

Odisha Entry Tax Act, 1999 (in short 'OET Act') pertaining to the tax periods 01.04.2005 to 31.01.2009.

2. The facts as revealed from the case record are as follows :-

The dealer-assessee named and styled as M/s. Khemka Weaving Factory, Asura, Dist. Bhadrak bearing TIN 21971501510 is a manufacturer of textile products such as lungi, gamuchha and saree. For this purpose it procures raw materials from outside as well as inside the State and then sells finished goods like dhoti, saree, lungi, gamuchha etc. As stated, for the relevant period the dealer had not paid any tax on the above finished goods on the ground that it had sold the same outside the State. As such it also did not pay entry tax on those goods. However, as the dealer failed to substantiate its assertion regarding sale of finished goods outside the State the assessing officer raised demand including penalty so far as its liability towards entry tax is concerned.

Being dissatisfied with such assessment order the dealer-assessee preferred an appeal before the first appellate authority challenging the order of assessment as illegal, arbitrary and bad in law. The first appellate authority also when noticed that the dealer had not used any Government Waybill for sending the finished products outside the State in order to sell the same he rejected the appeal on the ground

that the dealer had failed to furnish authentic proof of goods being sold outside the State during the relevant period. He thus confirmed the order of assessment passed against the dealer-assessee.

3. Being aggrieved with the aforesaid order of the first appellate authority the dealer preferred this appeal while contending that the impugned order should be struck down since the same is not just and proper. The dealer categorically pointed out that the first appellate authority did not accept the claim about its (the dealer's) selling of goods outside the State on the sole ground that it failed to furnish document such as Government Waybill to substantiate its plea but at the same time in the assessment of the dealer-assessee under OVAT Act for the self-same period the assessing officer had accepted the goods purchased by the dealer from outside and inside the State respectively and selling of finished goods outside as well as inside the State which the authority concerned also reflected categorically in the order of assessment done u/S. 42 of the OVAT Act covering the same period in respect of this dealer.

In this case no cross-objection has been filed by the State.

4. In course of hearing learned Counsel appearing on behalf of the dealer filed certain documents to substantiate that the dealer-appellant deals in goods which were tax free in nature and that

apart its business transactions were subjected to assessment under the OVAT Act for the period commencing from 01.04.2005 to 31.01.2009. At that time it was noticed by the Sales Tax Officer concerned that the dealer was a manufacturer of saree, lungi and gamuchha which were tax free under the OVAT Act. Further the dealer had also used Government Waybills for bringing raw materials from outside the State. Its books of account were verified and the detail yearwise purchase and sale of the dealer as per audit were also reflected in the aforesaid order of assessment. On perusal of those detail yearwise information regarding purchase and sale of the dealer as reflected in the said assessment order, it could be found that the GTO at ₹1,33,13,836.00 as determined by the Sale Tax Officer to ascertain the liability of the dealer-assessee under the OET Act is the same GTO which was found out by the same taxing authority as per the audit. However, the assessment done under the OVAT Act for the consecutive periods commencing from 01.04.2005 to 31.01.2009 reveals that the dealer-assessee had made outside sale worth ₹1,00,33,557.00 whereas his inside sale worth ₹32,80,279.00 only. In the assessment proceeding held against the dealer under the OET Act the assessing officer determined its TTO at ₹1,33,13,836.00 and then imposed tax worth ₹2,66,277.00. Thereafter he also imposed penalty twice the amount of tax i.e. ₹4,01,348.00 and after adding both the amount i.e. tax as well

as penalty on the tax so determined made a demand of ₹6,02,022.00. The first appellate authority accepted this demand of tax as determined by the assessing officer but curiously enough during the same period another assessment under the OVAT act was also done in respect of the dealer-assessee. In the said assessment the assessing officer found all relevant documents of the dealer-assessee to be in order so as to determine the purchase and sale transactions of the dealer-assessee both outside as well as inside the State. The above facts were certainly overlooked by the assessing officer while determining the actual tax liability of the dealer-assessee under the OET Act for reasons best known to him. The VAT assessment order clearly reveals that the dealer had sold goods worth ₹1,00,33,557.00 outside the State during the relevant period. Therefore, it is certainly not liable to pay entry tax on the said amount i.e. ₹1,00,33,557.00. Thus the dealer, if at all, is required to pay entry tax then he is supposed to pay the same in respect of the sale worth ₹32,80,279.00 made inside the State.

Under such circumstances we find that the order of assessment as well as the impugned order passed by the first appellate authority are not correct for the reasons described above. As such the impugned order deserves to be set aside.

5. In the result, the appeal is allowed in part and the impugned order of the first appellate authority is set aside. The case is

remitted back to the assessing officer with a direction to determine the exact Entry Tax to be paid by the dealer-assessee on the amount of ₹32,80,279.00 only i.e. in respect of sale made by the dealer inside the State, as per the relevant provision of law within a period of four months from the date of receipt of this order.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Smt. Sweta Mishra)
2nd Judicial Member

I agree,

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