BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 176 (ET) of 2018

(Arising out of order of the learned JCCT & GST (Appeal), Sundargarh Territorial Range, Rourkela in First Appeal Case No. AAV-15(ET) of 2014-15 disposed of on dated 31.08.2018)

Present: Shri R.K. Pattanaik,
Chairman

M/s. M.R. Engineers Pvt. Ltd.,
Jampali, Rajgangpur, Dist. Sundargarh ... Appellant

-Versus-

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

For the Appellant : Sri S.C. Agarwal, Advocate
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 21.01.2021 ***** Date of order: 09.02.2021

O R D E R

Present appeal in terms of Section 17(1) of the Odisha Entry Tax Act, 1999 (hereinafter referred to as 'the Act') is at the instance of the dealer assessee vis-a-vis impugned order dated 31.08.2018 promulgated in Appeal Case No. AAV–15(ET) of 2014-15 by the learned Joint Commissioner of CT & GST (Appeal), Sundargarh Territorial Range, Rourkela (in short, 'FAA'), who allowed its claims partly against the order of assessment dated 22.03.2014 passed under Section 9C of the Act by the learned Sales Tax Officer, Rourkela-II Circle, Panposh

(hence called, 'AA') for the tax period from 01.04.2011 to 31.03.2013 only to the extent of determination with respect to less payment of admitted tax.

2. The dealer assessee is carrying in business of manufacturing of machines using raw materials like iron, steel goods, chemicals etc. and for that, effects purchases of scheduled goods from inside and outside the State of Odisha. In respect of the dealer, an audit inspection was held and at last, Audit Visit Report (AVR) in Form E-27 was submitted by the STO, Rourkela-II Circle, Panposh stating about the discrepancies in tax compliance by the dealer assessee. Later to the above, the dealer assessee was noticed and confronted with the AVR with a direction to cause production of books of accounts and other documents. Accordingly, it was obliged by the dealer assessee and on verification of the books of accounts and considering other materials, the AA raised additional demand of ₹37,930.00 and with the interest and penalty, it was required to pay an amount of ₹1,19,100.00. Against the order of assessment dated 22.03.2014, the dealer assessee approached the FAA, who deleted the interest but upheld the additional demand with penalty and reduced the assessed due to ₹1,13,790.00. The dealer assessee, thus, preferred the instant appeal only raising a dispute in the adjustment vis-a-vis less payment of admitted tax of ₹37,970.00.

3. According to the dealer assessee, the only point for consideration is less payment of admitted tax determined at ₹37,930.00. The learned Counsel for the dealer assessee contended that AVR dated 16.11.2013 has allowed set off of ₹3,60,209.00 which was claimed by them. Further contended that

the dealer assessee has paid ₹26,68,513.00 as against the admitted amount of ₹27,96,441.00 resulting in less payment of ₹37,928.00 which was reported in audit and was accepted by the AA with the tax demand of ₹37,930.00. The dealer assessee claims that an amount of ₹26,237.00 paid on 19.12.2013 has not been taken into account which would have reduced the admitted tax to ₹11,691.00. Per contra, the State by way of cross-objection contends that there is no wrong or error in the impugned order dated 31.08.2018. It is further contended that rightly the authorities below levied penalty on the balance tax payable determined at ₹37,930.00 after allowing set off on raw materials worth of ₹3,60,209.00 purchased and utilized in the process of manufacture and sale of machines.

4. In course of argument, the learned Counsel for the dealer assessee has not pressed the penalty part and confined the claim vis-a-vis the adjustment against alleged payment of admitted tax on the ground that an amount of ₹26,237.00 (₹8,817.00+₹17,420.00) was paid and deposited on 19.12.2013. In other words, as per the dealer assessee, the above amount deposited ought to have been taken into account, while assessing the admitted tax which would have reduced it to ₹11,691.00. In support of such deposits, copies of chalans have been produced before the Tribunal for consideration.

5. In fact, the FAA deleted the interest, but retained the penalty against the admitted tax payable for ₹37,930.00. Since levy of penalty has not been pressed, now, the only point for the Tribunal is to consider, whether, additional

payment of ₹26,237.00 should be credited for, while determining less payment of admitted tax.

6. In the case at hand, the said deposit of ₹26,237.00 was made on 19.12.2013. The dealer assessee is shown to have deposited the said amount after receiving notice for tax audit, or as a result of such audit. Whether, such amount of ₹26,237.00 deposited on 19.12.2013 should be adjusted against the admitted tax of ₹37,930.00? According to the Tribunal such deduction of ₹26,237.00 from and against the admitted tax of ₹37,930.00 should be entertained, in absence of any bar or interdiction alike Section 33(5) proviso of the OVAT Act. However, the Tribunal holds that the rest of the impugned order dated 31.08.2018 remains as such and deserves no interference.

7. Hence, it is ordered.

8. In the result, the appeal stands allowed in part. As a logical sequitur, the impugned order dated 31.08.2018 passed in Appeal Case No. AAV-15 (ET) of 2014-15 is hereby modified to extent indicated above. Consequently, the AA is directed to recompute the tax liability vis-a-vis the dealer assessee for the tax period from 01.04.2012 to 31.03.2014 as per the observations of the Tribunal, preferably, within a period of three months from the date of receipt of the above order. The cross-objection is accordingly disposed of.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman