



pro, deemark mass gainer, deemark musli active, no addition ayurvedic powder etc. of Teleone Consumer Products. The respondent-dealer was self assessed u/s.9(2) of the OET Act by accepting the figures disclosed in the returns filed in Form E-3. On the basis of a tax evasion report submitted by the Sales Tax Officer, Enforcement Range, Bhubaneswar, the respondent-dealer was assessed u/s.10 of the OET Act. During the course of investigation, the inspecting officials found that the dealer had received goods otherwise than by way of purchase for which the respondent-dealer was liable to pay Entry Tax on sale value instead of purchase value as per Sec.2(j) of the OET Act. The Investigation Wing also found that the market sale value was much higher than the stock transfer value apparently leading to gross understatement on taxable turnover under the OET Act. Therefore, there was gross understatement on taxable turnover which led to proceeding u/s.10 of the OET Act against the respondent-dealer. So the respondent-dealer was liable to pay Entry Tax on the market value. The GTO and TTO of the dealer were determined at Rs.4,79,52,276.00 and the dealer was taxed @ 2% which came to Rs.9,59,046.00. The respondent-dealer had already been assessed to Rs.75,180.00 u/s.9(1) of the OET Act for which the dealer was to pay Rs.8,83,866.00 along with two times penalty amounting to Rs.17,67,732.00. Tax together with penalty came to Rs.26,51,598.00 which the respondent-dealer was required to pay.

3. Being aggrieved by the order of the learned STO, the respondent-dealer preferred an appeal before the learned JCST, wherein the learned JCST calculated the total tax and penalty to Rs.17,67,732.00. Being aggrieved by the order of the learned JCST, the Revenue as appellant has preferred this second appeal.

4. No cross objection has been filed by the respondent-dealer.

5. Due to non-appearance of the appellant-dealer the appeal is heard *ex parte* but on merit.

6. Heard the learned Standing Counsel appearing for the Revenue. Perused the case record and also perused the grounds of appeal and the written submissions. I have also carefully gone through the orders of both the fora below. The learned JCST in the first appeal reduced the demand by holding that the proviso to Sec.2(j) of the OET Act is not applicable to the case of the respondent-dealer. On perusal of the materials available on record, it is seen that the learned STO has rightly determined the turnover on market value of the goods. On the sale value of the respondent-dealer tax was imposed by invoking the proviso to Sec.2(j) of the OET Act. There is wide gap between the stock transfer value and the sale value of the goods sold by the dealer. The details of transfer price and sale value as reflected in the statutory returns have been extracted at page 3 & 4 of the assessment order. The respondent-dealer had taken the stand that tax could not be imposed on market value as the price is ascertainable from the stock transfer invoices and stated that no tax could be charged on market value. To that effect the learned JCST has misinterpreted the ratio of the second appeal of this Tribunal (Single Bench) vide S.A. No.111(ET) of 2007-08 inasmuch as in the said case both the transfer invoices price and the sale price were at par. Hence the said second appeal order is distinguishable and not applicable to the facts and circumstances of the present case. It is to be noted that the goods have been brought into the local area by way of challans/STN and the value reflected thereon is not the real value and the same is only to facilitate transfer of goods such as generation of way bills etc. The price quoted therein is an approximate value of the cost of goods which does not indicate the market value nor the purchase value. The invoices/challans/STN do not reflect any insurance charges, freight charges or any miscellaneous charges for

which the price is not ascertainable and cannot be taken as purchase value. As per Sec.2(j) of the OET Act, even in case of purchase of goods freight and incidental charges including any duties charged are to be included in the purchase value for the purpose of levy of entry tax. But in case of receipt/branch transfer otherwise than by way of purchase the market value has to be adopted for the purpose of levy of entry tax. In the present case the sale price of the respondent-dealer has been rightly adopted as the market value by the learned STO. The Full Bench of this Tribunal in the case of State of Orissa v. Asian Paints Ltd. vide S.A. No.235(ET) of 2014-15 dtd.11.05.2018 held as follows:-

“... We are of the considered view that the dealer is liable to pay entry tax on sale price disclosed and accepted under the OVAT Act.”

Hence the respondent-dealer is liable to pay tax on the market value of the goods. Hence the order of the learned JCST suffers from infirmity which is liable to be set aside.

7. In the result, the appeal is allowed and the impugned order is hereby set aside. Accordingly, the order of assessment of the learned STO is upheld.

Dictated & corrected by me,

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

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