

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

**S.A.No. 153(ET)/2016-17**

(From the order of the Id.Addl. CST (Appeal), Central Zone, Odisha, Cuttack, in Appeal No. AA-ACST/CUIR/178/2014-15, dtd.26.10.2016, modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty  
2<sup>nd</sup> Judicial Member**

M/s. Om Oil and Flour Mills Ltd.,  
I.E., Madhupatna,  
Dist. Cuttack.

... Appellant

**-Versus-**

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

.... Respondent

For the Appellant : Mr. A. Mohanty, Senior Advocate  
For the Respondent : Mr. S.K. Pradhan, ASC (C.T.)

(Assessment period : 01.04.2005 to 28.02.2007)

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

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**ORDER**

This second appeal has been directed against the order of the learned First Appellate Authority/Addl. CST(Appeal), Central Zone, Odisha, Cuttack (in short, FAA/Addl.CST) in First Appeal Case No.AA-ACST/CUIR/178/2014-15 dtd.26.10.2016 in enhancing the tax due as assessed by the learned Assessing Authority/Asst. Commissioner of Sales Tax, Cuttack-I Range, Cuttack (in short, AA/ACST) for the assessment period 01.04.2005 to 28.02.2007 u/s.9C of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. The facts in brief giving rise to the present second appeal may be succinctly stated as follows :

Basing on audit report submitted before him, the AA initiated a proceeding u/s.9C(3) of the OET Act covering tax period from April, 2005 to February, 2007 relating to the dealer. The dealer was found to have purchased schedule goods from outside the State of Odisha to the tune of Rs.18,11,60,803.35 whereas the dealer has disclosed the sale turnover of finished goods during this period at Rs.24,86,88,248/-. The AA held that the dealer was liable to pay entry tax on purchase value of schedule goods worth of Rs.94,65,688/- being purchased from unregistered dealer of the State. But since the dealer had not claimed any set-off on this amount and has admitted entry tax liability on sale turnover of finished products as schedule goods. The AA held the dealer not liable to pay entry tax on this and as such dropped the charge brought by the Audit Unit. Thereafter, the AA on breakup of the sale and purchase of the schedule goods and packing materials, raw materials as per the list chart reflected in the assessment order, calculated the tax liability of the dealer at Rs.39,87,119.37. The dealer was allowed set-off for an amount of Rs.3,29,928.24. Thus, the balance tax due from the dealer was determined at Rs.36,57,191.13. The dealer was found to have paid tax of Rs.36,57,071/- at the filing of return so the balance tax due from the dealer was calculated to

Rs.120/-, penalty thereon at two times of the tax due i.e. Rs.240/- invoking provision u/s.9-C(5) of the OET Act was imposed and as a result, the tax due and penalty in total raised to Rs.360/-.

3. Being aggrieved with such assessment, the dealer first knocked the Hon'ble Court by challenging the very initiation of proceeding by the AA to be illegal and also disputed the jurisdiction of the Assessing Authority in W.P.(C) No.16427/2008. But at a latter period the dealer has withdrawn the writ petition from the Hon'ble Court with a liberty to file appeal. Thereafter, on the strength of the order of the Hon'ble Court, the dealer had preferred the first appeal bearing Appeal Case No.AA-CUI/306/JCST/2011-2012 whereby Learned Addl. Commissioner of Sales Tax (Appeal) Central Zone, Cuttack vide impugned order dtd.10.02.2016 held that, the dealer had made a wrong claim of ITC and then after giving notice for enhancement he re-determined the tax liability of the dealer. The enhance tax due and penalty became calculated at Rs.1,85,917.00.

4. Being aggrieved thereby, the dealer has filed this second appeal challenging the maintainability of the impugned order on the question of fact and law both. It is contended by the dealer that, the FAA has not dealt with the questions like maintainability of the assessment proceeding, the competency of the AA and his jurisdiction in the impugned order and as such these questions raised and even

though taken contingency of by the dealer but have not been answered. Rather, the FAA, without following the procedure under law, visited beyond the audit report basing which the original assessment was initiated and then enhanced the liability of the dealer arbitrarily.

5. The appeal is heard with cross objection by the Revenue, whereby the Revenue has supported the impugned order claiming it to be correct both in law and fact.

6. The substantive question of law and facts to be raised for decision in this appeal are, Whether the FAA has not answered all the questions raised before him such as the jurisdiction/competency of the AA, the applicability of the Act to the tax period from 01.04.2005 to 19.10.2005 and the assessment thereon, (ii) Whether the FAA has gone beyond the audit report while assessing the dealer and that is not tenable in law ? and (iii) Whether the entire assessment proceeding being without jurisdiction is not maintainable ?

7. At the outset, learned Senior Counsel appearing for the dealer vehemently argued that, the FAA has slept over the question of law raised before him. It was the dealer who has challenged the maintainability of very initiation of proceeding before the Hon'ble Court but later has withdrawn the writ and preferred first appeal on the same grounds before the FAA. It was a question on jurisdiction of the AA, the competency of the AA in person in official capacity. On the

other hand, another question was raised questioning the extension of act as per Sec.9C of the OET Act to a part of the assessment period. The questions are remained unanswered. Learned Counsel placed reliance in the matter of **Commissioner of Service Tax, Bangalore, (2010) 13 VST 460 (Karnataka)** and in the matter of **M/s. Bikash Udyog Ltd. -Vrs. State of Orissa** in **STC Vol.1 Page 703** and argued that, since the FAA has not dealt the issues raised before him, the impugned order is not sustainable in the eye of law.

In the case in hand, it is a fact that, as per the original assessment, demand was raised for Rs.360/- i.e. tax with penalty. The dealer had challenged the assessment proceeding and the jurisdiction of the AA, whereas, the FAA without dealing these issues, proceeded with the assessment declining the set-off claimed by the dealer. It is not disputed that, the FAA has jurisdiction to enhance the tax demand by giving notice and an opportunity of heard to the dealer, which is done in this case. But the fact remains, when the question of law raised by the dealer upon which the dealer's appeal stood are remained unanswered. So avoiding unnecessary discussion, it can safely be said that, on this score only the matter should be remitted back to the AA for re-hearing and for determination of the questions raised by the dealer about the maintainability of the assessment proceeding.

8. Next point of the argument advanced by the learned Counsel for the dealer is, the original assessment was based on audit report. The FAA has travelled beyond the audit report, which is not permissible under law. He placed his reliance in the matter of **Bhusan Power & Steel Ltd. Vrs. State of Orissa and Others (2012) 47 VST 466 (Ori)**. On the other hand, the impugned order as it revealed, the AA had allowed the dealer to file show cause and to explain why the tax liability will not be enhanced. The dealer had given with an opportunity to explain the circumstance and provision of law in his favour. Thereafter, it is only in accordance to the figure furnished by the dealer after hearing, the Id.FAA on calculation of stock transfer of schedule goods to outside of State, CST sale, sale within local area, export sale and entry tax payable thereon has determined the set off admissible to the dealer. Thus, there is no hesitation to hold that, the AA has every authority under law to scrutinise and to see the factual aspects which were not taken care of by the AA. Needless to mention here that, the FAA being an extended forum of assessment, has the jurisdiction under law as good as that of AA. But in the case in hand, here it is early to conclude, whether the dealer is liable to pay tax and penalty. The findings on demand of tax and penalty rest on other two issues raised by the dealer and the decision on these issues are to be given by the FAA in remand case. Thus, it is held that, this is a fit

case, where the matter should be remitted back to the FAA to give his decision on the questions of law as well as the question of facts involved raised by the dealer and thereupon, to determine the tax liability if any, to be paid by the dealer. It is hereby ordered.

The appeal is allowed on contest. The order of the FAA under challenge is set-aside. The matter is remitted back to the FAA for disposal afresh as per the observation.

Dictated and Corrected by me,

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

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