



'assessing officer') u/S. 10 of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') pertaining to the tax period from 01.04.2005 to 31.10.2009.

2. The facts as revealed from the case record are that the dealer-assessee named and styled as "M/s. Eastern Aluminium, S-2/5, Industrial Estate, Angul" is a partnership firm and engaged in manufacture and sale of aluminium utensils and aluminium circles which are scheduled goods under the OET Act. However, basing on the report of the Sales Tax Officer, Investigation Unit, Angul the firm was assessed for the period from 01.04.2005 to 31.10.2009 in respect of turnover escaping assessment. The Sales Tax Officer, Investigation Unit had visited the place of business of the dealer on 09.11.2009 to conduct inquiry and investigation regarding the business activities of the firm concern and in course of inspection the investigating officials detected certain incriminating documents like nine numbers of bound books from the business premises of the dealer which were seized. Sri Prasant Nayak, a partner of the firm, appeared before the STO, Investigation Unit on 30.11.2009 and 07.12.2009 and while being confronted with the entries made in those seized documents, Sri Nayak categorically admitted that the transactions noted in those nine numbers of bound books (Sl. Nos.2 to 10) were the transactions of sales and purchases effected by their firm on different dates. Further on cross-verification it was found that all the transactions noted in those bound books had not

been incorporated in the regular books of account and as such the value of unaccounted for sales effected by the dealer-firm during the tax periods was reported at `1,78,32,434.00 as per the summarized check sheet duly signed by the partner of the firm. In the assessment proceeding, the said partner of the firm Sri Nayak appeared before the assessing officer and offered his explanation on the alleged entries found in the seized bound books to the effect that those books contained the details of sales and purchases of finished products and raw materials respectively effected by their firm on different dates but despite sufficient opportunity given to him he failed to show the corresponding entries of sales and purchases contained in those seized books in the regular books of account of their firm. Thus it was concluded by the assessing officer that the firm had suppressed sales turnover amounting to `1,78,32,434.00 for the relevant period. Accordingly, the assessing officer computed the entry tax liability of the dealer-firm at `5,34,972.00 which included penalty of `3,56,648.00 as per the order of assessment.

Being aggrieved with the order of the assessing officer, the dealer-assessee preferred an appeal before the first appellate authority but the pleas advanced on behalf of the dealer-

assessee were not accepted by the first appellate authority and as such he confirmed the order of assessment passed by the assessing officer.

3. Being aggrieved with the order of the first appellate authority the dealer-assessee preferred the present appeal before this forum. It is inter alia submitted in the grounds of appeal that the order of the first appellate authority as well as the order of assessment passed by the authorities below are ultra virus in the eye of law as the goods were sold within the local area to unregistered persons where entry tax was not leviable. Further, the investigating team verified all the books of account and found no discrepancy in payment of entry tax on purchases of the scheduled goods and further the investigating team who had seized 9 nos. of books had also reported those transactions as local purchases and sales. It is also submitted by the dealer-appellant that in the return Form E-3 Sl.No. 6 Part-B it is also mentioned to deduct "value of scheduled goods purchased/received within the local area" and Sl. No. 18 says to deduct "sale value of the finished products which are scheduled goods sold within the same local area". Accordingly, the dealer-assessee prayed to accept the return figure by quashing the order of the first appellate authority.

4. The State-respondent filed cross-objection in this appeal stating therein that there was a non-cooperating attitude from the side of the dealer while it was confronted with the allegation

contained in the report of the investigating team. The impugned order of learned DCST is justified as there is no such material evidence on record justifying the contention of the dealer-firm in this appeal.

5. In course of hearing learned Counsel appearing on behalf of the dealer-assessee and learned Addl. Standing Counsel (CT) appearing on behalf of the State advanced their submissions in terms of the grounds advanced by them in the memo of appeal and cross-objection respectively. In this context, we felt it proper to quote the relevant observation of the assessing officer in the order of assessment below :-

Quote : "The dealer submitted a written submission stating that his sales turnover is not taxable under the OET Act as he has effected the entire sales with in the local area. Against this it is important to mentioned that a register dealer claiming deductions as per Column 18 of form E-3 (Part-C) has to account for the sales in its regular books of accounts. But in this case the dealer has deliberately suppressed its sales turnover which is to the tune of `1,78,32,434.00 thus he is not at all eligible to stake claim for any deduction against the total sale effected inside the local area." Unquote

Similarly, the observation of the first appellate authority in this regard is quoted below for better appreciation.

Quote : "The partner of the firm, filing the hazira did not opt for confrontation of the allegation contained in the report, rather quitted the place by sticking to his own grounds of appeal already lodged at the time of filing appeal. Due to non-cooperation and non-confrontation of the report at the stage of appeal hearing, the stand taken unilaterally by the partner, cannot be considered. Perhaps the same stand has been taken by him at the stage of assessment and the learned Assessing Officer with his due observation has regretted the contention advanced by him with a view to the unaccounted for sale as alleged by the STO Investigation Unit. There is no such countering material given by the appellant at the stage of appeal hearing for the sake of their defense. I don't find any such grave infirmity in the order of the assessment passed. Therefore the order of assessment and the demand raised thereto does not require any interference by this forum which ultimately stands upheld."

Unquote

From the above categorical observations of the authorities below it is found that the dealer-firm failed to exhibit the

corresponding entries of sales and purchases effected inside the local area in their regular books of account even though sufficient opportunities were given to it. Therefore, its (the dealer-assessee's) claim for deduction could not be acceded to by both the authorities below. The dealer-appellant also failed to furnish material evidence before this forum substantiating its assertions which could have enabled this forum to come to a different conclusion than the one arrived at by the authorities below in the matter.

In the aforesaid circumstances, we find absolutely no justification to interfere with the impugned order of the first appellate authority confirming the order of assessment for the relevant period.

6. In the result, the appeal is dismissed and the impugned order of the first appellate authority is hereby confirmed. The cross-objection is disposed of accordingly.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Subrat Mohanty)**  
**2<sup>nd</sup> Judicial Member**

I agree,

**Sd/-**  
**(Rabindra Ku. Pattnaik)**  
**Accounts Member-III**