate Unit,
Bhubaneswar, in First Appeal Case No. AA. 312 (E.T.)/BH-I/03-04,
disposed of on 31.03.2004)

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. Kalinga Engineering,
Cuttack Road, Bhubaneswar.

... Respondent

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, whereby the first appellate authority vide impugned order reduced the tax due calculated by assessing authority in an assessment u/s.7 of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) read with Rule 15(1) of the Orissa Entry Tax Rules, 1999 (hereinafter referred to as, the OET Rules) for the assessment period 1999-2000 relating to the dealer.

2. The assessee-dealer M/s. Kalinga Engineering, Cuttack Road, Bhubaneswar had effected purchase of goods worth of Rs.4,82,252.99 during the assessment period in question. Out of the said amount, Entry Tax paid goods worth of Rs.10,678.00 was deducted and the balance amount of Rs.4,71,574.44 was taxed @ 2% calculated to Rs.9,431.48. The dealer having paid only Rs.200.00 only, the rest amount i.e. Rs.9,231.00 was raised against the dealer by the assessing authority.

3. Being aggrieved with such assessment, the dealer preferred the appeal before the first appellate authority who in turn vide impugned order recalculated the TTO i.e. the scheduled goods purchased for an amount of Rs.50,210.97. Out of which, tax suffered goods of Rs.10,678.50 was adjusted and the rest amount such as Rs.39,532.47 was taxed @ 2% calculated to Rs.790.65 only. Adjusting a sum of Rs.200.00 which was already paid by the dealer as tax, the rest amount i.e. Rs.591.00 was raised against the dealer.

4. When the matter stood thus, Revenue preferred this appeal challenging such reduction in demand on the plea that, the determination of TTO by the first appellate authority is erroneous, hence prayed for restoration of order of the assessing authority.

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

The only question raised for decision in this appeal is, whether the determination of TTO by the first appellate authority is erroneous, consequently, the tax liability and if yes, what order?

6. Gone through the impugned order as well as the order passed by the assessing authority. Both the authorities below have determined the total purchase value of goods during the period under assessment as Rs.4,82,252.99. According to the assessing authority, the TTO was Rs.4,71,574.00 but according to the first appellate authority the TTO was

Rs.51,210.97 only. The impugned order is silent how the TTO was calculated by the first appellate authority.

Perused the LCR. The LCR contains the order passed under the OST Act for the self-same period relating to the assessee-dealer and the connected appeal order by the first appellate authority. On perusal of both the orders, it is found that, the dealer had a claim of transit sale exempted from payment of tax u/s.6(2) of the CST Act to the tune of Rs.4,32,042.02. It was rejected by the assessing authority, whereas the first appellate authority remanded the matter with a direction to assessment afresh. The assessment under CST Act for the said period is not made available for perusal. Once there was a claim of exemption u/s.6(2) of the CST Act, then it is necessary to peruse the assessment under CST Act to ascertain if the claim was accepted by the authority or not. If not, then the consequential assessment under the OST Act will carry the said turnover as a sale covered under OST Act. Tax liability under OET Act is normally consequential to the tax liability under the OST Act. The order as it revealed, the dealer has made intrastate purchase and according to the first appellate authority the TTO was only Rs.50,210.97. The first appellate authority in assessment under OST Act has categorically held that, the assessing authority is required to verify the assessment under CST Act and under what circumstance the declaration form 'C' should be rejected and then only the tax liability of the dealer need to be fixed. The remand assessment under OST Act is not complete as it is submitted by the learned Standing Counsel

because of the reason that, the original record is available and appended to this appeal in hand.

In the aforesaid scenario, I am constrained to take the view that, any finding in this appeal may lead to conflicting opinion and anomaly may occur in determination of tax due. The assessment under all three Acts are interlinked and remand assessment in one is necessarily amounts to remand assessment in other. Once the OST assessment has been remanded, then the assessment under OET Act is bound to be remanded to the same authority so as to enable the authority to compare both the assessments along with assessment under the CST Act and then to fix liability on the dealer, if any. With the observation above, it is hereby ordered.

7. The appeal by the State is allowed. The impugned order is set aside. The matter is remitted back to the assessing authority with a direction to assessment afresh in the light of the assessment under OST Act and CST Act concerning the dealer for the self-same period.

Dictated & corrected by me,

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

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