

***BEFORE THE ORISSA SALES TAX TRIBUNAL (FULL BENCH),
CUTTACK***

S.A.No. 206(ET)/2005-06

(From the order of the 1d. ACST, Jajpur Range, Jajpur Road, in Appeal No. AA.23(E.T)/CU III/2004-2005, dtd.19.7.2005 confirming the assessment order of the Assessing Officer)

P R E S E N T :

<p>Smt. Suchismita Misra Chairman</p>	<p>Sri S. Mohanty & Judicial Member-II</p>	<p>Sri R.K. Rout Accounts Member-II</p>
<p>M/s. Neelachal Ispat Nigam Ltd., Kalinga Nagar Indl. Complex, P.O. – Duburi, Jajpur.</p>		<p>... Appellant</p>

- Versus -

<p>State of Orissa, represented by the Commissioner of Sales Tax, Orissa, Cuttack</p>	<p>... Respondent</p>
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Appearance :

<p>For the Appellant ... Mr. J. Mohanty, Advocate</p>		
<p>For the Respondent ... Mr. M.S. Raman, Addl. Standing Counsel (C.T.)</p>		

(Assessment Year : 2000-2001)

Date of Hearing: 01.02.2019 *** Date of Order: 01.02.2019

ORDER

When the order of Assessing Authority imposing penalty for non-payment of Entry Tax in spite of demand is confirmed in First Appeal No. AA.23(E.T)/CU III/2004-2005, the dealer M/s. Neelachal Ispat Nigam Ltd. preferred this Second Appeal challenging the order of the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short, ACST), as illegal and arbitrary.

2. Brief fact of the case :

The assessee in present case M/s. Neelachal Ispat Ltd., Kalinganagar, Jajpur admittedly effects intra-state and inter-state purchases of raw materials. During verification of the books of account in reference to the periodical returns furnished by the appellant-company for the assessment period 2000-01, the Assessing Authority detected an amount of Rs.50,68,335/- which was demanded U/s.13(4-a) of the OST Act r/w Rule 34 of the Odisha Entry Tax Rules, (which were subsequently converted into equity during the year 2002-03). Similarly he also found that the dealer-company has disclosed purchase of LAM Coke through import amounting to Rs.24,76,85,578/- in the Entry Tax statement whereas in the statement under OST Act, the dealer has disclosed the amount at Rs.27,60,91,766/-. Therefore, the Assessing Authority added this differential amount of Rs.2,84,06,188/- in the group of Entry Tax and then imposed penalty at 1 ½ times as per Sec.7(5) of the OET Act due to the reason that the dealer has failed to pay the due tax in time. The tax together with penalty is assessed at Rs.1,30,27,468/-. After deduction of Rs.50,68,335/-, which was already assessed, the balance amount of Rs.79,59,113/- is demanded from the dealer.

3. The case of the dealer at hand is that; the industry is entitled for the exemption envisaged under IPR, 1992, which includes concessions like exemption from payment of octroi on purchase of raw materials and spare parts up to a period of five years from the date of commencement of commercial production. However, before completion of the exemption period of five years octroi duty was

abolished by the Government of Odisha and in its place Entry Tax was introduced w.e.f. 01.12.1999. Since Government of Odisha did not take any policy decision for exemption of Entry Tax in the new Act, the dealer-industry made representation before the Government of Odisha for appropriate notification for exemption of the unit from paying Entry tax on the basis of cost overrun guarantee given by the Government of Odisha. When acting upon the representation in the meetings of discussion in the chamber of the Chief Secretary on 22.11.2000, it was decided that the amount to be paid by the NINL and KMCL as Entry Tax would be treated as equity of the State Government in the said projects after obtaining Government orders in the matter. In the second meeting held on 16.10.2001 in the matter by Finance Department through Industries Department and the matter was finally materialized in the month of February, 2003 when the Government of Odisha sanctioned the proposal as above.

On the other hand, during this period the dealer industry has filed statutory monthly statements/returns before the Sales Tax Officer disclosing the Entry Tax liability. However, the Entry Tax was not paid assigning the reason of pendency of its representation for exemption before the appropriate authority. After regularization of the matter at the Government level as mentioned above, the final assessment was done by the Sales Tax Officer vide assessment order dtd.30.03.2005. Since the admitted tax was not paid by the appellant prior to initiation of the proceeding, the learned Assessing Officer imposed penalty as per Sec.7(5) of the OET Act. It is further case of

the dealer that the differential amount of Rs.2,84,06,188/- as reflected in the assessment order is due to the adding up of the transportation cost to the purchase value of the imported LAM Coke in the O.S.T. Return. However, the dealer has paid the Entry Tax on the said differential amount.

Rival Contentions :

4. The dealer-appellant has contended that the delay in payment of Entry Tax was due to the delay in consideration of its representation by Government of Odisha for exemption, which the dealer was availing pre-Entry Tax Act period.
(b) It is further contended that, no notice was issued prior to the passing of assessment order dtd.30.03.2005 U/s.7(4) of the OET Act. As such the dealer was not given proper opportunity of being heard. The penal provision is not attracted because the appellant has acted bona fide.

FINDINGS :

5. From the rival contentions mentioned above, the moot question to be decided in this appeal is, "Whether in the facts and circumstance of the case, non-payment of Entry Tax in due time by the dealer-industry is liable U/s.7(4) r/w Sec.7(5) of the OET Act. The explanation by the dealer-industry is that it was earlier availing concession under IPR, 1992 and was not paying any octroi. However, on the implementation of the Orissa Entry Tax Act confusion arose, since the new Act does not contain any provision of such concession, thus, they took up the matter with the Government. However, in the

meantime, they have filed return from time to time and on the basis of the same returns, the authority raised demand of tax. The dealer did not pay the same on the plea that its representation for exemption is pending before the competent authority. Finally, the representation was considered by the Government authority and intimated that the amount of Entry Tax be converted into equity.

6. Learned counsel for the dealer argued that the demand is raised in the assessment order dtd.30.03.2005 and by that time this concession had already been availed by the dealer company. So provision U/s.7(4) of the OET Act before 2005 is not attracted.

Provision U/s.7(4) & (5) reads as follows :

“(4) If no return is submitted by the dealer under sub-section (1) within the period prescribed or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, he shall assess the dealer to the best of his judgment recording the reasons for such assessment :

(5) While making any assessment under sub-section (4), the assessing authority may also direct the dealer to pay in addition to the tax assessed a penalty not exceeding one and a half times the amount of tax due that was not disclosed by the dealer in his return or in the case of failure to submit a return one and a half times the tax assessed, as the case may be.]”

Bare reading of sub-sec.(5) of Sec.7, reveals that, assessing authority may also direct the dealer to pay in addition to the tax assessed a penalty not exceeding one and half times the amount of tax due that was not disclosed by the dealer in his return or in the case of failure to submit a return.

From the terms of the provision, it can safely be said that when there is non-disclosure of tax due or when there is non-filing of return, then the provision U/s.7(5) can be attracted and penalty can

be imposed and the slab of penalty can go maximum upto 1 ½ times. In the case at hand, it is not the allegation that return was not filed. Similarly it is not the case that the tax due was not disclosed. The fact remains, the return was filed and tax due was disclosed. However, the question of grant of exemption was under consideration before the appropriate authority. So to sum up, it can safely be said that there was no deliberate or willful violation of provision U/s.7(4) of the OET Act by the dealer-industry and resultantly, the provision U/s.7(5) of the OET Act is not attracted in this case. In such premises, it is held that the order of the assessing authority levying penalty and the confirmation of his order of assessment by dismissing the appeal by the 1d.ACST both are not sustainable in law and facts, hence ordered.

7. In the result, the appeal is allowed on contest. The order of the 1d.ACST stands set-aside and the order of the Assessing Authority is reduced to the return figure.

Dictated & corrected by me

(S. Mohanty)
Judicial Member-II

I agree,

(S. Mohanty)
Judicial Member-II

I agree,

(Suchismita Misra)
Chairman

I agree,

(R.K. Rout)
Accounts Member-II