



assessment period 01.04.2007 to 31.03.2008 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 a mines owner and engaged in extraction of lumps from his own mines and after crushing of the same in his own crusher, sales the same i.e. size iron ores and iron ore fines inside the State of Orissa as well as in course of interstate trade and commerce. On the basis of the Audit Visit Report (in short, the AVR), proceeding was initiated against the appellant-dealer for production of books of account. In response to the notice the authorized representative on behalf of the appellant-dealer appeared and produced the books of account. During the course of audit, it was seen that the appellant-dealer had not paid entry tax against the freight charges as per Sec.2(j) of the OET Act. So, the learned JCST observed that the appellant-dealer was liable to pay entry tax against the freight charges paid by him. In absence of actual amount of freight charges paid by the appellant-dealer towards purchase of scheduled goods from inside the State as well as from outside the State, a margin of 3% of the total purchase value was considered to be added towards freight charges and entry tax due thereon to be levied. As per the AVR the appellant-dealer had not paid entry tax to the tune of Rs.1,07,118.00. The learned JCST determined the GTO at Rs.27,48,29,213.78 and the appellant-dealer was allowed deduction of Rs.3,89,54,058.65 against submission of form-E1. The total tax payable was calculated at Rs.12,85,737.78. As per the AVR the appellant-dealer had not paid entry tax to

the tune of Rs.1,07,118.00 which was added in the total tax assessed which came to Rs.13,92,855.78. The appellant-dealer had paid Rs.10,52,832.00 and had availed set-off to the tune of Rs.1,56,208.28. So, the balance amount of Rs.1,83,816.00 was payable by the appellant-dealer.

3. Being aggrieved by the order of the learned JCST, the appellant-dealer preferred an appeal before the learned ACST who reduced the demand. Being further aggrieved by the order of the learned ACST, the appellant-dealer has preferred the second appeal.

4. The appellant-dealer has come up with the second appeal on the grounds that the learned JCST is not authorized to assess the appellant-dealer for the aforesaid period, for which the assessment order passed by the learned JCST is without jurisdiction and is void one in the eye of law; that addition of Rs.35,926.00 to purchase turnover, on account of freight without any basis and reason is arbitrary, excessive and bad in law; that the learned ACST without affording adequate opportunity to collect and submit the wanting declaration forms E-15 which is beyond the control of the appellant-dealer has passed the order and demanded the tax on the same which is also arbitrary, excessive and against the principle of natural justice; that the learned ACST without issuing any notice and affording opportunity of personal hearing to the appellant-dealer, imposed the penalty of Rs.51,076.00 u/s.9C(5) of the OET Act which is arbitrary, excessive, bad in law and violates the principle of natural justice; that the imposition of penalty of Rs.51,076.00 u/s.9C(5) of the OET Act is arbitrary, excessive and bad in law

and 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.

Cross objection has been filed by the respondent-Revenue supporting the order of the learned ACST.

5. Heard the learned Counsel for the appellant-dealer so also the learned Addl. Standing Counsel appearing for the Revenue. Perused the materials available on record so also the orders passed by both the fora below. I also perused the grounds taken in the appeal so also the plea taken in the cross objection. In the grounds of appeal the appellant-dealer raised the objection that the learned ACST did not afford adequate opportunity to collect and submit the wanting declaration form E-15 and passed the order. During the course of hearing the learned Counsel for the appellant-dealer only agitated the said ground but did not press the other grounds. To that effect he filed one declaration form E-15 amounting to Rs.10,98,129.00 along with a petition to accept the same as additional evidence. Heard the petition. The learned Addl. Standing Counsel did not raise any objection and submitted that the matter should be remanded to the learned JCST for verification and necessary computation. In view of the submissions of both the sides the petition is allowed. I am also convinced that sufficient opportunity was not provided to the appellant-dealer for furnishing of declaration form E-15 as per the materials available on record. Therefore, it is a fit case where the matter should be remanded to the learned JCST for fresh assessment after verifying the genuineness of the aforesaid declaration form.

The Full Bench of this Tribunal have also taken similar view in S.A. Nos.156(E) of 2008-09 & 157(E) of 2008-09, disposed of on dtd.24.04.2019. Hence, it is ordered.

6. The appeal is allowed on contest and the impugned order is hereby set aside. The matter is remitted back to the learned JCST for assessment afresh in view of the aforesaid observation preferably within a period of three months from the date of receipt of this order. The cross objection is accordingly disposed of.

Dictated & corrected by me,

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

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