

pertaining to the assessments made by the Sales Tax Officer, Koraput-II Circle, Rayagada (in short, 'assessing officer') u/S. 7(4) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') for the periods 2000-01 and 2002-03 respectively. For the sake of convenience, these appeals are disposed of by this common order even though those arose out of separate orders of the first appellate authority passed in different appeals since they were basing upon similar facts and circumstances with different periods of assessment only in respect of the same dealer-assessee.

2. The facts as revealed from the record are that the dealer-assessee named and styled as M/s. J.K. Paper Ltd. is a manufacturer of paper and paper boards. It purchases raw materials like bamboo and fire wood as well as other materials from inside and outside the State and then sells paper, paper boards and pulp inside the State, inter-State sale, export sale as well as branch transfer. On examination of its books of account for assessment the assessing officer found that the dealer had filed monthly returns based on bills passed for payment instead of entry of goods into the local area and thus set off was found wrongly taken by it. It was also noticed that the dealer-Company had computed the tax payable on scheduled goods and claimed deduction of tax calculated on purchases made from the registered dealers inside Odisha in respect of the entry tax amount

which had already been paid by it at the time of purchase of these scheduled goods. Noticing all these defects in the return filed by the dealer-assessee the assessing officer issued show-cause notice to it with an instruction to furnish the correct return including escapement turnover of scheduled goods as well as payment of tax for the year 2000-01. Pursuant to the said notice the dealer filed a chalan on 29.03.2004 towards payment of additional tax amounting to `5,42,172.00 and interest u/S. 11(2)(ii) @ 2½% (two and half percent) which came to `4,87,955.00 for the period of delay. Further the set off wrongly claimed for sale of goods in inter-State and intra-State sale before issuance of the show-cause notice by the assessing officer was rectified by the dealer showing the same as inter-State sale only. The dealer furnished detail purchase of scheduled and unscheduled goods made under 98 numbers of broad heads of items before the assessing officer and on scrutiny of those informations the assessing officer observed that the dealer-respondent had not paid entry tax under Part-I of the schedule goods worth `23,76,45,851.00 which were plastic straps, plastic core plug size, flexible bopp films (thin plastic sheets used for lamination), polythene bags, cement powder, white cement, teak wood plank, bidding, teak wood and timber, PVC sheets, fiber glass, adhesives like fevicol, cold adhesive, self adhesive tapes, araldite, cold tight pipe

jointing materials, pipe fittings etc. Since the assessing officer found that out of the total amount of scheduled goods the purchase amount of chemicals was `23,40,75,208.00 which included purchase amount of `21,65,81,669.00 from outside the State the assessing officer allowed deduction of rest purchases amounting to `1,74,93,539.00. He determined the tax liability of the dealer-assessee for the year 2000-01 following the relevant law and rules in the matter.

Similarly the assessing officer while examining the returns and books of account for the year 2002-03 found that the dealer had filed incorrect returns and annual purchase statement and as such had paid less tax against the annual dues. Further the manner of computation of tax and payment thereof alongwith adjustment of tax and set off were found to be completely wrong. Basing on the revised return, the dealer had claimed excess payment of `4,03,555.00 by adopting wrong calculation whereas on scrutiny it was noticed by the assessing officer that the dealer had not paid entry tax on many other scheduled goods and wrongly claimed set off of `6,92,504.00. The dealer also filed another revised return showing the set off amount to `58,789.00 and admitting further entry tax amount of `7,08,301.00 in addition to the tax paid earlier and penalty 2½% for the period

01.04.2003 to 10.02.2004 u/S. 11(2)(ii) of the OET Act but did not include penalty for the entire period of default. Further on scrutiny of the said returns the assessing officer found that the dealer had not admitted tax payable on certain plastic goods, adhesives, chemicals, machinery spares, safety equipment, laboratory equipment, pipe and pipe fittings etc. and also the dealer had claimed set off of tax payable on raw materials which were utilized for manufacture of goods and sold in course of export as per Rule 3(4) of the OET Rules. Concluding the assessment the assessing officer found the total goods purchased during the year at `81,90,49,811.00 and after allowing deduction on account of dispatch of pulp to outside the local area, the cost of raw material used in manufacture of finished products for export and purchase of scheduled goods from inside the State on payment of entry tax, the TTO was determined at `61,17,30.885.00. He ultimately calculated the entry tax liability of the dealer for the relevant period duly levying tax thereon and penalty as per rules.

3. Being aggrieved with the said orders of assessment the dealer-assessee preferred appeals before the first appellate authority and the first appellate authority considering the points advanced by the dealer-assessee allowed the appeals in part while reducing the assessments made by the assessing officer basing upon

the GTOs and TTOs as determined by him (the assessing officer) in assessments for both the periods.

4. Being aggrieved with the aforesaid orders of the first appellate authority the State preferred these appeals before the Tribunal on the grounds that the orders passed by the first appellate authority are not just and proper as he had not considered the reasons assigned by the assessing officer in connection with imposition of penalty on the dealer-assessee. The first appellate authority also ignored the fact that the dealer-assessee is a habitual defaulter in filing of correct return and payment of admitted tax in time. Therefore, penalty imposed by the assessing officer on the dealer-assessee should have been upheld by the first appellate authority keeping in view the facts and circumstances of the case.

5. When the matter was taken up for hearing learned Counsel for the dealer-respondent submitted that the State-appellant filed these appeals against the orders of the first appellate authority dated 31.03.2005 relating to the assessment orders passed u/S. 7(4) of the OET Act for the periods 2000-01 and 2002-03 respectively. The dealer-assessee also being aggrieved by the aforesaid orders of the first appellate authority filed writ petitions before the Hon'ble High Court of Orissa bearing W.P. (C) Nos. 9324 of 2005 and 9322 of 2005 respectively. The said writ petitions have already been disposed of in

the meantime and the Hon'ble Court vide orders dated 30.11.2009 have been pleased to set aside the impugned orders passed by the first appellate authority with a direction to the Asst. Commissioner of Sales Tax to dispose of the matter in accordance with law taking into consideration the orders passed for the subsequent assessment years i.e. 2001-02, 2003-04 and 2004-05. Thus, pursuant to the aforesaid direction of the Hon'ble Court learned first appellate authority passed orders dated 02.03.2010 by disposing of the mater afresh. The learned Counsel for the dealer-assessee who is the respondent in the present appeals filed xerox copies of the orders passed by the Hon'ble Court in the aforesaid writ petitions. Both the orders of the Hon'ble Court being similar the order dated 30.11.2009 passed in W.P. (C) No. 9324 of 2005 by the Hon'ble Court is quoted here for better appreciation.

Quote : "Heard learned counsel for the petitioner and learned counsel for the Revenue.

The petitioner has come up before this Court challenging the order dated 31.03.2005 passed by the first appellate authority, i.e., Assistant Commissioner of sales Tax, Koraput Range, Jeypore, for the assessment period 2000-01 under the O.E.T. Act, vide Annexure-3.

On perusing the impugned order, we find that the appellate authority accepting the plea of the petitioner has taken different view. In view of such, without expressing any opinion regarding merit of the case, we set aside the impugned order dated 31.03.2005 in Annexure-3.

Let the petitioner appear before the Assistant Commissioner of Sales Tax, O.P.2, on 9th December, 2009 and on its appearance, O.P. 2 shall fix a date of hearing of the matter and dispose of the same in accordance with law taking into consideration the orders passed for the subsequent assessment years, i.e. 2001-02, 2003-04 and 2004-05 within a period of three months thereafter.”
Unquote

6. Learned Addl. Standing Counsel (CT) for the State did not counter this submission advanced on behalf of the dealer-assessee. In the aforesaid circumstances, these appeals having been filed challenging the orders passed by the first appellate authority in First Appeal Case Nos. AAE (KOII) 37/ 2003-04 and AAE (KOII) 73/2003-04 on 31.03.2005 pertaining to the assessment periods 2000-01 and 2002-03 respectively which have already been set aside by the Hon'ble Court as quoted above have to be dismissed being infructuous.

7. In the result, the appeals are dismissed.
Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Prabhat Ch. Pathy)
Accounts Member-I