

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

S.A. No.102 (ET) of 2017-18

(From the order of the Id. JCST (Appeal), Sundargarh Range,
Rourkela, in First Appeal Case No. AA V 3 ET of 2014-15,
disposed of on 20.06.2017)

**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. Durga Aluminium Industries,
At:- Kutra,
Dist.- Sundargarh.

... Respondent

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

Date of hearing: 23.02.2019 **** Date of order: 23.02.2019

ORDER

Revenue has preferred this appeal against a reversing order of first appellate authority in an assessment u/s.9C of the OET Act relating to the respondent-dealer who is a registered dealer having TIN number engaged in trading and manufacturing of aluminum bar utensil etc.

2. The facts in brief are, on the basis of Audit Visit Report (in short, AVR) submitted by Sales Tax Officer, Rourkela II Circle, ---, the dealer's unit was subjected to assessment u/s.9C of the OET Act for the tax period 01.04.2011 to 31.03.2012. The audit team has raised objection to the extent

that, the audit team has reported that the dealer has manufactured aluminum utensils during the tax period as such, the dealer is required to pay entry tax on the sale price. However, the dealer having not paid as such the assessing authority in course of assessment levied entry tax on the sale price. The assessing authority determined the TTO for the purpose of entry tax at Rs.17,54,162.00 and then, imposed entry tax @ 1% and penalty at the rate, twice of the tax amount. Besides, interest at Rs.6,315.00 was also added. As a result, the total due from the dealer was determined at Rs.58,941.00. The dealer having paid Rs.6,000.00 before assessment, the balance amount i.e. Rs.52,941.00 was demanded from the dealer.

3. Felt aggrieved, with the assessment as above, the dealer preferred appeal before the first appellate authority. Learned JCST (Appeal), Sudargarh Range, Rourkela while disposing the appeal before him vide impugned order, deleted the tax liability, penalty and interest imposed by the assessing authority with the findings that, during the tax period in question the dealer had not manufactured any goods, so there was no question of payment of entry tax on sale. The entire transactions were treated as trading by the dealer with no liability of entry tax at the sale point. The findings of the assessing authority was reversed accordingly. When the tax liability fixed by the assessing authority is deleted, State being aggrieved instituted this second appeal on the following grounds.

It is contended by the State that, when the AVR by the audit team and then the assessing authority has held that, the dealer was engaged in manufacturing of goods and the dealer has collected sale price against such sale of manufactured goods to the tune of Rs.17,54,162.00, the tax imposed by the assessing authority on sale point is lawful, conversely to that extent the view of the first appellate authority is erroneous. It is further contended that, the first appellate authority has gone wrong by deleting the tax due as determined by the assessing authority without proper verification of the books of account and profit/loss account of the dealer with his audited account. So, it is prayed by the

Revenue for determination of tax liability afresh by setting aside the impugned order.

4. The appeal is heard without cross objection. The dealer did not choose to contest the case in spite of receipt of the notice of hearing.

5. The case in hand, as mentioned above, the Revenue has challenged the impugned order with the contention like, the first appellate authority has wrongfully accepted the fact that, the dealer was not engaged in manufacturing of goods during the tax period.

6. Perused the AVR, the assessment order and the statement of the authorizing agent of the dealer taken by the audit team. The AVR as well as the statement of the authorized agent of the dealer reveals that, the dealer was engaged in manufacturing as well as sale of aluminum bar and utensils. Plea of the dealer is, he had not manufactured any goods during the tax period. Such plea of the dealer was accepted by the first appellate authority. If we look at the AVR and the assessment order, it is found that, the assessing authority has committed an error manifest on the record by treating the entire amount as TTO which was determined in the assessment u/s.42 of the OVAT Act. If the dealer was engaged in trading as well as manufacturing, then the TTO under the VAT Act could have the same under the OET Act for the purpose of tax liability at sale point. Necessarily, the above amount containing worth of some materials which were traded and some materials which was manufactured and sold. On the other hand, when we look at the impugned order, it is found that, the first appellate authority has prepared a chart showing the purchases made by the dealer during the tax period and the sale statement of the dealer during the tax period. The first appellate authority, on verification had come to the conclusion that, the dealer was not engaged in manufacturing. This findings by the first appellate authority on verification of the connected documents registers on production by the dealer, whereas the assessment by the assessing authority is found to be mechanical i.e. in acceptance of the AVR and consequential to assessment under VAT Act. The first appellate authority verified the return under VAT Act and on verification of the same,

he found that, the dealer had purchased goods to the tune of Rs.16,68,410.00 which includes tax @ 4% against that amount of purchase and further the dealer has effected sale at Rs.17,54,161.00 which includes tax @ 4%. The dealer was allowed ITC accordingly by the first appellate authority. If this turnover is treated as purchase and sale under the VAT Act in the VAT assessment, then there is no scope to treat this sale is a sale of manufactured goods attracting ET liability as per sec.26 of the OET Act.

7. From the discussion above, in the considered view of this Tribunal, the impugned order suffers no illegality. Hence, calls for no interference.

8. The appeal is dismissed as of no merit accordingly.

Dictated & corrected by me,

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

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