

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

S.A. No. 216 (ET) of 2015-16

(Arising out of the order of the learned JCST, Cuttack I Range,
Cuttack, in First Appeal Case No. AA(ET)79/CUIC/2009-10,
disposed of on dtd.28.12.2015)

P r e s e n t : Shri A.K. Panda,
1st Judicial Member

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

... Appellant

- V e r s u s -

M/s. Ruchi Infrastructure Ltd.,
Professorpara, Cuttack.

... Respondent

For the Appellant ... Mr. M.L. Agarwal, S.C.

For the Respondent ... Mr. S.B. Agarwal, Advocate

Date of hearing: 10.08.2018

Date of order: 31.08.2018

ORDER

This appeal is directed against the order dtd.28.12.2015 passed by the learned Joint Commissioner of Sales Tax, Cuttack I Range, Cuttack (hereinafter referred to as, the learned JCST) in First Appeal Case No. AA(ET)79/CUIC/2009-10, wherein and whereby, he has allowed the first appeal by reducing the balance tax demand and penalty to nil from Rs.72,303.00 raised by the learned Asst. Commissioner of Sales Tax, Cuttack I Central Circle, Cuttack (hereinafter referred to as, the learned ACST) in an assessment u/s.10 of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) in respect of the respondent-dealer for the assessment year 2003-04.

2. The respondent-dealer bearing R.C. No.CUIC-2604-ET is a business establishment having its branch office at Professorpara, Cuttack and head office at Kakinada in the State of Andhra Pradesh. In the

assessment year in question i.e. in the assessment year 2003-04 it had received certain amount of edible oil and banaspati from its head office on stock transfer basis and in an earlier assessment u/s.7(4) of the OET Act its tax liability was calculated to be Rs.44,81,601.00 after determination of its GTO and TTO at Rs.44,61,02,713.00. Subsequently, basing upon an objection raised in the A.G. Audit report, the learned ACST initiated a proceeding u/s.10 of the OET Act against the respondent-dealer for its assessment for the assessment year in question i.e. for the assessment year 2003-04 and issued a notice to appear and to produce the books of account and in response to the notice, the authorized representative of the respondent-dealer appeared and produced the books of account and the other relevant documents which were duly been examined. When the allegation of the audit report relating to the non-inclusion of the freight charges and the other incidental charges for determination of the purchase value of the goods was confronted to the respondent-dealer, the authorized representative appearing on its behalf submitted that, the value of the goods as disclosed in the stock transfer invoice includes the freight charges which has been borne by the head office situated at Kakinada and as such the further inclusion of the freight charges for determination of the value of the goods will cause great injustice to it. But, on examination of the books of account and the other relevant documents, the learned ACST did not accept the clarification of the respondent-dealer, rather accepted the allegation of the report as true and genuine and determined the freight charges to be Rs.72,30,367.00 and further determined the purchase value of the goods on inclusion of the same as per sec.2(j) of the OET Act. Then, after consideration of the same to be the GTO and TTO, he levied tax at the appropriate rates of 1% and 2% on different transactions and the same came to be Rs.45,53,904.20. As the respondent-dealer had already paid tax to the tune of Rs.44,81,601.00 earlier, he raised the balance tax demand of Rs.72,303.00, to be paid by it.

3. After the assessment, being aggrieved with the order of the learned ACST, the respondent-dealer preferred an appeal before the learned

JCST bearing First Appeal Case No. AA(ET)79/CUIC/2009-10. On hearing and on consideration of the material available on record, the learned JCST accepted the contention of the respondent-dealer and accordingly allowed the appeal by reducing the balance tax demand to nil from Rs.72,303.00 as raised earlier by the learned ACST. Thus, being aggrieved with the order of the learned JCST, the Revenue as appellant has preferred this second appeal.

4. No cross objection has been filed by the respondent-dealer.
5. Heard both the sides. The learned Standing Counsel appearing for the appellant-Revenue submitted that, the learned JCST has not considered the matter in its proper perspective and has passed the order erroneously and as the order passed by him suffers from serious infirmity being not based upon the materials available on record, the same is liable to be set aside and the order passed by the learned ACST being proper and justified, the same is liable to be restored. On the other hand, the learned Counsel appearing for the respondent-dealer supported the order of the learned JCST and submitted that on consideration of the entire materials available on record, the learned JCST has passed the order in a proper and justified manner and as such the appeal preferred by the appellant-Revenue being devoid of merit is liable to be dismissed.
6. On hearing both the sides, the sole point to be determined in this appeal is to whether sec.2(j) of the OET Act is applicable to the present case for determination of the purchase value of the goods and whether the order passed by the learned JCST is proper and justified and is sustainable in the eye of law.
7. To adjudicate the matter properly, it is beneficial to refer to sec.2(j) of the OET Act which defines the purchase value of the goods as follows-

“Purchase value” means the value of scheduled goods as ascertained from original invoice or bill and includes insurance charges, excise duties, countervailing charges, sales tax, transport charges, freight charges and all other charges incidental to the purchase of such goods.

Provided that where purchase value of any scheduled goods is not ascertainable on account of non-availability of non-production of the original invoice or bill or when the invoice or bill produced is proved to be false or if the scheduled goods are acquired or obtained otherwise than by way of purchase, then the purchase value shall be the value or the price at which the scheduled goods of like kind or quality is sold or is capable of being sold in open market;”

8. It is not in dispute that, Entry Tax is levied on the entry of the scheduled goods into a local area. But before levy of such tax, the purchase value of the scheduled goods is to be ascertained. From the above definition of purchase value, it is very much clear that, the same is to be ascertained from the original invoice or bills which includes insurance charges, excise duties, countervailing charges, sales tax, value added tax or, as the case may be, turnover tax, transport charges, freight charges and all other charges incidental to the purchase of such goods. When there is non-availability of original invoice or bills or the scheduled goods are obtained otherwise than by way of purchase, then the purchase value of the scheduled goods are to be determined at the price at which the scheduled goods are sold in the market. On perusal of the materials on record, it is seen that, in the present case, the appellant-dealer has obtained the scheduled goods on stock transfer basis from outside the State and has failed to produce any original invoice or bill showing the purchase value of the goods including freight charges. Therefore, in this factual background, the learned ACST determined the purchase value of the goods by applying the definition as mentioned in sec.2(j) of the OET Act. But at the first appeal stage, the learned JCST examined certain documents produced by the respondent-dealer and found out that, the freight charges are to be borne by the head office of the respondent-dealer situated outside the State and as such he re-determined the purchase value of the goods by excluding the freight charges on acceptance of the contention of the respondent-dealer. As per the provisions of the Act, purchase value of the goods means the value of the goods as ascertained from the original invoice or bill and the same

includes insurance charges, excise duties, countervailing charges, sales tax, transport charges, freight charges and all other charges incidental to the purchase of such goods and hence bearing of the freight charges either by the respondent-dealer or by its head office in the present case is totally immaterial. As the definition of purchase value clearly speaks of inclusion of freight charges and all other incidental charges, the order passed by the learned ACST can certainly be considered to be a wrong one. On the other hand, the order passed by the learned ACST is proper and justified in the facts and circumstances of the present case as the same is clearly based upon the material available on record.

9. In view of the above discussion, the appeal is allowed. The order passed by the learned JCST is hereby set aside and the order passed by the learned ACST is hereby restored.

Dictated & corrected by me,

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

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