

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.

Present: **Smt. Suchismita Misra**, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member,
&
Shri R.K. Pattnaik, Accounts Member-III.

S.A.No.44(ET) of 2011-12

(Arising out of the order of the learned DCST (Appeal), Bhubaneswar Range,
Bhubaneswar, in First Appeal Case No.AA-(E.T)53/BH-I/09-10,
disposed of on dtd.03.05.2011)

M/s. Rajarani Service Station (P) Ltd.,
Lewis Road, Bhubaneswar. ... Appellant

- V e r s u s -

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

For the Appellant : N o n e
For the Revenue : Mr. M.S. Raman, A.S.C.

Date of hearing: 20.02.2020 **** Date of order: 24.02.2020

ORDER

This appeal is directed against the order dtd.03.05.2011 passed by the learned Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (hereinafter referred to as, the learned DCST) in First Appeal Case No.AA-(E.T)53/BH-I/09-10, wherein he enhanced the tax demand from Rs.69,08,406.00 to Rs.69,18,406.00 made by the learned Assessing Authority, Bhubaneswar I Circle, Bhubaneswar (hereinafter referred to as, the LAO) in an assessment u/s.7(3) of the Orissa Entry Tax Act, 1999

(hereinafter referred to as, the OET Act) in respect of the appellant-dealer for the assessment year 2003-04.

2. The brief facts of the case are that, the appellant-dealer deals in two wheelers, three wheelers, power tillers, tractors, spare parts of tractors and automobile spares on wholesale basis. Consequent upon the receipt of an objection memo from the Asst. Audit Officer, Bhubaneswar statutory notice under the Act was issued and served on the dealer. In response to notice, the Managing Director of the appellant-dealer firm filed a written submission stating that the purchases were accounted for in the subsequent assessment year, but the Managing Director could not produce any documentary evidence in support of his contention. Taking such facts into consideration suppression of purchases amounting to Rs.2,32,72,814.88 was established which had escaped from original assessment. The same escaped purchase turnover of Rs.2,32,72,814.88 was added to purchase shown by the dealer-company previously i.e. Rs.11,46,900,456.53 and the GTO was determined at Rs.13,79,63,271.41. Allowing deduction towards purchase effected from inside the State of Orissa amounting to Rs.2,92,37,098.00, the TTO was determined at Rs.10,87,26,171.41. Entry Tax payable was calculated @ 1% on Rs.83,62,108.53 and @ 12% on Rs.10,03,64,064.88 which together came to Rs.1,21,27,308.86. The dealer-company failed to pay entry tax and had suppressed purchases effected. Penalty u/s.9(2) of the OET Act amounting to Rs.41,45,044.00 was levied. The appellant-dealer was thus required to pay tax and penalty amounting to Rs.1,62,72,352.86. The appellant-dealer had already been assessed u/s.7(3) of the OET Act amounting to Rs.93,63,946.48. After deduction, the balance amount of Rs.69,08,406.00 was payable by the appellant-dealer.

3. Being aggrieved by the order of the LAO, the appellant-dealer preferred an appeal before the learned DCST who enhanced the tax demand from Rs.69,08,406.00 to Rs.69,18,406.00. Being further aggrieved by the order of the learned DCST, the appellant-dealer preferred this second appeal with a prayer to quash the order of the learned DCST.

4. The respondent-Revenue has filed cross objection stating that the learned DCST has clearly dealt each and every aspect raised by the appellant-dealer which requires no further interference.

5. When the matter was taken up for hearing, none appeared on behalf of the appellant-dealer and as such it was heard *ex parte* and is disposed of on merit.

6. Before going into the elaborate discussion on the disputed questions raised in this case for decision, it is apt to mention here that, the OET appeal in the case in hand is consequential to the appeal under OST Act bearing S.A. No.35 of 2011-12. The findings regarding tax liability under OET Act is consequential to the tax liability under OST Act. If the OST appeal has been decided in favour of the respondent-Revenue, then there is no reason to interfere with the order of the learned first appellate authority here in this appeal with regard to OET liability. Thus, when the OST appeal is dismissed, then being consequential to it, the OET appeal also needs to be dismissed. Thus it can only be said that, the order passed under OET Act by the first appellate authority calls for no interference. So, we found that there is no necessity to interfere with the impugned order.

7. In the net result, the appeal filed by the appellant-dealer is dismissed 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

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

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III