

31.03.2012 u/s.10 of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act).

2. The brief facts of the case are that, the appellant-dealer is a Works contractor. Proceeding was initiated u/s.10 of the OET Act on the basis of the Tax Evasion Report submitted by the Sales Tax Officer, CT & GST Enforcement Unit, Berhampur. It was pointed out in the report that there was no transaction relating to the purchase and sale for the quarter ending 06/2011 and that there was escapement of turnover. In response to notice the appellant-dealer appeared and produced the books of account for verification. As per the Tax Evasion Report the appellant-dealer had purchased goods worth Rs.9,68,26,410.00 from unregistered dealers for the period 2011-12 to 2017-18. Out of the said purchase, the appellant-dealer had effected purchase of goods worth Rs.1,12,82,204.00 from unregistered dealers during the material period. The appellant-dealer had paid entry tax of Rs.44,708.00 on interstate purchase of scheduled goods amounting to Rs.26,10,790.00 which had been reflected in the returns. The learned DCST found that the appellant-dealer had shown purchase of scheduled goods worth Rs.76,329.00 wrongly during quarter ending 06/2011 in the returns filed under the OET Act whereas the said purchase had been reflected for the quarter ending 09/2011 in the returns filed under the OVAT Act. The appellant-dealer had purchased goods worth of Rs.1,39,78,672.00 from registered dealers inside the State of Odisha on which VAT had been paid for Rs.9,44,559.00. The learned DCST also found that the appellant-dealer had included freight charges on purchase of

goods from outside the State while paying entry tax but no transporting charges had been included for purchase of goods worth Rs.1,12,82,204.00 from unregistered dealers. After adding of incidental charges of Rs.11,28,220.00 i.e. 10% of Rs.1,12,82,204.00, the learned DCST had taken purchase of scheduled goods at Rs.1,24,10,424.00 from unregistered dealers. After allowing deduction of Rs.1,49,23,231.00 towards entry tax suffered goods purchased from registered dealers inside the State, the TTO was arrived at Rs.1,50,97,543.00 including Rs.26,87,119.00 towards purchase from outside the State and Rs.1,24,10,424.00 towards purchase of goods from unregistered dealers. Entry tax was calculated at Rs.1,66,283.00 out of which the appellant-dealer had paid entry tax of Rs.45,471.00 at the time of filing of returns. So, the balance tax due came to Rs.1,23,575.00. Besides, penalty of Rs.2,47,150.00 was imposed u/s.10(2) of the OET Act for which the demand came to Rs.3,70,725.00.

3. Being aggrieved by the order of the learned DCST, the appellant-dealer preferred an appeal before the learned ACST who confirmed the order of assessment. Being further aggrieved by the order of the learned ACST, the appellant-dealer has preferred the second appeal.

4. The appellant-dealer has come up with the second appeal on the grounds that the learned ACST upheld the assessment which is unreasonable and contrary to law; that the appellant-dealer purchased goods like sand, stone, chips, metal, boulder morrrum etc. from unregistered dealers being unscheduled goods within the local areas but the learned

ACST held that the said come under the entry tax at entry No.59 in Schedule I of the OET Act; that the purchase of said goods cannot be made subject to levy of entry tax since the said goods were not schedule goods under the OET Act, 1999 and that the amended provision of the OVAT Act is to be imposed to an amount equal to the tax assessed for the escaped turnover.

Cross objection has been filed by the respondent-Revenue supporting the order of the learned ACST.

5. Heard the learned Counsel for the appellant-dealer so also the learned Addl. Standing Counsel appearing for the Revenue. Perused the materials available on record so also the orders passed by both the fora below. Also perused the grounds taken in the appeal so also the plea taken in the cross objection. I also perused the written notes of submission of both the sides. During the course of hearing the learned Counsel for the appellant-dealer filed a petition with a prayer to allow and admit the additional evidence by submitting copies of some documents in support of purchase of materials from different sources. It was stated that the said documents were not called for examination by the learned ACST. Such non-application of mind of the learned ACST amounts to refusal for acceptance or examination of additional documents at the time of hearing of the appeal. In support of the petition, the learned Counsel for the appellant-dealer filed the copies of confirmation letters and identity proof of all the suppliers belonging to same local area and prayed for acceptance of the additional evidence. As regards the purchase of materials from local area, the learned Counsel relied upon an order of this

Tribunal vide S.A. No.28(ET) of 2012-13, disposed of on dtd.23.08.2013. In the said decision this Tribunal passed the order as follows:-

“The object the Act is for the levy of tax on entry of goods into a local area for consumption, use or sale therein as explained under Entry 52 of the list of the 7th schedule of the Constitution of India. The tax is proposed to be levied in every dealer in scheduled goods or on any person who brings or causes to be brought into a local area the scheduled goods at such rates as may be prescribed by Government, not exceeding to twelve percentum of the purchase value of such goods. Section 2(d) speaks “entry of goods” with all its grammatical variations and cognate expression means entry of goods into a local area from any place outside the local area or any place outside the State for consumption, use or sale therein. Therefore, it is abundantly clear that when scheduled goods under the Act has been brought into a local area from outside that local area or from outside State for consumption, use or sale then that scheduled goods attracts entry tax and not otherwise. The learned DCST on verification of the books of account of dealer has been satisfied that the scheduled goods in question has been purchased from within Cuttack Municipality and had been sold within Cuttack Municipality. Reference made to the order of learned DCST, mention has been made that the learned AA while making assessment u/s.12(4) of the OST Act, 1947 has observed that the purchases has been made from Cuttack Municipality. Therefore, it is clearly established that the goods in question has not been brought from any local area outside the Cuttack Municipality. The schedule goods were also sold with Cuttack Municipality. Hence, the dealer is not liable to pay any entry tax. Speaking differently, the order of the learned DCST cannot be faulted with.”

6. In the light of the aforesaid finding of the Tribunal and in view of the petition for an additional evidence this Tribunal is convinced that the documents produced as additional evidence could not be filed earlier in spite of due diligence. Hence the petition is allowed. I am satisfied that the documents relied upon by the appellant-dealer need to be verified by the learned DCST and thereby to conduct a fresh assessment. In view of the same it is necessary to remand the matter to the learned DCST for fresh assessment and computation. Hence, it is ordered.

7. The appeal is allowed on contest and the impugned order is hereby set aside. The matter is remanded to the learned DCST for fresh assessment and computation which is to be completed within a period of three months from the date of receipt of this order in view of the aforesaid observations. Accordingly, the appellant-dealer is directed to produce all the documents accepted as additional evidence and other relevant materials before the learned DCST to enable him to complete the assessment and computation. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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