BEFORE THE JUDICIAL MEMBER-I:
ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 12(ET) of 2018
(Arising out of the order of the learned Addl. CST (Appeal), Odisha, Cuttack, in Appeal Case No. AA-JCST-JR-210/2014-15, disposed of on dtd.29.06.2017)

P r e s e n t: Shri A.K. Dalbehera, O.S.J.S.
M.A., LL.M.
1st Judicial Member

M/s. Pawan Kumar Ahluwalia,
At/P.O.- Barbil,
Dist.- Keonjhar. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. P.K. Harichandan, Advocate
For the Respondent ... Mr. M.S. Raman, A.S.C.

Date of hearing: 09.03.2021 *** Date of order: 24.03.2021

O R D E R

This appeal is directed against the order dtd.29.06.2017 passed by the learned Addl. Commissioner of Sales Tax (Appeal), Odisha, Cuttack (hereinafter referred to as, the learned ACST) in Appeal Case No. AA-JCST-JR-210/2014-15, wherein he reduced the demand to Rs.4,40,395.00 from Rs.19,16,316.00 made by the learned Joint Commissioner of Sales Tax, Jajpur Range, Jajpur Road (hereinafter referred to as, the learned JCST) for the assessment period 01.04.2010 to

31.03.2011 u/s.9C of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act).

2. The brief facts of the case are that, the appellant-dealer is engaged in manufacturing of size iron ore and fines for which he extracts iron ore lumps from his mines and also purchases such goods from its sister concern M/s. KJS Ahluwalia. Proceeding u/s.9C of the OET Act was initiated against the appellant-dealer on the basis of the Audit Visit Report (in short, the AVR) submitted by the DCST, Barbil Circle, Barbil. Pursuant to the notice the authorised representative of the appellant-dealer appeared who was confronted with the allegations reported in the AVR. On going through the AVR, the written submission of the appellant-dealer and after hearing the authorised representative the learned JCST determined the GTO at Rs.80,79,88,590.00 which included the total turnover of purchases and sales. After allowing deduction of Rs.45,04,125.00 towards collection of entry tax and purchase of entry tax suffered goods of Rs.4,37,94,692.00 the NTO of the appellant-dealer was determined at Rs.75,96,89,773.00. Tax was calculated at Rs.51,60,434.04. After allowing adjustment of set off of Rs.1,15,603.00 and payment of admitted tax of Rs.44,07,077.00 the entry tax assessed was arrived at Rs.6,37,754.00. Penalty of Rs.12,75,508.04 u/s.9C(5) of the OET Act was imposed and interest of Rs.3,054.00 was levied on late payment of admitted tax. Thus, the total tax including penalty and interest was arrived at Rs.19,16,316.00 which the appellant-dealer was required to pay.

3. Being aggrieved by the order of the learned JCST, the appellant-dealer preferred an appeal before the learned ACST who after thorough analysis reduced the demand to Rs.4,40,395.00. Being further aggrieved by the order of the learned ACST, the appellant-dealer has preferred the second appeal.

4. Heard the learned Counsel for the appellant-dealer and the learned Addl. Standing Counsel appearing for the Revenue. Perused the materials available on record so also the orders of both the fora below. I also perused the grounds of appeal so also the plea taken in the cross objection. During the course of hearing, the learned Counsel for the appellant-dealer filed a memo stating therein that the appellant-dealer was not pressing the ground No.4 as it had not been able to collect the wanting form E-15 with all efforts and also stated to allow the same. The learned Addl. Standing Counsel did not raise any objection for the same. Hence, the memo is accepted. On perusal of the other grounds taken in the appeal it is seen that the appellant-dealer has stated that the determination of NTO at Rs.20,72,83,368.00 by the learned ACST is arbitrary, excessive and bad in law. It was further stated that as per the settled principle of law, after completion of reassessment the learned assessing officer cannot initiate and pass original/audit assessment order for self same tax period for which the order passed u/s.9C of the OET Act after passing of order u/s.10 of the OET Act by the learned JCST is without jurisdiction and liable to be quashed. Moreover, the learned ACST without appreciating the ratio of the decision in case of M/s. Balaji Tobacco Store v. The Sales Tax Officer, Cuttack I

East Circle, Cuttack as reported in (2015) 81 VST 170 (Orissa) which is squarely applicable to the present case passed the order against the appellant-dealer which is against the settled principle of law as stated in the grounds of appeal. Moreover, the imposition of penalty and charging of interest are arbitrary, excessive and bad in law as stated in the grounds of appeal. It was finally contended that the assessment order passed by the learned JCST as well as the appeal order passed by the learned ACST are otherwise arbitrary, excessive and bad in law.

5. On perusal of the impugned order it is seen that the learned ACST has reduced the demand from Rs.19,16,316.00 to Rs.4,40,395.00 which indicates that the first appeal order has partly gone in favour of the appellant-dealer. I have respectfully gone through the decision relied upon by the learned Counsel for the appellant-dealer. However, the said decision is distinguishable from the facts and circumstances of the present case in the sense that Sections 42 and 43 of the OVAT Act have mainly been dealt with in the said decision as follows:-

> "An audit assessment under section 42 of the Orissa Value Added Tax Act, 2004 cannot be made after completion of the assessment of turnover which has escaped assessment under section 43 of the Act read with rule 50 of the Orissa Value Added Tax Rules, 2005 for the same tax period."

The learned Counsel for the appellant-dealer failed to explain as to how Sec.9C of the OET Act is applicable in the light of the said decision. Thus, I come to a positive conclusion that the learned ACST rightly completed the appeal proceeding

basing on the statutory provisions and dealing with each and every item which are self explanatory and require no further interference. The imposition of penalty equal to twice the amount of tax assessed and levy of interest are statutorily mandated. Thus, the grounds taken in the second appeal have no basis to stand. Hence, there is no reasonable merit in the second appeal filed by the appellant-dealer which is not sustainable in the eye of law. Thus, it is ordered.

6. The appeal stands dismissed being devoid of any merit and the impugned order is hereby confirmed. The cross objection is accordingly disposed of.

Dictated & corrected by me,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

Sd/-
(A.K. Dalbehera)
1st Judicial Member