

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

S.A.No. 121(ET)/2017-18

(From the order of the Id.JCST (Appeal), Cuttack-II Range, Cuttack, in
Appeal No. AA/11/OET/CUII/2016-17/108131613000080,
dtd.27.07.2017, confirming the assessment order
of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

M/s. Purvi Bharat Steels Ltd.,
Regd. Office :
Kandoi House, Mathasahi,
Chauliaganj, Dist. Cuttack,
Works : Bainchua, Cuttack.

... Appellant

-Versus-

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

.... Respondent

For the Appellant : Mr. R.P. Kar &
Mr. A.N. Ray, Advocates
For the Respondent : Mr. M.L. Agrawal, S.C. (C.T.)

(Assessment period : dt.01.04.2013 to dt.31.03.2015)

Date of Hearing: 19.01.2019 *** Date of Order: 19.01.2019

ORDER

This second appeal is preferred by the assessee-dealer against a confirming order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack (in short, FAA/JCST), questioning sustainability of the order impugned, on three counts as follows :

- (i) Whether the fora below have committed wrong in imposing entry tax on the goods claimed to have purchased from dealers of local area ?

- (ii) Whether the fora below has committed calculation mistake in confirming the order of AA levying tax on the goods in transit i.e. PM Scrap even though the charge was dropped?
- (iii) Whether the fora below has illegally confirmed the order of imposition of penalty in the case in hand when there was no deliberate defiance of law by the dealer ?

2. **Factual matrix :** The dealer was subjected to regular assessment u/s.9-C of the Odisha Entry Tax Act, 1999 (in short, OET Act) for the tax period from 01.04.2013 to 31.03.2015 basing on the Audit Visit Report (AVR) with the allegation that,(i) the dealer had not paid entry tax on schedule goods amounting to Rs.15,88,002/- purchased from unregistered sources,(ii) the dealer has collected entry tax on sale value after charging VAT,(iii) the dealer has claimed excess set off and(iv) the dealer has not paid entry tax on subsequent inter-state sale of goods. The AA declined to accept the plea of the dealer that, the dealer had effected purchase of goods amounting to Rs.7,86,991/- from out of Rs.15,88,002/- from unregistered dealers of local market but he held the dealer is not wrong in the manner of collecting entry tax on sale value. Further, though the allegation of wrong claim of set-off was found established, but the AA has found that, the goods like PM scraps were brought into local area not for the purpose of consumption, use or sale, but the goods were exported and accordingly during transit the same was found to be not entitled to entry tax. In ultimate analysis, the AA determined the TTO and tax liability. After adjusting the tax already paid, the balance tax due was calculated at Rs.1,01,438.41, then, twice of the tax due was levied as penalty, and thereby, the total demand raised to Rs.3,04,315/-.

3. The assessment was called in question by the dealer before the FAA, who in turn, vide impugned order did not interfere with the order of assessment, thereby, the demand remained undisturbed.

4. On this backdrop, the dealer has preferred this second appeal on the contentions like, the findings of the fora below as against the entry tax liability on purchase from local market is wrong and calculation of tax on goods like PM scrap in transit is contrary to the findings in impugned order itself.

5. The appeal is heard with cross objection whereby the Revenue has supported the impugned order.

Findings :

6. At the outset, learned Counsel, Mr. R.P. Kar has drawn the attention of the forum to the findings of the AA on the AVR allegation No. (iv) mentioned above. The AA has accepted the explanation of the dealer that, the goods were brought into the local area not for sale, use or consumption. It was entered into the local area in transit only and the same were exported outside the local area. However, the AA while dropping the charge inadvertently calculated tax on it. Perused the AVR and the impugned order. The FAA has only confirmed the assessment of AA on this point without any independent finding on the mistake in calculation. Since the goods were entered into the local area during transit and since both the For a below have accepted this plea of dealer and dropped the charge then, it is held that, this is a matter of wrong calculation by the authority below, which needs to be corrected only.

7. The next point for determination is, according to the dealer, the AA has imposed entry tax on goods worth of Rs.15,88,002/- treating the same as purchases from unregistered

dealers. But on verification of the documents, the AA had accepted the purchase bills to the tune of Rs.8,01,011/- i.e. purchases from M/s. Ratan Distributors, a registered dealer and thereupon the escaped turnover was reduced from Rs.15,88,002/- to Rs.7,86,991/-. The claim of the assessee-dealer like, the goods are purchased from dealers of local area was not accepted by the FAA in absence of any evidence this being a subjective satisfaction of the fora below on pure question of fact in absence of any evidence that the purchases were made from local dealers is unsafe to hold that the findings on this question of fact is wrong. However, when the matter is remitted back to the assessing authority for assessment afresh on other point as held above, in that event the dealer will be at liberty to produce any document of purchases from local dealer and the AA may re-determine this point afresh on verification of the genuineness of the document if such occasion arises. It is needless to mention here that, the purchase from local dealer does not carry entry tax liability under law. In that view of the matter, it is held that, this is a fit case, where the matter should be remitted back to the AA for assessment afresh on two points as per the observation above. Accordingly, it is ordered.

The appeal is allowed. The impugned order is set-aside. The matter is remanded back to the AA for assessment afresh as per the observation above.

Dictated and Corrected by me,

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

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

