BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A.No.112(ET) of 2011-12

(Arising out of the order of the DCST, Jajpur Range, Jajpur Road, in First Appeal Case No. AA-228-CU-III(ET)-08-09, disposed of on dtd.30.08.2011)

Present: **Mrs. Suchismita Misra**, Chairman,
Shri Subrat Mohanty, 2nd Judicial Member,
&
Shri R.K. Rout, Accounts Member-II.

M/s. Maithan Ispat Ltd.,
At/P.O.- Rabana, KNIC,
Dist.- Jajpur. ... Appellant

- V e r s u s -

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

For the Appellant : Mr. B.N. Mohanty, Advocate
For the Respondent : Mr. M.S. Raman, Addl. S.C. (CT)

Date of Hearing: 03.01.2019 **** Date of Order: 03.01.2019

O R D E R

The dealer-assessee has preferred this second appeal against the order of First Appellate Authority/ learned Deputy Commissioner of Sales Tax, Jajpur Range, Jajpur Road (hereinafter referred to as, the DCST) in First Appeal Case No. AA-228-CU-III(ET)-08-09, whereby the first appellate authority has reduced the but not deleted the demand as determined by the learned Assessing Authority/Sales Tax Officer, Jajpur Range, Jajpur (hereinafter referred to as, the STO) u/s.9C of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) for the assessment period from 01.04.2006 to 31.03.2007.

2. The order of the first appellate authority is challenged on two counts by the dealer in this case such as:

(i) Whether the first appellate authority has committed wrong in not allowing set off to the extent of Rs.8,07,113.00 as claimed by the dealer?

(ii) Whether the first appellate authority has committed wrong in affirming the order of the assessing authority by adding freight @ 2% to the GTO which amounts to double taxation as claimed by the dealer?

The assessee-dealer was subjected to assessment u/s.9C of the OET Act for the period 01.04.2006 to 31.03.2007 on the basis of allegation under Audit Visit Report (in short, the AVR) submitted by the Audit Team of Jajpur Range. In the assessment, learned assessing authority found the dealer has disclosed turnover of Rs.194,41,53,662.74. As the dealer was found not paid the freight, the assessing authority added 2% to it as freight. The dealer though claimed to be a manufacturer liable to pay Entry Tax @ 0.5% but the assessing authority imposed Entry Tax @ 1% treating the fuel as not input/raw material for manufacturing purpose and further the assessing authority denied the claim of set off in absence of proof of the fact that the raw materials consumed and Entry Tax paid thereon by the dealer. In the result, the tax liability was calculated to Rs.254,28,026.75. The dealer having paid tax at Rs.239,65,577.00, the balance tax demand was calculated at Rs.14,62,449.75. Twice of it, as penalty was imposed as per Sec.9C(5) of the OET Act, aggregating the total demand raised at Rs.43,87,349.00.

The above assessment was carried in appeal by the dealer before the first appellate authority. The learned DCST as FAA, reversed the finding of the dealer relating to tax slab i.e. 0.5% instead of 1% as imposed by the assessing authority treating the goods as raw materials duly reflected in the R.C. of the dealer. Similarly, the assessing authority modified the findings on denial of set off and

allowed set off to the tune of Rs.6,47,750.00. On re-determination of the tax liability and adjusting therefrom the tax already paid, the tax payable by the dealer was determined at Rs.6,93,687.09. Penalty at twice of the tax amount was imposed and thereby the total demand raised at Rs.20,81,062.08.

3. Even though the demand was reduced by the first appellate authority, felt aggrieved, the dealer has preferred this second appeal challenging the impugned order to be not sustainable with the contentions like, denial of set off to the extent of Rs.8,07,113.00 is wrong, addition of freight amounts to double taxation, whereas, in the argument learned Counsel for the dealer raised another question i.e. levy of tax on non-scheduled goods like charcoal by the first appellate authority that too, for the first time is illegal as well as without jurisdiction.

4. The appeal is heard with cross objection by the Revenue in support of the first appeal.

5. As mentioned above, when delve into the impugned order and the claim of the dealer with regard to the set off, it is found that, the dealer had claimed set off to the tune of Rs.8,07,113.00. The first appellate authority has allowed set off at Rs.6,46,750.00. The relevant portion of the impugned order dealing with this issue is reproduced below:-

> "After verification of the accounts the set off Entry Tax on raw materials is allowed to Rs.6,46,750.00 for sake of natural justice and Rs.1,60,363.00 is disallowed and added to the TTO."

The impugned order is not a reasoned one on this issue. It is not made clear that if the determination of set off is based on verification of documents or based on principle of natural justice.

Question of natural justice has no place while determining the set off which is squarely based on facts. If that be, we are of the view that this question should be determined afresh by the authority on verification of the necessary documents only.

6. The next point i.e. the allegation of double taxation by addition of freight to the disclosed GTO. Learned Counsel for the dealer advanced a copy of the order passed by the first appellate authority under the VAT Act relating to the self-same period of the dealer, wherein and whereby the first appellate authority has accepted the dealer's claim of total purchase for Rs.193,32,77,598.56 and freight at Rs.108,76,064.18 and aggregated the amount thereafter at Rs.194,41,53,662.74. On perusal of the impugned order as well as order of the assessing authority, we also found that the fora below has accepted the claim of the dealer at one place but rejected at other place. Once the question of amount of freight and addition of the same to the turnover is already decided under the VAT proceeding before the first appellate authority and when the same is not disputed or challenged by other side before higher forum, it can safely be concluded by saying that Rs.194,41,53,662.74 includes freight. In that case it is held that the first appellate authority has gone wrong in adding freight @ 2% on and above Rs.194,41,53,662.74 and it amounts to addition of freight twice which is not sustainable in law. Hence, it is held that the finding of the forum below on this issue is not sustainable. While determining the matter on the point of determination of actual set off available to the dealer, we are of the view that the question of imposition of tax on non-scheduled item like charcoal as levied by the first appellate authority can be agitated by the dealer before the forum below only and similarly the fact of inclusion of freight in the GTO disclosed by the dealer is also subject to verification in the light of observation above.

7. In view of the finding above, it is held that this is a fit case to be remitted back to the assessing authority for assessment afresh as per the observation above. It is hereby ordered.

8. In the result, the appeal is allowed on contest. The matter is remitted back to the assessing authority for fresh assessment. The cross objection is disposed of accordingly. The Assessing Authority is requested to complete the fresh assessment within a period of four months hence.

Dictated & corrected by me,

Sd/-
(Subrata Mohanty)
2nd Judicial Member

Sd/-
(Subrata Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

(R.K. Rout)
Accounts Member-II