



bricks inside the State only. On the basis of tax evasion report submitted by the Sales Tax Officer, Investigation Unit, Balasore it was found that the appellant-dealer had effected sale of scheduled goods i.e. Fly Ash bricks to the tune of Rs.2,98,90,915.00. During the period of assessment the appellant-dealer had effected the total purchases of goods (cement, sand and fly ash as raw materials) to the tune of Rs.3,56,94,558.00 which included freight and other incidental charges. Out of the above goods purchased goods amounting to Rs.3,06,30,373.00 were purchased from outside the state of Odisha and goods amounting to Rs.50,64,185.00 were purchased from inside the state of Odisha which suffered entry tax. The purchase value of plant and machinery stood at Rs.53,83,220.00. Tax @ 1% on Rs.16,73,220.00 came to Rs.16,732.00 and tax @ 2% on Rs.37,10,000.00 came to Rs.74,200.00. Total entry tax due on purchases came to Rs.90,932.00. Though the dealer is a manufacturer of scheduled goods, it is liable to collect and pay Entry Tax on sales turnover and on purchases of raw materials which were scheduled goods at concessional rate of 50% of tax payable. During the period under assessment the dealer effected sales amounting to Rs.2,98,90,915.00 which were all scheduled goods. The above turnover includes sale within the local area amounting to Rs.1,52,25,790.00 and outside the local area amounting to Rs.1,46,65,125.00. Hence the total turnover on which entry tax is payable on sale stood at Rs.1,46,65,125.00. Tax @ 1% on Rs.1,46,65,125.00 came to Rs.1,46,651.00. So, the above entry tax due on account of purchases and sales stood at Rs.2,37,583.00. The dealer had already paid Rs.97,304.00 to the Government exchequer during the period under assessment. So, the dealer was liable to pay tax amounting to Rs.1,40,279.00 along with two times penalty of Rs.2,80,558.00 u/s.10(2) of the OET Act, for which tax and penalty together came to Rs.4,20,873.00. Being aggrieved by the order of

assessment, the dealer filed appeal before the learned JCST who confirmed the order of the learned STO. Hence being aggrieved by the order of the learned JCST, the appellant-dealer has come up with this second appeal before this forum with a prayer to delete the demand and penalty so levied for the sake of natural justice.

3. The respondent-Revenue has filed cross objection supporting the order of the learned JCST.

4. Heard both the sides. Perused the grounds taken in the appeal so also the submissions made in the cross objection and the materials available on record. I have also meticulously gone through the orders of both the fora below. The appellant-dealer on being asked by the investigation unit failed to produce the regular books of account such as purchase register, production register, retail invoice books and delivery challan books but the authorized representative produced the books of account for verification. The appellant-dealer is engaged in the business of manufacturing and sale of fly ash bricks. The appellant-dealer uses raw materials like fly ash, sand and cement for the finished product of fly ash bricks. The learned STO assessed the appellant basing on the tax evasion report. The appellant-dealer has taken the ground that the manufacturing goods i.e. fly ash bricks are not in the schedule. But the same is not correct as the same is there in Entry 12 and Entry No.82 of Schedule-1. Hence the plea that there will not be any levy because of such non-scheduled goods as claimed by the appellant-dealer is not legally sustainable. The appellant-dealer has paid Rs.97,304.00 out of the total tax liability on purchase and sale for which the claim by the appellant-dealer that he has no liability is self contradictory. Moreover, the exemption under OVAT Act does not reflect the tax liability under the OET Act. From such discussion it is clear that the penalty u/s.10(2) of the OET Act is as per statute and mens rea is proved in this case. Reference may be had to the case of R.S. Joshi v. Ajit Mills Ltd. (1971) 4 SCC 110 in

support of penalty where guilty intention/mens rea is proved as part of criminal liability. The grounds taken in the appeal are baseless. The penalty u/s.10(2) of the OET Act is equal to twice of the amount of tax assessed. Hence the imposition of tax and penalty in this case is justified. The learned JCST is an extended forum of assessment who after having considered all the materials available on record has dismissed the appeal which in my considered opinion cannot be said to be unlawful. The term 'bricks' is a genus which takes into its sweep all kinds of bricks. The fly ash bricks is understood and treated as bricks. It is also the settled principle of law that the entry should be read broadly and taking the popular parlance into account. In this connection, reference may be had to Indo International Industries v. Commissioner of Sales Tax (1981) 47 STC 359 (SC). The submission made by the appellant-dealer to adopt the classification made under the OVAT Act is not genuine. Even in OVAT Act all bricks are taxable @ 5% vide Sl. No.6 of Schedule-B of Part-II where it has been mentioned "all kinds of bricks". The legislature w.e.f. 02.07.2012 has exempted fly ash brick under the OVAT Act. The said exemption is for the purpose of the OVAT Act and the benefit of the same cannot be extended to OET Act. The imposition of penalty in this case is appropriate which is mandatory in nature. Hence there appears to be no infirmity or illegality in the impugned order of the learned JCST warranting interference by this forum for which the impugned order should be upheld.

5. In the result, the appeal is dismissed being devoid of any merit and the impugned order is hereby confirmed. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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