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

S.A. No. 78 (V) of 2017-18

(Arising out of the order of the ld. JCST (Appeal), Bhubaneswar Range, Bhubaneswar, in First Appeal Case No. AA-108221622000276, disposed of on dtd.31.05.2017)

P r e s e n t: **Shri S. Mohanty,**
1st Judicial Member

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

- V e r s u s -

M/s. Omm Maa Construction, HIG-47/01/02/, BDA Complex, Jayadev Vihar, Bhubaneswar. ... Respondent

For the assessment period: 01.04.2012 to 31.03.2014

For the Appellant ... Mr. M.L. Agarwal, S.C.
For the Respondent ... Mr. A.K. Mahapatra, Advocate

Date of hearing: 31.05.2019 ******** Date of order: 31.05.2019

O R D E R

The present second appeal is at the instance of the Revenue against the order of first appellate authority, whereby and wherein the first appellate authority has reduced the tax due calculated by the assessing authority in an assessment u/s.9C of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act). The prayer of the Revenue is to restore the assessment order by setting aside the impugned order of the first appellate authority.

2. The facts giving rise to the present appeal are, the instant dealer is a registered dealer engaged in execution of works contract. For the

assessment period 01.04.2012 to 31.03.2014, the dealer was assessed u/s.9C of the OET Act on the basis of audit visit report submitted by the Tax Audit Unit, Bhubaneswar Range. The audit team has alleged that, the dealer had not included the freight charges to the purchase price of the goods purchased from out of state dealers and suggested for addition of 5% as freight to the purchase price shown by the dealer to determine the purchase value for the purpose of calculation of Entry Tax. Similarly. The audit team has also found that, though the dealer had affected purchase of minor minerals to the tune of Rs.69,01,439.00 from the unregistered dealers of State of Odisha but, as the selling dealers are from outside the local area, the dealer is liable to entry tax @ 1% on such calculated at Rs.1,84,240.00, whereas, the dealer has actually paid Rs.1,09,740.00. So, the dealer is liable to pay the balance amount along with penalty. In the assessment, the assessing authority found that, the dealer has purchased minor minerals like 'bajury' and 'chips' from unregistered dealers of the local area. Mines minerals covers under Part-I of the schedule of goods as per Sl. No.59 liable to be taxed @ 1%. But, as the goods are purchased within the local area in accordance to Sec.3(1) of the OET Act, the dealer is found not liable to tax as there was no entry of the goods to local area by the dealer. On the other hand, with regard to the purchase of goods from outstate dealers, the assessing authority has held that, the purchase price as shown by the dealer was not included with freight. So, the assessing authority added freight @ 3% and taxed the dealer accordingly. The tax payable by the dealer was calculated by him at Rs.72,305.00, penalty was imposed at Rs.1,44,610.00 as per sec.9C(5) of the OET Act. Accordingly, the total due from the dealer was Rs.2,16,915.00.

3. Felt aggrieved with such assessment and demand raised, the dealer carried the matter before first appellate authority. Learned Joint commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar as first appellate authority vide impugned order re-determined the tax liability. According to the first appellate authority, the dealer had purchases bajury and chips to the tune of Rs.68,08,626.00 out of total claim of purchases from

unregistered dealers to the tune of Rs.69,01,439.00 as a local purchase. So, the amount of purchase from local dealers covered u/s.3(1) of the OET Act, whereas the rest amount which were not supported with any purchase bills i.e. to Rs.92,813.00 was taxed @ 1% under the OET Act calculated to Rs.92,813.00. Similarly, the first appellate authority has held that, the dealer has failed to produce documents regarding freight charges paid on purchases from outstate dealers, as such the addition of freight by the assessing authority was found justified. Thereafter, on re-determination of the tax liability, the dealer was found liable to pay the balance tax of Rs.4,219.00 and penalty at Rs.8,438.00, thereby the total demand became raised to Rs.12,657.00.

4. When the demand became reduced by the order of first appellate authority, Revenue being aggrieved preferred this second appeal. The contention of the Revenue is, in accordance to sec.3(2) of the OET Act the dealer is liable to pay tax on entire amount of purchase of the minor minerals like bajury and chips affected from unregistered dealers, so the order of the first appellate authority should be set aside.

The appeal is heard without cross objection.

5. From the rival contention in the case in hand, it is to be seen that, whether the first appellate authority is wrong in not imposing tax and penalty on the purchase of minor minerals by the dealer from unregistered dealers of the local area. To understand the disputed question the relevant provision under the Act i.e. sec.3 is reproduced below:

> "**3. Levy of tax.-**
> (1) There shall be levied and collected a tax on entry of the scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding twelve percentum of the purchase value of such goods from such date as may be specified by the State Government and different dates and different rates may be specified for different goods and local areas subject to such conditions as may be prescribed.
> **Provided that** the State Government may direct that in such circumstances and under such conditions and for such period as may be prescribed, a dealer shall pay in lieu of tax payable under this Act a sum fixed in the

prescribed manner, and in such a case the tax shall be deemed to have been compounded.

(2) The tax leviable under this Act shall be every dealer in scheduled goods or any other person who brings or causes to be brought into a local area such scheduled goods whether on his own account or on account of his principal or customer or takes delivery or is entitled to take delivery of such goods on such entry:

Provided that no tax shall be levied under this Act on the entry of scheduled goods into a local area, if it is proved to the satisfaction of the assessing authority that such goods have already been subjected to entry tax or that the entry tax has been paid by any other person or dealer under this Act.

Explanation.-

Where the goods are taken delivery of on their entry into a local area or brought into the local area by a person other than a dealer, the dealer who takes delivery of the goods shall be deemed to have brought or caused to have brought the goods into the local area.

xxx xxx xxx"

6. Learned Standing Counsel, Mr. Agarwal vehemently argued that, as per sec.3(2) explanation, the dealer being a purchaser from the person who brought the goods into the local area and not paid entry tax ultimately, the dealer is liable to pay tax.

The argument of the learned Counsel is not based on any material for consideration. In the case in hand, there is no such plea of the taxing authority before both the fora below that, the minor minerals like 'bajury' and 'chips' purchased by the dealer were brought into local area by another person or another middleman/dealer and the present dealer is purchaser from that dealer. When the said middleman/person/dealer who brought the goods into local area had not paid tax, in that event as a consequential effect the present dealer is liable to pay tax. But, this is not the case here in this appeal. The dealer is the direct purchaser from the unregistered dealers as per the order of the first appellate authority. In no case it can be said that, the first appellate authority has suppressed the fact in favour of the dealer. It is also not the case as per the order of assessing authority that, the goods were brought into local area by some other persons

from whom the dealer has purchased. This question is purely based on subjective satisfaction of the assessing authority. The first appellate authority is an extended forum of assessment, so under the law he is the competent person to verify the documents of the dealer and when it is upto the satisfaction that, the dealer is the purchaser of the goods from the local unregistered dealers. In that case, sec.3(1) of the OET Act is applicable. Consequently, the dealer is not liable to pay tax on such purchases. The first appellate authority has rightly taxed the goods against which the dealer has failed to produce the documents in support of the claim that, the purchases were made from local dealers. But, at the same time, he is right in holding that, the dealer is not liable to pay tax on the purchases from local dealers.

7. Thus it is held that, the findings of the first appellate authority is based on threadbare discussion of fact and law, hence calls for no interference. If that be, the impugned order need to be confirmed.

For the reasons hereinabove in this in hand, it is held as follows.

8. The appeal is dismissed on contest as devoid of any merit.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

Sd/-
(S. Mohanty)
1st Judicial Member