BEFORE THE DIVISION BENCH-III: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No.70 (ET) of 2017-18
S.A. No.71 (ET) of 2017-18
S.A. No.72 (ET) of 2017-18
&
S.A. No.73 (ET) of 2017-18

P r e s e n t : Shri S. Mohanty, 2nd Judicial Member & Shri P.C. Pathy, Accounts Member-I

S.A. No.70 (ET) of 2017-18

(From the order of the ld. Add. CST (Appeal), Central Zone, Cuttack, in Appeal Case No. AA/108101610000084/16-17, disposed of on 26.05.2017)

For the assessment period: 01.04.2013 to 31.03.2014

S.A. No.71 (ET) of 2017-18

(From the order of the ld. Add. CST (Appeal), Central Zone, Cuttack, in Appeal Case No. AA/108101510000490/15-16, disposed of on 26.05.2017)

For the assessment period: 01.04.2012 to 31.03.2013

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

- V e r s u s -

M/s. Balasore Alloys Ltd., Balgopalpur, Balasore. ... Respondent

S.A. No.72 (ET) of 2017-18

(From the order of the ld. Add. CST (Appeal), Central Zone, Cuttack, in Appeal Case No. AA/108101610000084/15-16, disposed of on 26.05.2017)

For the assessment period: 01.04.2013 to 31.03.2014

S.A. No.73 (ET) of 2017-18

(From the order of the ld. Add. CST (Appeal), Central Zone, Cuttack, in Appeal Case No. AA/108101510000490/2015-16, disposed of on 26.05.2017)

For the assessment period: 01.04.2012 to 31.03.2013

M/s. Balasore Alloys Ltd.,
Balgopalpur, Balasore. ... Appellant

- V e r s u s -

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

For the Revenue : Mr. M.L. Agarwal, S.C.
For the Dealer : Mr. K.K. Kurmy, Advocate

Date of Hearing: 23.03.2019 ******** Date of Order: 05.04.2019

O R D E R

All these appeals above relate to assessment u/s.9C of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) for consecutive tax periods such as 01.04.2012 to 31.03.2013 and 01.04.2013 to 31.03.2014 relating to the assessee-dealer, preferred against the order of the learned Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack, the First Appellate Authority, by adversary parties.

Since the appeals involve common question of law and fact raised for decision, all are taken up together and decided by this common order for shake of convenience and to avoid conflicting opinion, if any.

Factual matrix

The dealer, M/s. Balasore Alloys Ltd. is engaged in manufacturing and selling of High Carbon Ferrochrome (HCFC). It has its factory located at Balasore and it effects intrastate, interstate and export to foreign buyers. It collects raw material from its own captive mines,

Kaliapani, district-Jajpur and from intrastate, interstate and by way of import from out-country sellers.

2. The audit team constituted u/s.9B of the OET Act suggested for audit assessment of the dealer's unit for the tax period 01.04.2012 to 31.03.2013 and 01.04.2013 to 31.03.2014 with the Audit Visit Report (in short, the AVR) such as,

> "The dealer has sold finished goods in State of Orissa and collected Entry Tax @ 1% against form E-15 condition. So, verification of the form E-15 was suggested. The dealer has adjusted refundable amount of Entry Tax on account of export sale against Entry Tax payable which is not in accordance to the due procedure by issuing formE-16 as laid down under the Act and the dealer has withheld the payment of 2/3rd of the Entry Tax liability against the goods brought into the local area which are not manufactured inside the State."

For the tax period 01.04.2012 to 31.03.2013

For the tax period 01.04.2012 to 31.03.2013, the assessing authority found the dealer has taken exemption in tax for export sale to the tune of Rs.89,33,79,047.00 in absence of issuance of declaration form E-16 as required for exemption in tax. The assessing authority determined the turnover to the tune of the aforesaid amount as not allowed for any exemption in tax in terms of 2nd proviso to rule 3(4) of the OET Rules. According to the assessing authority the dealer has not followed the procedure laid down under the provision u/s.35(4) of the OET Act read with rule 30(3) and rule 17 of the OET Rules, such as, the dealer was to pay the tax first and then to ask for refund claiming in form E-37, in the event of export sale by a manufacturer. Further, in the assessment, the assessing authority found the dealer has disclosed the price of chrome ore of 164126455 MT less than the declared IBM price fixed by the Mining Department during that period. As a result, the purchase value of goods received from its own captive mines was re-determined by the assessing authority at Rs.1,47,71,38,095.00. The assessing authority further found

the dealer had taken adjustment of Rs.8,75,410.00 against the Entry Tax payable apart from the set off of Rs.60,374.00 u/s.26 of the OET Act. The said adjustment relates to Entry Tax paid on purchase of raw materials. The assessing authority denied that amount of adjustment as not permissible. Thereafter, the assessing authority recomputed the tax liability of the dealer, he imposed the tax determining the purchase value on the basis of IBM price and the adjustment claimed by the dealer was denied, the tax due from the dealer was calculated at Rs.99,00,175.00. Penalty u/s.9C(5) of the OET Act at twice of the tax due was also imposed, thereby the total demand raised to Rs.2,97,00,525.00.

3. In appeal before the first appellate authority as preferred by the dealer, the first appellate authority held the claim of exemption in tax against export sale not to be incorrect as there was no column in the format E-3 to reflect such exemption particularly when there was no occasion or scope of the dealer to issue declaration form E-16. However, the first appellate authority upheld the findings of the assessing authority relating to the rejection of the purchase value as disclosed by the dealer and then accepting of the IBM price as the purchase value and in conclusion, he determined the tax liability at Rs.25,47,627.00. The first appellate authority has levied the differential amount of tax which was withheld against purchases from the outstate dealers, the goods are not produced in the State and in addition to that, he has also levied interest for delay in payment of tax. Ultimately, it ended with raising demand of Rs.25,47,627.00.

For the tax period 01.04.2013 to 31.03.2014

In the similar manner and method adopted for the tax period 2012-13 for the subsequent tax period 2013-14, the assessing authority also denied the adjustment of tax against export sale of manufactured goods, he also re-determined the purchase value accepted the IBM price and then decided the tax liability, penalty and interest payable by the dealer at Rs.2,34,09,237.00, whereas in appeal the first appellate authority reduced the tax liability to Rs.50,85,521.00 with the self-same view as taken for the previous period details mentioned above.

The orders of the first appellate authority are under challenge by way of appeal by both the parties. The contentions of the State in both the appeals are, the first appellate authority has committed wrong in accepting the mode of claim of exemption in tax against the export sale of the manufactured goods as adopted by the dealer. It is also contended that, the dealer should be asked to pay the tax on the entry point and in the event of export sale attracting provision u/s.3(4) of the OET Act, the dealer may ask for refund, if permissible on furnishing the declaration form E-37.

The contention of the dealer is, the authorities below have proceeded beyond the AVR while re-determining the purchase value but the impugned orders of the first appellate authority to the extent of acceptance of the mode of calculation of tax liability of the dealer in the event of export sale of the manufacturing dealer is lawful.

4. The questions raised for decision in these appeals are,

(i) Whether the first appellate authority has committed wrong in reversing the order of the assessing authority by holding that, the mode of claim of exemption against export sale as adopted by the dealer in the case in hand such as, adjusting the tax liability with refund available against export sale is erroneous ?

(ii) Whether the authorities below have acted in violation of the mandate of the provision under the Act by travelling beyond the AVR?

(iii) Whether the purchase value of the goods brought into the local area by the dealer otherwise then by way of purchase as determined by both the fora below in accepting the IBM is in accordance to law is sustainable ?

(iv) Whether imposition of interest in the case in hand is lawful?

(v) what order ?

Finding and reasons thereof.

Point No.(i) (adjustment of refund against tax liability as per 2nd proviso sec.3(4) of the OET Act)

The admitted facts in all these cases are, the dealer had received raw materials from his own captive mines inside the State and by purchase from outstate sellers. The factum of export sale, use of the raw materials in the manufacture of goods exported are remained undisputed. Provision u/s.3 of the OET Act speaks of the levy of tax. Provision u/s.2(j) contemplates how to determine the purchase value for the purpose of levy of Entry Tax. Rule 3 read with schedule and rule 17 of the OET Rules contemplates the rate of tax to be levied. Rule 3(4) 2nd proviso reads as follows-

> "Goods specified in Part I and Part II of the Schedule to the Act shall be exigible to tax at a concessional rate of fifty percentum of the rate to which such goods are exigible under sub-rule (3) and sub-rule (2) respectively of this rule, when such goods are brought-
> (a) for use as raw material by a manufacturer on first entry into a local area of the State from outside the State; or
> (b) for use as raw material by a manufacturer on first entry into a local area from another local area; or
> (c) by a registered dealer into any local area and then sold to a manufacturer for use as raw material:
> ***Provided that*** xxx xxx xxx
> ***Provided further that*** goods specified in Part I and Part II of the Schedule to the Act when used as raw material directly in manufacture of goods to be exported out of the territory of India shall not be exigible to tax where a declaration in Form E-16 from the buying manufacturer is furnished.
> ***Provided also that*** xxx xxx xxx
> ***Explanation.-***
> For the purpose of this sub-rule the word ***'manufacturer"*** shall mean and shall always be deemed to have meant a manufacturer who is registered under the Act."

Provision u/s.35(4)(a) reads as follows:-

> "(4) (a) Where any return filed under this Act shows any amount to be refundable to a dealer on account of sale in course of export out of the territory of India or, on account of claim of deductions or exemptions provided under this Act, the dealer may make an application in such form to the assessing authority for refund in such manner and in such form as may be prescribed.
> ***Explanation.-***

> For the purpose of this sub-section, the expression ***"EXPORT OUT OF THE TERRITORY OF INDIA"*** shall have the meaning assigned to it under the provisions of sub-section (1) of Section 5 of the Central Sales Tax Act, 1956 (74 of 1956):
> ***Provided that*** the burden of proving that any scheduled goods were sold in the course of export out of the territory of India shall be on the registered dealer."

Related provision u/r.33(3)(a) reads as under-

> "(3) (a) Where any dealer claims refund in return furnished for a tax period on account of sales in course of export out of the territory of the India or on account of deductions or exemptions provided under the Act and these Rules, he shall make an application in Form E37 to the assessing authority of the Circle or Range, as the case may be, within thirty days from the date of furnishing such return. ***Provided that*** an application for refund made after thirty days may be admitted, if the assessing authority is satisfied that the dealer has sufficient cause for not making the application within the said period."

A harmonious reading of all the provisions above creates no doubts in mind that, the buying dealer is required to reflect the purchase figure in column 10/11 of the return in From E-3 and the selling dealer is to indicate such sale against Form E-16 in column 23 of his return in format E-3. Form-16 enables the exporter of the manufacturer of goods to get exemption in tax on purchase of raw materials. The format under Form E-3 has undergone change w.e.f. 01.10.2013. The column No.10 in earlier format is similar to column No.11 in the later format i.e. relates to the goods bought against Form E-16. Column No. 8, 9, 10 and 11 of Form E-3 deals with the deduction with regard to purchase value of schedule goods. Similarly, column No.18 to 24 of Part-C reflects sale value and deductions.

5. Keeping the provisions in mind, when we delve into the case in hand, here the peculiarity is, the buyer and seller, both are the same and one. The instant dealer receives raw materials from its own captive mines. The assessing authority held that, the column No.11 cannot be treated to be meant for reflecting the goods received by the dealer otherwise then by way of purchase, the assessee is not permitted to circumvent the procedure laid

down in Act and Rules framed thereunder to suit his own benefit. Learned first appellate authority has held that, because the Form E-3 does not contain any column to reflect the goods received otherwise than purchase, there was no scope for the dealer to reflect the fact of sale/purchase by issuing declaration form E-16. However, as the dealer is a manufacture/exporter, the dealer is entitled to the exemption and thus exemption was allowed in the impugned order.

6. Learned Standing Counsel for the Revenue argued that, the dealer cannot adopt a method of calculation of its own which is alien to the provisions under the Act. The dealer is always required to pay the tax at the entry point and then pray for refund as per law accrued on the sale point.

Well settled principle is, when statute require to do certain thing in certain way, the thing must be done in that way or not at all. Other modes of performance are forbidden.

Learned Counsel strongly placed a reliance in the matter of **Bharat Sanchar Nigam Ltd. & Another v. Union of India & Others 2006 (2) S.T.R. 161 (SC)** and argued that, the taxing authority should accept the mode of payment of tax and deduction as allowed on previous years of assessment to maintain the continuity and consistency which is recognized by the Apex Court in the reported decision.

In **State of Kerala v. Fr. William Fernadez & Others, (2018) 57 GSTR 6 (SC)** it is held as under-

> "63. There cannot be any dispute to the proposition as laid down by this Court in the above noted cases. Statutes which are in consideration are the statutes where clear charging provision has been enacted and charging of entry tax is on entry of the scheduled goods into a local area for consumption, use or sale. Thus, the charging event arises on entry of scheduled goods into a local area of a State whether coming from another local area of State, any other State or outside the country, the charging event is same for all goods entering into local area. We, thus, are of the clear view that charging Section is clear, unambiguous and the provisions cannot be read to mean that the imported goods coming from outside the country are excluded from charge of entry tax. No such indication is discernible from any provision of the Act. Charging event is complete as and when goods enter

> into local area for use, sale or consumption irrespective of its origin. We, thus, are of the view that definition clause, Section 2(d) read with Section 3 does not exclude the charging of the entry tax on goods entering into local area for consumption, use or sale from outside the country."

7. Provision under the Act says, the dealer is to reflect the fact of purchases against declaration Form E-16 in the return and then, he can ask for deduction as per the column under Part 'B' of the format 3. Provision u/s.35(4) of the OET Act and Rule 30(3) of the OET Rules also says how the refund is to be claimed i.e. only when it is preceded by payment of tax. Because the format is not exhaustive to cover all contingencies as one of which is the present one, the statutory mandate cannot be overruled. The dealer should have paid the tax and made a claim for refund of tax under the form E-37 or stating the difficulty for the ambiguous return form but in no case the dealer can adopt a method which is alien to the statute book.

8. Learned Counsel for the dealer argued that, the provision u/s.35(4)(a) as it contemplates the dealer may make an application for refund of tax paid in the event of export sale of the manufactured goods. The term 'may' indicates it is at the option of the dealer to adopt the same mode of payment of tax and claiming refund. In no case the provision can be said to be mandatory in nature. Learned Counsel placed reliance on a decision of Full Bench of this Tribunal in S.A. No.100(ET)/2013-14, whereby the Bench while deciding the matter of CST and ET payable by the dealer held, the claim of refund in form E-37 is not mandatory.

9. In the case before us the dealer had no option at his end to show the fact of receipt of goods otherwise than purchase in any of the column of the format-3. Column No.11 is specifically meant for the purchases made by the assessee-dealer. In that event, there is no escape from the conclusion that, the dealer is required to reflect the purchase value in column No.7 first and as because there is no other column available for the dealer to make such adjustment of entry tax payable, then, the dealer is bound to take resort of the provision u/s.35(4)(a) of the OET Act. Putting the case from other angle, if it is presumed but not construed that, when there

is no column for such adjustment and when the provision u/s.3(4) speaks of concession only in the event of issuance of form E-16, then there may be a conclusion that, the dealer who has not purchased the raw materials is not even entitled to refund. The dealer's claim may not fall u/s.3(4) of the OET Act. However, it is nobody's case that the dealer is not entitled to get refund. Thus, from above in no case it can be said that, the dealer cannot opt for any other method which are alien to the provision to take adjustment of refundable amount with payable amount.

10. The fact of purchase when reflected in column No.11 by the dealer, the dealer has committed a mistake since it was not supported by Form E-16.

Conversely, when we look into the case in hand, it is found that, the exemption in tax against the export sale relating to the purchase of raw materials for manufacturing of those goods is always available to the dealer. The whole exercise became academic when we look into the merit of the case. When the dealer is liable to pay tax or not, the answer is the dealer is liable to pay tax but at the same time, he is entitled to avail refund. The procedure adopted by the dealer was not new to the taxing authority since, according to the dealer, similar mode of payment adopted for other tax periods and those were accepted by the Revenue without objection.

Well settled principle is, there is no estoppel on the point of law. A question of law if ignored by the authority on earlier occasion, it cannot be a precedent for all time.

11. In the result, it is held as follows, looking at the peculiarity of the case in hand, since this is a petty old matter, the taxing authority may proceed with the adjustment of the refund amount against the tax due or can ask for deposit of the tax first then, to allow refund whichever is convenient for the authority.

Point No.(ii) (whether the tax audit can travel beyond the AVR)

The next point raised by the dealer is, the assessing authority in the assessment u/s.42 of the OVAT Act has travelled beyond the AVR which is not permissible under law as has been laid down by the Hon'ble Court in

Bhusan Power & Steel Ltd. v. State of Orissa (2012) 47 VST 466 (Ori.) and **M/s. Balaji Tobacco Store v. STO (2015) 81 VST 170 (Ori.)**. Per contra, learned Standing Counsel argued that, there are other decisions of the Hon'ble High Court, wherein and whereby this question was considered and it is the view of the Hon'ble Court that, once, the dealer has given notice of the incriminating materials found during audit assessment and where an opportunity of being heard was given to the dealer with raising defense plea, if any in that case since there is no violation of principle of natural justice, the materials beyond the AVR can be taken in the audit assessment.

Here, the dealer has taken the plea on the strength of the authoritative pronouncement of the Hon'ble Court. However, on the other hand, the dealer has avail the opportunity of being heard on this points beyond AVR. The other decisions of the Hon'ble Court has considered this question incidental to other main questions but, there is no authority directly deciding this question taking consideration of the decision of the Hon'ble Court in Bhusan Power & Steel (supra).

Learned Standing Counsel fairly submitted that, this disputed question is still in fluid state as the Hon'ble Apex Court in SLP (Civil) No.4962/2012 vide order dtd.24.07.2012 has directed the taxing authority to proceed with the assessment on the basis of material in his possession in addition to the report of AVR in terms of Sec.41 of the OVAT Act. But, put a condition that, final assessment order shall not be passed without the leave of the Apex Court.

On close scrutiny of the pronouncement of the Hon'ble Court and Apex Court mentioned hereinabove, it can safely be said that, till the ratio laid down in the matter of Bhusan Power & Steel (supra) is set aside, varied or till the operation of the order is not stayed by the higher forum, it has got binding effect on this Tribunal. Resultantly, it is held that, the assessing authority in a proceeding u/s.42 of the OVAT Act cannot proceed beyond the AVR, but he can suggest for an assessment u/s.43 of the OVAT Act on the basis of new materials discovered in the audit assessment.

Point No.(iii) (what should be the purchase value of the goods)

So far as the value of the goods brought into local area by the dealer i.e. from his own captive mines or from the dealers outside the state, the claim of the dealer is, the price shown in the return should have been accepted.

Learned Counsel for the dealer argued that, the authority has applied the IBM price to determine the purchase value which is not in accordance to law. What is IBM or Bench Mark Price, it is a price declared for the purpose of royalty, statutorily fixed by the Mining Department. Learned Counsel for the dealer draws the attention of the forum to the Mines Rules & Regulations and the method of fixation of IBM price and argued that, the said price never can be treated as a purchase value. He has placed reliance of authorities like **Sneh Enterprises v. CC (2006) 7 SCC 714**, **CCE v. Shree Baidyanath Ayrved Bhawan Ltd. (2009) (237) ELT 225 (SC)** and **Hotel & Restaurant Assn. v. Star India Ltd. 2007 (5) STR 161 (SC)**.

12. Per contra, learned Standing Counsel, Mr. Agarwal vehemently argued that, the price shown by the dealer is, arbitrary and unreasonably low. When there is no purchase price then Court is to determine the purchase value from the market price. Learned Standing Counsel argued that, a government authority taking consideration of the price of the said raw materials in the open market time to time has worked out an average price called IBM price. Though it is for royalty purpose but, the price so determined is reasonable and accepted by the mining community. Hence the application of that IBM price to the case in hand is no way illegal or unsustainable.

13. The statute prescribes a method for determination of purchase price i.e. as per sec.2(j) of the OET Act. The provisions reads as follows:

> ***"Purchase value"*** means the value of scheduled goods as ascertained from original invoice or bill and includes insurance charges, excise duties, countervailing charges, sales tax, transport charges, freight charges and all other charges incidental to the purchase of such goods.
> ***Provided that*** where purchase value of any scheduled goods is not ascertainable on account of non-availability of

> non-production of the original invoice or bill or when the invoice or bill produced is proved to be false or if the scheduled goods are acquired or obtained otherwise than by way of purchase, then the purchase value shall be the value or the price at which the scheduled goods of like kind or quality is sold or is capable of being sold in open market;"

Prevailing market price is defining under Sec.2(34) of the OVAT Act which reads as follows:-

> "(34) ***"PREVAILING MARKET PRICE"*** in relation to any goods sold means the published price in force in the market at the time when the sale of such goods occasioned or, in the absence of any such published price, the price at which such goods were capable of being sold in the open market at that time;"

Learned Counsel for the dealer strenuously argued that IBM Price cannot be treated as a market price as contemplated u/s.2(34) of the OVAT Act relatable to sec.2(j) of the OET Act. IBM price is as statutorily fixed price such as bench mark price fixed by the concerned department for a particular purpose of royalty to be paid. It has got no relevance to the market price.

Revenue cannot blow hot and cold at the same time. On the question of adjustment of refundable amount on sale with entry tax liability, it is argued that, strict adherence to the provisions under the Act should be made. No doubt the argument is quite conceivable and in accordance to law. Even then, the determination of purchase value must be in strict compliance to the term purchase value as contemplated u/s.2(j) of the OET Act. At the cost of repetition, it is mentioned that, the provision is not ambiguous or even not vulnerable to so many interpretation. It says when the goods are brought into local area otherwise then by way of purchase then, the purchase value should be determined on the basis of market price. Market price means the price at which scheduled goods of like kind or quality is sold in open market or is capable of being sold in open market. Open market does not mean or include any price fixed by any statute more to say under Mineral Concession Rules, 1960. So, avoiding further discussion on this

question, it can safely be concluded that, the fixation of purchase value in accordance to IBM price in the case in hand is not sustainable. In consequence thereof, it is held that the department is to determine the purchase value in accordance to the price in open market as per proviso to sec.2(j) of the OET Act.

However, in view of the findings against the Question No.3, here notwithstanding the fact that, the purchase value as determined by the assessing authority/first appellate authority taking IBM price is incorrect and it needs to be determined afresh by strict adherence to proviso of sec.2(j) of the OET Act but the same is not permissible in the current assessment u/s.42 of the OVAT Act as this is a question beyond AVR.

Point No.(iv) (whether imposition of interest in the case in hand is lawful?

Coming to the question of payment of interest, the claim of the learned Counsel is, the dealer is not liable to pay any interest because he was not violated the provision u/s.7(5) of the OET Act. It is argued that, interest can be levied in the event, the dealer has failed to pay the tax in accordance to the return or the tax payable for the period for which he has failed to furnish return. On the other hand, claim of the Revenue is, once there is non-payment of tax or delay payment of tax, the interest is the automatic consequence of such non-payment or delay payment. It is apt to mention here that, because of the decision of the Hon'ble Court in the case of **Reliance Industries Ltd. v. ACST (2008) 15 VST 225 (Ori.)** at a particular point of time, not only the present dealer but also other dealers of the State took advantage of the order of the Hon'ble Court and did not pay tax on the goods brought into local area which were not produced in the State. In a later period, in compliance to the order of the Hon'ble Apex Court, as other dealers this dealer had also deposited 1/3rd amount of tax liability. So, from this, it is found that, the dealer has acted bona fide and the dealer was necessarily swayed by the decision of the authority which has got binding in nature till it was reversed by the Apex Court in **Jindal Stainless Ltd. v. State of Haryana (2016) 15 STD 493 (S.C.)**. In the above background of the disputed question, it is believed that, the delay payment

of tax was not intentional or with an intention to evade tax liability but, under the impression based on the view of the Hon'ble Court as such it is believed that, there was sufficient cause for non-payment of tax. The argument of the learned Counsel for the dealer is quite conceivable to the extent that, in consideration of the chequerred history of the dispute, the dealer was prevented from paying the tax with sufficient reason in his hand but that does not itself mean the dealer is exempted fully from paying the interest. The Nine Judge Bench of the Hon'ble Supreme Court in the aforesaid judgment reversed its own view in the case of Atiabari's case (1961) 1 SCR 809 which ruled the filed for 55 years. So, the interpretation of the tax liability was only came to a rest by a larger Constitution Bench, in that case it is believed that, such dilemma in the mind of a dealer keeping view the opinion of the Hon'ble Court necessarily constitute sufficient cause as contemplated u/s.7(5) of the OET Act. But, when the disputed point put to a rest by the Hon'ble Supreme Court, the liability to pay tax by the dealer arised forthwith. Therefore, delay if any, thereafter, cannot come to the rescue of the dealer so far as the payment of interest is concerned. The dealer is accordingly liable to pay interest on the withheld tax amount from that very day of the verdict of the Hon'ble Supreme Court. No time limit was fixed by the Apex Court for payment of tax by the dealer. Pertinent to say, when the instant dealer was not a party before the Apex Court, in that event, the dealer is to pay tax as well with interest calculated from the date of the order of the Hon'ble Supreme Court.

Point No.(v) (what order ?)

The other question raised in this case is, the withheld of 2/3rd tax liability on the goods which are brought into local area from out of State i.e. which are not produced or manufactured in the State. This question is put to rest by Hon'ble Apex Court by now and it is settled that, on the entry of goods irrespective of fact that, it is produced in the state or not, the dealer is liable to pay entry tax. So, avoiding further discussion on this question can be concluded with the observation that, the dealer is liable to pay the withheld tax.

With the observation above, we can summarize the answer to the disputed questions as follows. The purchase value as determined in this case is not tenable. The question relating to determination of purchase value in this audit assessment is not permissible as it is beyond AVR. The procedure adopted by the dealer in adjustment of refund amount of tax accrued against export sale by adjusting with entry tax payable is not in accordance to law, hence not sustainable. The assessing authority may do well to impose tax liability or it may adjust the same in the case in hand in particular on due cross verification/adjustment of the of the tax liability with the admissible refund in the remand assessment. The dealer is liable to pay withheld amount of tax and interest on it accrued from the date of the judgment of the Apex Court till payment. Thus, it is ordered.

14. The appeals and cross appeals above are allowed in part against each other on contest, as per the observation above. The matter is remitted back to the assessing authority for assessment afresh as per the observation hereinabove.

Dictated & corrected by me,

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

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

I agree

Sd/-
(P.C. Pathy)
Accounts Member-I