



10.11.2008 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 limited company carrying on business of palm oil, ground nut oil, soya oil, mustard oil, sun flower oil, coconut oil and vanaspati on wholesale basis. On the basis of the Audit Visit Report (in short, the AVR) assessment was completed. As per the AVR, the appellant-dealer had mainly procured materials from outside the State on stock transfer basis against form 'F'. A part of the receipt of the stock had also been made as a result of interstate purchase against form 'C'. The audit team suggested addition of 10% to the value disclosed in the stock transfer note to determine the taxable turnover for the purpose of computation of entry tax and addition of 3% to the value declared in the purchase invoice related to interstate purchase against form 'C' towards freight charges. The learned JCST added 10% to the value of the goods received against form 'F' from outside the State after excluding the value of goods dispatched to outside the State other than by way of sale against form 'F' to determine the taxable turnover of goods received against form 'F' for levy of entry tax. Similarly, the learned JCST added 3% towards freight charges to determine the taxable turnover for levy of entry tax on interstate purchase of scheduled goods against form 'C'. Therefore, the learned JCST determined the GTO at Rs.165,52,80,950.81 on which tax @ 1% was calculated to arrive at Rs.1,65,52,809.50. After allowing adjustment of payment of admitted tax of Rs.1,51,37,196.00, the balance tax due was arrived at Rs.14,15,613.50 and two times penalty of

Rs.28,31,227.00 was imposed u/s.9C(5) of the OET Act which together came to Rs.42,46,841.00.

3. Being aggrieved by the order of the learned JCST, the appellant-dealer preferred an appeal before the learned ACST who confirmed the order of assessment. 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 determination of GTO and TTO at Rs.165,52,80,951.00 by the learned JCST and confirmed by the learned ACST is illegal, arbitrary, bad in law and liable to be set aside; that the Commissioner of Sales Tax, Orissa, Cuttack has not delegated the power to the Sales Tax Officer u/s.15A of the OET Act to pass any assessment order u/s.10 of the OET Act, hence the order passed by the Assessing Officer is without jurisdiction and liable to be quashed; that the learned ACST while passing the order under the OET Act has relied on a Notification No.5223III(III)-21/2009-CT dated 13.03.2009 issued under OVAT Act which is not applicable to the instant case; that the audit team visited the business premises of the appellant on 01.11.2008 and from the AVR and assessment order, it is found that the AVR has been submitted to the AO on 16.02.2010 which is beyond the time specified under rule 11(5)(c) of the OET Act. Under the said Rule it is provided that the audit report has to be submitted within seven days from the date of the completion of the audit to the assessing authority in the prescribed form along with statements recorded and documents obtained. Hence, the Audit report submitted beyond the statutory period is illegal,

without jurisdiction and against the settled principle of law, as such liable to be quashed; that under the OET Act, tax is leviable on entry of goods, hence levies of entry tax on sale/market price by the learned JCST as well as confirmed by the learned ACST is without jurisdiction and against the statute; that the learned JCST as well as the learned ACST while passing the order have wrongly interpreted the provision u/s.2(j) of the OET Act and determined the purchase value of the stock relating to sale inside the State by estimation, when the stock transfer value is ascertainable from stock transfer invoice, supported with form 'F' and also interstate purchase supported with purchase invoice and 'C' form which is arbitrary, excessive, bad in law and against the statute; that the imposition of penalty u/s.10(2) of the OET Act is arbitrary, excessive and bad in law and that the impugned order of assessment as well as first appeal order is illegal, arbitrary, bad in law and is liable to be set aside.

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. The objection of the appellant-dealer on non-delegation of power u/s.15A of the OET Act is not acceptable. The definition of assessing authority u/s.2(a) & 2(ad) of the OET Act and the delegation of power of Assessing Authority made under the OVAT Act clearly mean that the learned JCST

had the jurisdiction to assess the appellant-dealer under the Act. The date of visit of audit cannot be taken as the date of completion of audit. There is no statutory time limit for completion of audit. Hence, the contention of the appellant-dealer regarding illegality of submission of AVR within seven days from the date of audit visit has no justification. The contention of the wrong interpretation of Section 2(j) of the OET Act is not acceptable in the facts and circumstances of the case. On the other hand, the determination of the market value of the scheduled goods by both the fora below is found to be proper. Since the demand in question has been made due to the established fact of sale suppression and evasion of tax made by the appellant-dealer without any reasonable cause the penalty imposed is justified. The grounds taken in the appeal have no basis at all to stand. Thus, the appeal filed by the appellant-dealer has no merit and there is no need to interfere with the impugned order. Hence, it is ordered.

6. The appeal is 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

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