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

S.A. No. 63(ET) of 2018
(Arising out of the order of the learned Addl. CST (Appeal), Central Zone, Cuttack, in Appeal Case No. AA/05/OET/CUII/17-18, disposed of on dtd.15.02.2018)

P r e s e n t: Shri A.K. Dalbehera, O.S.J.S.
M.A., LL.M.
1st Judicial Member

M/s. Divine Constructions,
Sahid Nagar, Plot No.405,
Bhubaneswar. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. D. Sethy, Advocate
For the Respondent ... Mr. M.S. Raman, A.S.C.

Date of hearing: 17.02.2021 *** Date of order: 26.02.2021

O R D E R

This appeal is directed against the order dtd.15.02.2018 passed by the learned Addl. Commissioner of Sales Tax (Appeal), Central Zone, Cuttack (hereinafter referred to as, the learned ACST) in Appeal Case No. AA/05/OET/CUII/17-18, wherein he confirmed the order passed by the learned Deputy Commissioner of Sales Tax, Cuttack II Circle, Cuttack (hereinafter referred to as, the

learned DCST) for the assessment period 01.04.2011 to 31.03.2013 u/s.9C 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 registered dealer engaged in execution of civil works contract at different sites located within the State of Odisha. The Audit team constituted u/r.43 of the OVAT Rules conducted tax audit of the appellant-dealer and submitted the Audit Visit Report (in short, the AVR). Accordingly, notice was issued in form E-30 along with the copy of AVR which were served on the appellant-dealer. In response to the same the appellant-dealer appeared through its learned Counsel and caused production of books of account and the documents produced earlier in the course of audit. The appellant-dealer also produced the copies of work orders, agreement copies and the TDS certificates obtained from the deducting authority. As per the AVR submitted the appellant-dealer had received a sum of Rs.21,20,33,461.00 and Rs.20,11,12,273.00 for the financial years 2011-12 and 2012-13 respectively from different principals namely CPWD and M/s. Surendra mining & Industries Pvt. Ltd. against contractual obligations. However, the copy of the audited balance sheet for the year 2011-12 revealed the gross receipt at Rs.21,49,21,551.00 which was excess by a sum of Rs.28,88,090.00 against the disclosure made by the appellant-dealer. On being asked about the anomaly, no satisfactory reply could be given by the appellant-dealer for which total contractual receipt for the period was determined at Rs.41,60,33,824.00. To fulfil the

contractual obligations the appellant-dealer had effected purchases to the tune of Rs.26,72,87,500.01 as per the books of account which differed from the disclosure made in the return at Rs.25,48,62,049.00. The said discrepancy was explained by the appellant-dealer in course of audit and the purchase value was accepted at Rs.26,72,87,500.01 as mentioned in the books of account which was higher than that disclosed in the return. The only point of dispute raised in the AVR is to impose tax on the entire purchase of goods effected by the appellant-dealer from unregistered sources at Rs.12,18,39,747.00 on the ground that it failed to produce the supporting documents with regard to such purchases in order to determine the actual purchase of scheduled and non-scheduled goods. It was further revealed that the appellant-dealer had purchased sand, chips, aggregates for Rs.11,09,49,981.00, bricks for Rs.61,34,200.00 and cement for Rs.47,55,566.00 from different unregistered sources. Such figures were accepted by the audit in the AVR. The appellant-dealer was found to have not paid Entry Tax on the unregistered purchases as the same was not shown in the returns filed under the OET Act. Accordingly, the appellant-dealer was liable to pay entry tax on such purchase of cement and bricks from unregistered sources. Taking all these facts into consideration the total purchase during the period was determined at Rs.26,72,87,500.00. After allowing deduction of Rs.11,09,49,981.00 towards purchase value of non-scheduled goods, the purchase of scheduled goods was determined at Rs.15,63,37,519.00. After allowing further deduction of

Rs.11,28,50,521.00 towards value of scheduled goods purchased from registered dealers the taxable purchase was determined at Rs.4,34,86,998.00. OET @ 2% on Rs.90,82,008.00 and @ 1% on Rs.3,44,04,990.00 was calculated at Rs.5,25,690.00. The appellant-dealer having paid Rs.4,17,557.00 was found to have paid less tax of Rs.1,08,133.00. As the default was considered to be wilful the appellant-dealer was visited with penalty of Rs.2,16,266.00 u/s.9C(5) of the OET Act. Thus, tax and penalty together were calculated at Rs.3,24,399.00 which was to be paid by the appellant-dealer.

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 aggrieved by the order of the learned ACST, the appellant-dealer has preferred the second appeal before this Tribunal.

4. The appellant-dealer has come up with the second appeal on the grounds that the orders of both the fora below are illegal, arbitrary, erroneous and based on incorrect appreciation of facts and law governing the transaction and as such the orders deserve to be quashed; that the fora below committed illegality in holding that entry tax is payable on scheduled goods like bricks, cement etc. which were procured and used in works contract within the same local area and as such the findings are in violation of the statute governing the transaction; that the entry tax is leviable on any scheduled goods only upon entry of scheduled goods from one local area to others; that the learned ACST has not spelt out which part

of the assessment order established the fact that the learned STO examined all facts in details at the time of assessment and passed a reasoned order of assessment as per provision of law; that the order of the learned ACST is a non-speaking one which deserves to be quashed and that there being no deliberate suppression of the transaction, the imposition of penalty u/s.9C(5) of the OET Act is unlawful.

The Revenue has filed cross objection supporting the impugned order.

5. Heard the learned Counsel for the appellant-dealer and the learned Addl. Standing Counsel for the respondent-Revenue. Perused the materials available on record so also the orders of both the fora below. I also perused the grounds of appeal so also the plea taken in the cross objection. On perusal of the impugned order it is seen that the appellant-dealer in spite of sufficient opportunity given, failed to produce the books of account as well as necessary documentary evidence in support of the case. Hence, the appeal was disposed of basing on the information available on the face of the record. It was observed by the learned JCST that the appellant-dealer had purchased goods during the period which was determined at Rs.26,72,87,500.00 and after allowing deduction of Rs.11,09,49,981.00 and Rs.11,28,50,521.00 towards value of scheduled goods purchased from registered dealers the taxable purchase stood determined at Rs.4,34,86,998.00 for which the appellant-dealer is liable to pay entry tax. The learned JCST held that the learned STO had examined all the facts in detail at the time of assessment

and passed a reasonable order as per the provisions of law. It was also reflected in the order that the learned STO rightly completed the assessment on the basis of AVR and also the books of account maintained by the appellant-dealer for which there is no illegality in the demand raised by the learned STO.

6. On perusal of the record it is seen that the appellant-dealer had effected purchase of scheduled goods like sand, chips and aggregates worth Rs.11,09,49,981.00, bricks worth Rs.61,34,200.00 and cement worth Rs.47,55,566.00 from different dealers but the same were neither disclosed in the return nor entry tax was paid on the same. On being confronted the appellant-dealer had explained that sand, chips, stones and aggregates are not scheduled goods for which no entry tax on the same was paid. It was also explained by the appellant-dealer that bricks were purchased from the unregistered dealers of the locality for which no entry tax is leviable on the same. But the appellant-dealer failed to disclose the names and addresses of the sellers and other details for which the learned STO imposed entry tax on purchase of bricks effected from registered dealers. Needless to mention that sands, stone, chips, boulders etc. are scheduled goods as per Entry 59 in Part-I of the schedule attached to the OET Act which are subjected to levy of entry tax @ 1% as held by this Tribunal in case of Banadurga Stone Crusher vide A.R.A. No.05(ET) of 2013-14 dtd.26.02.2016. The same view was also taken by this Tribunal in the case of Maa Sarbamangala Stone Crusher v. State of Odisha. Hence, the learned STO was justified in levying entry tax on scheduled

goods like sand, chips and aggregates purchased from unregistered dealers.

7. As regards imposition of penalty it is seen that the imposition of penalty u/s.9C(5) of the OET Act is mandatory in nature. The appellant-dealer in this case had suppressed the transaction and misinterpreted the facts which affected its tax liability. Sec. 9C(5) of the OET Act is very clear which reads as follows:-

> "Without prejudice to any penalty or interest that may have been levied under any provision of this Act, an amount equal to twice the amount of tax assessed under sub-section (3) or (4) shall be imposed by way of penalty in respect of any assessment completed under the said sub-sections".

Hence the imposition of penalty which is double of the tax assessed is justified in view of sec.9C(5) of the OET Act. So, this is a fit case for upholding the penalty imposed on the appellant-dealer. From the aforesaid discussion it is clear that there is no infirmity in the impugned order. Hence, it is ordered.

8. 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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