

2. The respondent-dealer carries business in manufacturing of Quartz and Quartz power, Ferro Alloys, Coal, Coke, Refractory Bricks and Tiles. The dealer had effected purchases from both the unregistered dealer of the State and outside the State of Odisha and sales both in course of interstate and intrastate trade and commerce. During the course of audit of the VAT returns with respect to books of account of the dealer for the aforesaid tax period, different discrepancies were reported. In the audit visit report the audit officers had suggested for assessment, pointing out that the dealer had not paid Entry Tax on transportation charges on the goods brought into the local area and had also not paid entry tax on purchase of raw materials i.e. Quartz and Quartzite from unregistered dealer. Accordingly, they suggested for imposition of tax, interest and penalty thereon. The LAO after perusing the materials, assessed the dealer by adding transportation charges @ 5% on purchases so effected and also imposed tax @ 1% on purchase of raw materials of Rs.27,45,487.00 purchased from unregistered dealers. Thus the LAO raised demand by imposing tax demand of Rs.49,084.00, interest of Rs.11,780.16 u/s.7(5) of the OET Act and penalty twice the amount of tax assessed i.e. Rs.98,168.00 u/s.9C(5) of the Act, totaling to Rs.1,59,032.00. The respondent-dealer filed the first appeal where the learned JCST reduced the demand by excluding the demand raised on account of the purchases made from unregistered dealer on the ground that the purchases are from one local area. Being aggrieved by the first appeal order, the Revenue-State has preferred this second appeal.

3. The Revenue came up with the second appeal on the following grounds:-

- (i) The order of the First Appellate Authority appears to be unjust and improper.

(ii) As per Section 2(f) of the OET Act local area means the areas within the limits of any Municipality, Gram Panchayat or other local authority by whatsoever name called, constituted or continued in any law. As per the order raw materials were purchased from Kechupani and processed/manufactured at Govindpur. It clearly indicates that there is existence of two different places. Either it may be two villages or the area having two distinct jurisdictions. Under single R.I. Circle, there may be many villages/towns for which R.I. Circle is not the point to determine the arena of local area. Further, the explanation to proviso to Section 3(2) of the OET Act states that where the goods are taken delivery of on their entry into local area or brought into the local area by person other than a dealer, the dealer who takes delivery of the goods from such person or makes carriage of the goods shall be deemed to have brought or caused to have brought the goods into the local area. With the same analogy for schedule goods purchased from other area within same locality the person has to pay the tax under OET Act.

(iii) The order of the learned JCST may be modified accordingly.

4. No cross objection has been filed in this case by the respondent-dealer. Due to non-appearance of the respondent-dealer the appeal was heard exparte.

5. The finding of the learned JCST is quoted below:

“In this regard the appellant furnished a certificate from Revenue Inspector, Govindpur (Bamara) showing that R.I. Circle is Govindpur and this circle includes 34 nos. of mouza. Out of this, Sl. No.31 is Kechupani and Sl. No.32 is Govindpur unit

No.01 do consist in the same R.I. Circle. As understood the raw materials are purchased from Kechupani and processed/manufactured at Govindpur. Since these two places fall under the same local authority as reported by the Revenue Inspector, ET is not leviable as per provisions of law. Accordingly to this effect appeal is allowed.”

The tax under the OET Act is on the entry of goods into local area. The tax is leviable vide Section 3 read with Section 2(f) of the OET Act. The ground on which the learned JCST has allowed the appeal is based on the R.I. report showing area of the R.I. Circle. The R.I. Circle itself cannot be considered as one local area. One R.I. Circle constitutes several local areas i.e. different mouzas which are each local area of its own. One mouza is a local area and several mouzas constitute one R.I. Circle. Admittedly, the respondent-dealer has purchased goods from unregistered dealer from Kechupani which is one local area and has transported the purchased raw materials to its factory situated at Govindpur which is another local area. Therefore, the respondent-dealer is liable to pay entry tax on entry of goods. The reason of the forum below (learned JCST) is not sustainable in law. Govindpur is one local area and Kechupani is another local area, but both of them may fall within one R.I. Circle is not relevant for the purpose of levy of tax under the OET Act. Therefore, the forum below has lost sight of the distinctive feature of OET Act and Land Revenue Law.

6. The entry tax is also leviable as per Section 3(2) of the OET Act. The respondent-dealer has to prove that the goods purchased have already suffered tax to claim exemption to non-taxability on the said purchase. The order of the learned JCST is self-contradictory. The learned JCST has deleted entry tax purchase for the tax period 2008-09 amounting to Rs.20,73,558.00 whereas he has levied tax for the period 2007-08 amounting to Rs.5,42,006.00, so

purchased from unregistered dealer. Hence, there is inconsistency in the first appeal order by approbating and reprobating at the same time.

7. From the aforesaid discussion and analysis it is apt clear that, the impugned order cannot stand and is liable to be set aside. Hence ordered.

The appeal is allowed. The impugned order is set aside and the order of assessment is upheld.

Dictated & corrected by me,

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

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