

'OET Act') for the tax period from 01.04.2005 to 31.12.2008 was reduced by allowing refund.

2. The facts as revealed from the case record are that the dealer-assessee in the instant case carries on business of saree, dhoti, joda, school uniform, cloth and readymade apparels on wholesale basis. On receipt of Audit Visit Report (AVR) in Form E-27 assessment proceeding was initiated against him u/S. 9C(1) of the OET Act read with Rule 15B(1) of the OET Rules. Statutory notice in Form E-30 along with copy of AVR in Form-27 was served on the dealer. Then the dealer appeared before the assessing officer through its representative namely Ramananda Sharma who produced the books of account comprising purchase register with supporting invoices and sale register with supporting sale invoices pertaining to the period under assessment for verification. The representative of the dealer-assessee was confronted with the AVR and opportunity was given to him to defend the allegations made against the dealer-assessee by the Audit Visit Team. Then after verification of all the documents the assessing officer held that the total outside State purchase of the dealer came to `39,86,79,594.00. Then allowing deduction of a turnover of `1,98,05,785.00 towards CST sale he calculated the TTO at `37,88,73,809.00. After adding freight @ 3.5% of `1,32,60,583.32 he determined the taxable value for the purpose of levy

of entry tax which on calculation came to `39,21,34,392.32. Thus, the entry tax @ 2% on the aforesaid amount came to `78,42,687.85 out of which the dealer had already paid entry tax of `76,09,057.00 and thus he was required to pay the balance amount of `2,33,630.85 with penalty of `4,67,261.70.

Being aggrieved with this determination of assessing officer the dealer-assessee preferred an appeal before the first appellate authority contending therein that the order of assessment was illegal and arbitrary. Considering the facts and circumstances of the case the first appellate authority allowed his appeal and ordered for refund of `1,25,046.00 in his (the dealer-assessee's) favour.

3. The State now being aggrieved with the aforesaid order of the first appellate authority preferred this appeal on the ground that the order of the first appellate authority is not justified since without verification of certain documents he allowed concessional rate in respect of entry tax and further he also reduced the freight charge from 3.5% to 1.8% without assigning proper reasons for the same in his order. Thus, the State urged before this Tribunal to quash the order of the first appellate authority and remand the case for reassessment. In course of

hearing learned Addl. Standing Counsel (CT), appearing on behalf of the State, reiterated the grounds raised by the appellant for fresh assessment and in reply to the same learned Counsel for the dealer-assessee, in terms of cross-objection, submitted that he had opted before the assessing officer to pay entry tax @ 1.5% on total purchase by filing E-14 option form u/R. 33 of the OET Rules and as the goods dealt in by the dealer-assessee are covered under Schedule-II of the OET Act such E-14 option is permissible. As such the dealer-assessee was entitled to avail entry tax @ 1.5% on the total purchase instead of 2% upto the period 15.10.2005 as per Finance Department Notification No. 4797-CTN-31-2005-F (SRO No. 489/2005) dated 15.10.2005 published in the Odisha Gazette Extraordinary No. 1714 dated 19.10.2005. But in the instant case the assessing officer did not allow the option furnished in E-14 and determined the ET @ 2% instead of 1.5%. However, the learned first appellate authority after due verification of the E-14 option and the audited trading account alongwith balance sheet of the dealer-assessee which was accepted by the Income Tax Department made the calculation afresh and concluded that the dealer-assessee was entitled for a refund of `1,25,046.00. The dealer-assessee also filed xerox copies of documents such as Audit Report under OVAT Act in respect of the business concern i.e. D.D. Textiles vide Annexure-2, statement of particulars required to be furnished u/S.44AB of the Income Tax Act pertaining to the business establishment in support of his case.

4. On perusal of the records and the documents as well it is found that the assessing officer while determining the tax liability did not consider the E-14 forms of the dealer-assessee claiming the benefit u/R. 33 of the OET Rules and thus levied 2% of entry tax on the scheduled goods instead of 1.5% whereas the first appellate authority verified those option forms and then allowed him the benefit extended as per the legal provisions in the matter. Thus he passed order for refund of money accordingly. In the present case the learned Counsel for the State submitted that the first appellate forum was not supposed to accept those forms when the same were not verified by the assessing officer. However, this argument does not seem to be tenable in the facts and circumstances of the case since as per law the first appellate authority is also an extended forum of assessment and as such by accepting those E-14 forms produced before him he had not over-stepped his authority. In this regard his observation is that the dealer-respondent had submitted E-14 option in due time before the Sales Tax authority as per Rule 33 of the OET Rules and in conformity with the provision of law the dealer had also paid entry tax @ 1.5% on his periodical returns upto the period 15.10.2005.

5. Considering the aforesaid facts which are clearly revealed from the order of the first appellate authority we find absolutely no reason to interfere with the order of the first appellate authority.

6. In the result, the appeal is dismissed and the impugned order of the first appellate authority stands confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Prabhat Ch. Pathy)
Accounts Member-I