

**BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.  
S.A.No.9(ET) of 2014-15**

(Arising out of the order of the learned CCT, Odisha,  
Cuttack, in Appeal case No.AA.74/12-13(Under OET Act,  
disposed of on 30.01.2014)

**Present: Suchismita Misra, Sri S.Mohanty, & Sri R.K.Rout,  
Chairman. Judicial Member-II Accounts. Member-II.**

M/s.T.R.Chemicals Ltd.,  
At-Barpali, Kesramal,  
PO:Rajgangpur, Dist:Sundargarh. ... Appellant.

**- V e r s u s -**

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

For the Appellant ... Mr.S.C.Agarwal, Advocate.  
For the Respondent ... Mr.M.S.Raman, Id.Addl. S.C.(C.T).

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Date of hearing: 17.04.2019 \* \* \* Date of Order:13.05.2019  
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**ORDER**

The second appeal has been filed against the order of learned Addl. CST (North Zone) on dated 30.01.2014, in appeal No.AA.74/12-13 in reducing the order of assessment passed by the learned Assessing Authority, Rourkela II Circle, Panposh under Section 10 of the OET Act for the tax period from 01.04.2005 to 31.03.2010.

2. The brief facts of the case are that the appellant is a manufacturer and trader of sponge iron by using iron ore, coal and dolomite as raw materials and consumables. The special investigation team submitted a tax evasion report alleging discrepancy in physical stock of goods, suppression of production etc. The learned DCST passed the assessment order in exparty

relying upon the materials of report. The escaped turnover was estimated at Rs.20,79,07,260.00, to which VAT @4% of Rs.83,16,290.00 was added. The turnover for entry tax purposes was determined at Rs.21,62,23,556.00 Entry Tax @1% was calculated at Rs.21,62,236.00. Interest was charged under Section 7(3)(5) of the OET Act at Rs.8,92,855.00 penalty twice the tax was imposed at Rs.43,24,472.00. Accordingly, the learned STO raised the demand of Rs.73,79,563.00 including penalty of Rs.43,24,472.00.

3. Being dissatisfied with the order of learned STO, the dealer appellant preferred appeal before the learned Addl. CST (North Zone) challenging the assessment on the ground that the demand raised is illegal, arbitrary and liable to be quashed. Learned Addl. CST (North Zone) after hearing the case has allowed the appeal in part by reducing the demand to Rs.14,71,269.00.

4. Still being not satisfied with the aforesaid order of learned Addl. CST (North Zone), the dealer has filed the second appeal before this Tribunal on the ground that the order of both the lower forums are bad, unreasonable and not based on sound footing. Further the appellant has challenged the impugned order that other grounds applied under the principal act are mutatis mutandis applicable to this act and reliefs granted under the principal act are equally applicable under this act.

5. Cross objection has been filed by the learned Addl. Standing Counsel on behalf of the respondent revenue. He has contended that the learned assessing officer and first appellate authority have rightly completed assessment/appeal basing on the statutory provisions under the Act and Rules.

6. We have carefully considered the rival contentions and perused the orders of fora below, grounds of appeal, cross objection of respondent revenue and materials on record. Both assessments under OVAT Act and in the OET Act are imposed in this forum which was taken up in the common hearing. In the grounds of appeal, it is contended that the grounds taken in the appeal under OVAT Act may be read as grounds for impugned assessment under OET Act. Here in this forum the appellant does not stress on claim of relief in discrepancy in physical stock of iron ore, shortage of sponge iron, claims of CST sale held as VAT sale and rejection of exempted sale in course of export and inclusion in the impugned VAT assessment other than the suppression of production of sponge iron i.e., allegation of production Rs.4,30,22,300.00 which has been raised estimating the sales accepting the method of "SION" (standard input and output norms). The learned Counsel on behalf of the dealer Shri Agarwal argued that there is no hard and first standard for ratio of production of sponge iron and utilisation of iron ore. It is submitted that in the impugned order of the learned first appellate authority the suppression of production of sponge iron was finally held as 4302.23 MTs , on the basis of "SION" leading to unaccounted sale. The learned Counsel Shri Agarwal argued that when the quality of Iron ore was below 65% Fe and there is no adverse material in support of under statement of production/ sale suppression, but the demand is made on surmises.

There is no suppression of coal which is required in equal quality and dolomite for sale of such sale suppression of sponge iron, the revenue cannot adduce even single instance of suppression of purchased sale. On the basis of "SION", hence the revenue has miserably failed to bring home charge of production/sale suppression. In the wake of above, it is held that in absence of any specific evidence of less production, the assessment proved to be based on assumption and surmise. Under the above discussed facts, we find the addition of Rs.4,30,22,300.00 towards unaccounted for production of sponge iron and sale thereof is wholly untenable in law and now stands deleted.

7. In the result, the appeal is allowed in part and the order of learned Addl. CST is modified to the extent mentioned above. The case is remitted to the learned assessing authority for computation of fresh tax liability of the dealer in the light of the observation made in here in before within three months from the date of receipt of the order.

Dictated and Corrected by me,

**(Sri R.K.Rout)**  
**Accounts Member-II.**

**(Sri R.K.Rout)**  
**Accounts Member-II.**

**I agree,**

**(Suchismita Misra)**  
**Chairman.**

**I agree,**

**(Sri S.Mohanty)**  
**Judicial Member-II.**