

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 99(ET)/2016-17**

(From the order of the Id.JCST (Appeal), Sundargarh  
Range, Rourkela, in Appeal No. AA 13(RL-II) ET of 2009-  
10, dtd.28.06.2016 confirming the assessment order of the  
Assessing Officer)

**Present: Smt. Sweta Mishra  
2<sup>nd</sup> Judicial Member**

M/s. Shiva Ispat,  
Vedvyas, Rourkela,  
Dist. Sundargarh. .... Appellant

**-Versus-**

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

For the Appellant : Mr. D. Pati, Advocate  
For the Respondent : Mr. M.S. Raman, A.S.C. (C.T.)

(Assessment Period : 2004-2005)

Date of Hearing: 12.06.2019 \*\*\* Date of Order: 19.06.2019

**ORDER**

The present second appeal has been directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (in short, FAA/JCST) in confirming the assessment order passed by the Assessing Authority/Sales Tax Officer, Rourkela-II Circle, Panposh (in short, AA/STO) for the assessment year 2004-2005 u/s.7(4) of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. The facts of the case in nutshell is that :

In the present case, the instant dealer M/s. Shiva Ispat, Rourkela is engaged in trading of Iron and Steel goods and has effected purchases from registered dealers within the local area. He has disclosed his total purchases for the year under assessment i.e. 2004-05 at Rs.22,86,475/-, which the dealer claims to have effected within the local area only from the registered dealers. But in order to substantiate his claim, he could not produce any supporting documents before the Assessing Authority, Rourkela-II Circle, Panposh. In absence of any cogent evidence/documents produced by the dealer, the AA determined the GTO of the dealer at Rs. 22,86,475/- and also taken into account of the same amount as TTO. Consequently, in absence of any material evidence available in the record, the AA taxed the entire GTO of the dealer @1%, which became calculated to Rs.22,865/-. As the dealer has not paid any tax due at the time of filing of return, ultimately he was imposed with a tax demand of Rs.22,865/- as determined by the AA.

3. Being aggrieved with such illegal and arbitrary order of assessment passed by the AA, the dealer-appellant preferred first appeal before the learned FAA/JCST with a prayer for deletion of the demand imposed by the AA as it is passed without basis and application of judicious mind.

4. The learned FAA in course of hearing of the appeal at the first appellate stage after hearing the counsels from both the sides and after going through the order of assessment vis-à-vis grounds of appeal filed by the appellant, found the dealer has purchased the goods within the local area, but since the dealer failed to produce any supporting documents against his claim, confirmed the order of assessment and thus, the tax demand imposed by the dealer-appellant remained as it is.

5. Not being satisfied with the order of the FAA the dealer-appellant knocked the door of this Tribunal through his Advocate and filed second appeal with the contention that, the imposition of entry tax to the tune of Rs.22,865/- by the AA on the entire GTO of the dealer is completely illegal, unjust and arbitrary, as the dealer has purchased the entire goods only from the registered dealer or second seller. Also there is no reasonable nexus between the GTO, TTO and the entry tax imposed on the dealer by the AA, which on the other hand is unwarranted as well as uncalled for. Notwithstanding that, the dealer was not given sufficient opportunities to appear and explain sufficient cause for non-submission of his books of account and purchase register before the learned AA. Thus, he should be allowed deduction towards the entry tax suffered goods purchased from within the local area.

6. The appeal is heard at length with both the parties present before this forum by their respective

counsels. Mr. D. Pati, learned Counsel was present on behalf of the dealer-appellant whereas learned Addl. Standing Counsel, Mr. M.S. Raman was representing the State. Learned Counsel from the side of the dealer duly submitted written note of argument in which he has put emphasis on the point that, the assessment order passed by the Assessing Authority is entirely on ex-parte basis merely on the ground that, the dealer was also set ex-parte under the OST Act for the self-same period i.e. 2004-05. At the first appellate stage also, the dealer failed to produce any supporting documents regarding his purchase within the local area. Moreover, the dealer was not given any further opportunities to explain for his non-appearance before the AA and hence the order was passed setting the dealer-ex-parte.

7. At the outset, it is pertinent to mention here that, the order of the FAA, which is under challenge in this appeal is regarding imposition of entry tax @1% on the GTO of the dealer to the tune of Rs.22,865/- is justified or not ? After going through the written note of arguments submitted by the learned Counsel carefully and arguments advanced by the learned Addl. Standing Counsel, it is obvious that, the assessment order relating to the year 2004-05 passed by the Assessing Authority setting the dealer ex-parte is baseless, as he was not given enough opportunities to substantiate his claim towards exemption of entry tax imposed on him on mere non-submission of

supporting evidence and materials available on record. At the first appellate stage also, the learned FAA did not take into consideration the claim of the dealer for exemption of entry tax on the self-same ground that, the dealer could not produce sufficient documents and materials evidence for claim of exemption of entry tax, which is imposed on him @1% of the entire GTO i.e. to the tune of Rs.22,865/-. So, keeping all these facts in mind, I am of the opinion that, this is a fit case to be remitted back to the Assessing Authority for assessment afresh with a direction to grant further opportunity to the dealer to put forth his claim for exemption as per principle of natural justice.

In the result, the appeal is allowed on contest. The impugned order is set-aside. The matter is remitted back to the AA for assessment afresh in the light of observation as mentioned above.

Dictated and Corrected by me,

Sd/-  
(S. Mishra)  
2<sup>nd</sup> Judicial Member

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