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

S.A. No. 151(ET) of 2017-18
(Arising out of the order of the learned JCST (Appeal), Sambalpur Range, Sambalpur, in First Appeal Case No. AA 264/SAI/ET/2014-15, disposed of on dtd.28.10.2017)

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

M/s. Castrol India Ltd.,
At/P.O.- Malipali, Bhalupali,
Dist.- Sambalpur. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. R.C. Poddar, Advocate
For the Respondent ... Mr. S.K. Pradhan, A.S.C.

Date of hearing: 18.02.2021 *** Date of order: 01.03.2021

O R D E R

This appeal is directed against the order dtd.28.10.2017 passed by the learned Joint Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (hereinafter referred to as, the learned JCST) in First Appeal Case No. AA 264/SAI/ET/2014-15, wherein he confirmed the demand of Rs.18,74,853.00 passed by the learned Deputy Commissioner of Sales Tax, Sambalpur I Circle, Sambalpur (hereinafter

referred to as, the learned DCST) for the assessment period 01.04.2011 to 31.03.2013 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 manufacturer of lubricants and grease having business in Odisha and receives stocks on stock transfer basis against form 'F' and effects sale of the same. The appellant-dealer dispatched goods to other branches located outside the State of Odisha by way of stock transfer. The assessment was framed on the basis of Audit Visit Report (in short, the AVR). It was reported in the AVR that the appellant-dealer had not followed the provision of Sec.2(j) of the OET Act and there was short payment of entry tax to the tune of Rs.6,24,951.00 for the aforesaid tax period. Therefore, the Audit Officer suggested reopening of the case u/s.9C of the OET Act. On receipt of the audit report the learned DCST initiated assessment proceedings u/s.9C of the OET Act by issuing notice to the appellant-dealer to produce the books of account for examination. In response to the said notice the learned Advocate of the appellant-dealer appeared with the books of account for verification. The learned DCST confronted the audit report to the appellant-dealer. On verification of the books of account the learned DCST determined Rs.186,28,73,180.74 as sale value and purchase value of the appellant-dealer for the material period under proviso to Sec.2(j) of the OET Act. Tax @ 1% on the same was calculated at Rs.1,86,28,732.00. The appellant-dealer having already deposited Rs.1,80,03,781.00 was assessed to further entry tax

of Rs.6,24,951.00. The learned DCST imposed two times penalty of Rs.12,49,902.00. So, the tax and penalty together came to Rs.18,74,853.00.

3. Being aggrieved by the order of the learned DCST, the appellant-dealer preferred an appeal before the learned JCST who confirmed the assessment order. Being aggrieved by the order of the learned JCST, the appellant-dealer has preferred this second appeal.

4. The appellant-dealer has come up with the second appeal on the grounds that under the facts and in the circumstance of the case the learned JCST failed to appreciate the submission of the appellant-dealer and thereby erred in not considering the merit of the case; that the impugned assessment is not based on true interpretation of the proviso appended to Sec.2(j) of the OET and thereby the learned DCST committed legal error in tuning with the observation found place in the AVR and thus the extra demand including penalty are arbitrary and illegal; that the learned DCST is wrong to reject the value of receipt of scheduled goods on stock transfer basis which is made on "Equalised Landed Price" which is nothing but "Maximum Retail Price" and that the payment of Entry Tax is made on such valuation; that in the instant case the charge of short payment of entry tax of Rs.6,24,951.00 by the appellant-dealer while furnishing the requisite returns for the tax period under appeal is unjust and unreasonable both in fact and law; that the order of the learned JCST is based on conjectures and surmises and is without any judicial consideration of "sale price" as defined under OVAT Act for

determination of entry tax leviable where the appellant-dealer has obtained the scheduled goods otherwise than by way of purchase; that the learned JCST is prejudiced while confirming the audit assessment order and that the said appeal is revenue oriented at the expense of justice.

Cross objection has been filed by the respondent-Revenue supporting the impugned order.

5. Heard the learned Counsel for the appellant-dealer and the learned Addl. Standing Counsel for the respondent-Revenue. Perused the materials available on record so also the orders of both the fora below. I also perused the grounds of appeal and the plea taken in the cross objection. On perusal of the materials available on record it is necessary to consider as to what would be the purchase value as per the proviso appended to Sec.2(j) of the OET Act where the goods were obtained/received by the appellant-dealer on stock transfer basis for the purpose of computation of entry tax. On perusal of the orders of both the fora below it is seen that "sale price" inclusive VAT is determined as GTO and TTO for computation of entry tax. The expression "sale price" has not been defined in the OET Act but Sec.2(46) of the OVAT Act and the meaning thereof shall apply mutatis mutandis in view of Sec.2(q) of the OET Act read with Rule 34 of the OET Rules. For better appreciation it is necessary to refer to Sec.2(46) of the OVAT Act to ascertain the sale price for computation of entry tax payable. Section 2(46) reads as follows:

> "(46) ***"SALE PRICE"*** means the amount of valuable consideration received or receivable by a dealer as consideration for the sale of

any goods less any sum allowed as cash discount or trade discount at the time of delivery or before delivery of such goods but inclusive of any sum charged for anything done by a dealer in respect of the goods at the time of or before delivery thereof and the expression ***'PURCHASE PRICE'*** shall be construed accordingly;

Explanations.-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) Any amount of duties, charges, taxes levied or leviable under any Act (other than tax levied or leviable under this Act) in respect of such goods shall be included in the sale price.

(e) xxx xxx xxx"

From the aforesaid definition it is crystal clear that when sale price is to be determined the tax levied or leviable under the OVAT Act shall not be part of "sale price". So the "sale price" inclusive VAT is the sine qua non for computation of entry tax leviable where the dealer has obtained/received the scheduled goods otherwise than by way of purchase. Such interpretation is also found support from the clarification on the said point issued from the Commissionerate of CT & GST, Odisha vide POL/53/3/2017-Policy-CCT (Part-I)-6322 dt.21.04.2018. This Tribunal in respect of the same appellant-dealer in S.A. No.152(ET)/2017-18 held that in case the proviso to Sec.2(j) of the OET Act is made applicable then the purchase value of the scheduled goods shall be the sale price inclusive VAT for the computation of entry tax leviable where the dealer had obtained/received the scheduled goods otherwise then by way of purchase. Reference may also be had

to the Full Bench decision of this Tribunal in S.A. No.169 & 170 (ET) of 2009-10 where the Full Bench held that in the case the proviso to Sec.2(j) of the OET Act is made applicable, then the purchase value of the scheduled goods shall be the actual "sale price" in which the goods are sold for the purpose of computation of entry tax. However, the said decision of the Full Bench is based on the interpretation of "sale price" defined u/s.2(h) of the Orissa Sales Tax Act. Resultantly, it is held that this is a fit case where the matter should be remitted back to the learned DCST for re-determination of the tax liability of the appellant-dealer as per the observations made above. Hence, it is ordered.

6. The appeal is allowed in part and the impugned order is modified to the extent indicated above. The matter is remitted back to the learned DCST for fresh assessment in the light of the observations made above preferably within a period of three months from the date of receipt of this order. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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