

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:  
CUTTACK**

**S.A. No. 121 (ET) of 2019**

(Arising out of order of the learned Addl. CST (Appeal), South Zone, Berhampur in Appeal Case No. AA- (ET) 4/ 2019-20 disposed of on dated 30.09.2019)

Present: **Shri A.K. Das, Chairman**

M/s. Sri Akshya Kumar Dash,  
Nehru Nagar, 7<sup>th</sup> Lane,  
Berhampur ... Appellant

-Versus-

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

For the Appellant : Sri B.B. Panda, Advocate.  
For the Respondent : Sri S.K. Pradhan, Addl. SC (CT)

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Date of hearing: 26.04.2021 \*\*\* Date of order: 03.05.2021  
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**O R D E R**

The appellant has filed this appeal assailing the order dated 30.09.2019 passed by the learned Addl. CST (Appeal), South Zone, Berhampur (hereinafter called as 'first appellate authority') in Appeal Case No. AA. (ET) 4/ 2019-20 wherein the order of assessment dated 02.02.2019 passed by the Deputy Commissioner of Sales Tax, Ganjam-I Circle, Berhampur (in short, 'assessing authority') raising demand of ₹28,20,108.00 including tax and penalty for non-payment

of entry tax on gross purchase of goods made during the period from 01.04.2012 to 31.03.2017 has been confirmed.

2. The facts and circumstances of the case giving rise to the present appeal are that the assessing authority initiated proceeding u/s. 10 of the OET Act, 1999 basing on the Fraud Case Report bearing No. 1/2018-19 (in short, 'FCR') submitted by the Sales Tax Officer, CT&GST, Enforcement Range, Berhampur wherein it was pointed out about the escapement of turnover in the return filed by the dealer/appellant for the period from 2011-12 to 2016-17. The appellant is a works contractor, who undertakes business in execution of works contract under Government and non-Government organisations and PUCs. He executed civil works under different Works Department of Government of Odisha during the period from July, 2011 to March, 2017 and filed returns on quarterly basis as per Section 7 of the OET Act. The return filed by the dealer appellant was accepted as self assessed as per sub-section (2) of Section 9 of the OET Act. The dealer paid entry tax of ₹2,40,358.00 towards purchase of goods from outside the local area at the time of filing returns. Besides that, he has also purchased sand, stone, chips, metal boulders, morum

etc. from unregistered dealers inside the State, but did not deposit the entry tax on it. It was alleged in the FCR that the dealer purchased stores of ₹9,68,26,410.00 from unregistered dealers, but did not pay the entry tax properly. The assessing authority on perusal of the FCR when found prima facie escapement of turnover in the assessment and under assessment of the dealer, he reopened the assessment u/s. 10 of the OET Act for the period from 2011-12 to 2016-17. There was no transaction during the quarter ending 6/2011, so the assessing authority took the entire assessment period in two phases i.e. for the period from 01.07.2011 to 31.03.2012 and the other period from 01.04.2012 to 31.03.2017. The present case relates to the order of assessment passed for the period from 01.04.2012 to 31.03.2017.

2(a). After initiation of proceeding u/s. 10 of the OET Act, notice was issued to the dealer appellant inviting show cause for under assessment and non-payment of required entry tax. The appellant on receipt of the notice, appeared through his lawyer Sri B.K. Sahu and took the plea that the goods, i.e. sand, chips, boulders, morum etc. were unscheduled goods and were purchased within the

local area for which he was not liable to pay the entry tax on the same. The assessing authority on verification of the books of account and purchase register, opined that gross purchase of goods during the period from 01.04.2012 to 31.03.2017 was ₹26,98,07,034.00 out of which goods purchased from other States including freight was ₹11,26,98,706.00, the entry tax suffered goods purchased from registered dealers inside the State was ₹16,32,53,829.00, goods purchased from unregistered dealers was ₹8,53,22,272.00 on which freight and other ancillary charges was estimated @ 10%, i.e. ₹85,32,227.00. After deducting ₹16,32,53,829.00 being the entry tax suffered goods purchased from the registered dealers inside the State, the TTO was arrived at ₹10,65,53,205.00. After segregating the TTO into 1% and 2% category, the entry tax payable was assessed at ₹11,77,392.00 on which interest was imposed at ₹3,002.00 u/s. 7(5) of the OET Act for delay in payment of tax. The dealer appellant had deposited entry tax of ₹2,37,356.00 and interest of ₹3,002.00 at the time of filing of return. After deduction of tax deposited, the balance tax was assessed at ₹9,40,036.00. The assessing authority finding the dealer to have not deposited the entry tax

properly with a motive to evade tax and to have not declared the turnover purchase correctly, imposed penalty to the tune of ₹18,80,072.00 which is equal to twice the amount of tax assessed. The dealer was required to pay the tax and penalty amounting to ₹28,20,108.00.

2(b). The appellant dealer challenging the assessment order dated 02.02.2019 passed by the assessing authority raising demand of ₹28,20,108.00 which includes tax and penalty, filed appeal u/s. 16 of the OET Act before the first appellate authority, who also confirmed the order of assessment passed by the assessing authority. Hence, the present second appeal.

3. It was vehemently challenged by the learned Counsel for the appellant that the first appellate authority has passed the impugned order without applying its mind to the facts and circumstances of the case and without giving any finding on various contentions raised by the appellant before him. It has passed the impugned order in a very whimsical, arbitrary and perfunctory manner without taking note of the law laid down by this Tribunal as well as in different judicial pronouncements of the Hon'ble Supreme Court of India and Hon'ble High Court. The first appellate

authority while confirming the order of the assessing authority has not given any finding whether the goods such as, sand, boulder and morum etc., were purchased by the dealer-appellant locally or out of the local area. It was specifically contended before the first appellate authority that the appellant was not liable to pay entry tax as the goods were purchased locally and in view of Entry No. 52 of the List II of Seventh Schedule of the Constitution of India. He strenuously argued relying on the order of this Tribunal passed in S.A. No. 33(ET) of 2019 decided on 06.04.2021 that the object of the Act is to levy tax on every dealer in scheduled goods or on any person who brings or causes to be brought into a local area the scheduled goods at such rates as may be prescribed by the Government. Both the forums below without giving any finding whether the goods were purchased locally or out of local area levied tax and imposed penalty in violation of the statute and law laid down in different judicial pronouncement. Learned Counsel for the appellant further argued that he has filed an application for adducing additional evidence in order to substantiate his plea that the goods were purchased locally. The assessing authority as well as the first appellate authority did not ask

for the documents before levying tax and imposing penalty on the appellant. If the documents produced by the appellant before this Tribunal are accepted, the former will be exonerated from paying the tax on the goods purchased by him from the local area and the order of assessment passed by the assessing authority raising demand of ₹28,20,108.00 and confirming the same by the appellate authority will be treated as illegal, unjust and, unsustainable in the eye of law. Hence, the impugned orders passed by both the forums below are liable to be set aside for the ends of justice.

4. Learned Addl. Standing Counsel (CT) appearing on behalf of the State supporting the impugned orders passed by both the forums below in terms of the cross-objection argued that the appellant in order to avoid payment of tax and penalty imposed on him has filed this appeal as well as application for adducing additional evidence. The appellant did not produce the documents before both the forums below, which are now produced before this Tribunal, to satisfy the authority that the goods were purchased locally and were not exigible to tax. In the application filed before this Tribunal also no explanation has

been offered by the appellant for non-filing of such documents before the forums below. Therefore, the appeal as well as the application for additional evidence filed by the appellant should be rejected and the order of both the forums below should be confirmed.

5. In view of such rival contentions of the parties, the only point that emerged for consideration in the present appeal is whether the goods such as, sand, boulder, morum etc. purchased by the appellant were scheduled goods and were exigible to tax being purchased from outside the local area or it is not exigible to tax being purchased locally. Before answering this question, it would be profitable to take note of some relevant provisions of the OET Act. Section 2(d) defines 'entry of goods'. It says-

“Entry of goods” with all its grammatical variations and cognate expressions, means entry of goods into a local area from any place outside that local area or any place outside the State for consumption, use or sale therein;”

Section 2(f) defines the meaning of 'local area'. It says-

“Local area” means the areas within the limits of any –

- (i) Municipality constituted under the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950);

- (ii) Grama Panchayat constituted under the Orissa Grama Panchayats Act, 1964 (Orissa Act 1 of 1965);
- (iii) other local authority by whatever name called, constituted or continued in any law for the time being in force.

and includes the area within an industrial township constituted under Section 4 of the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950);”

Section 2(m) defines “Scheduled goods” means the goods specified in the Schedule of this Act.

5(a). The preamble to the Act says to levy and collect tax on entry of goods into the local area of the State of Odisha for consumption, use or sale therein, matters incidental thereto and connected therewith. It is also explained in Entry No. 52 of the List II of Seventh Schedule of the Constitution that the object of the Act is to levy tax on entry of goods enter into a local area for consumption, use or sale therein. It is crystal clear from the aforesaid provisions that if the scheduled goods are purchased from outside the local area for use, sale or consumption in the local area, entry tax will be levied on entry of such goods into the local area. This Tribunal also in S.A. No. 28 (ET) of 2012-13 disposed of on 23.08.2013, interpreting the various

provisions of the OET Act opined that when the scheduled goods under the Act has been brought into a local area from outside that local area or from the outside the State for consumption, use or sale, then it would attract entry tax and not otherwise. In the present case, the appellant also claimed that he purchased of sand, morum, chips etc. within the local area for which these goods were not exigible to entry tax. The learned Counsel for the appellant in order to substantiate his contention relied upon certain documents such as, confirmation letter of different dealers, their identity proof and filed an application u/r. 102 of the OVAT Rules read with Rule 34 of the OET Rules for acceptance of these documents as additional evidence. On going through the petition as well as the documents filed by the appellant, this forum finds that these documents are relevant documents which would go to the root of the dispute between the parties and in the event of refusal to accept such documents, the appellant will be seriously prejudiced. It is settled position of law that the Tribunal being the final court of fact can take into consideration any document which is relevant for effective adjudication of the dispute between the parties. The documents filed by the

appellant being relevant for the purpose of adjudication of the dispute as to whether the scheduled goods were purchased within the local area or from outside the local area, the same needs to be accepted as additional evidence. Therefore, the petition filed by the appellant is allowed. The record reveals that both the forums below negated the claim of the appellant that the goods were purchased within the local area for which the same were not exigible to entry tax as he did not file relevant documents to substantiate such plea. The appellant having filed those documents before this Tribunal, it is necessary to remit the matter back to the assessing authority, who shall examine the genuineness of the documents filed by the appellant and consider the claim of the appellant that all the goods were purchased by him within the local area on the basis of the materials to be produced by the appellant.

6. In view of the foregoing discussions, the appeal filed by the dealer-appellant is allowed. The impugned orders passed by the both the forums below are hereby set aside and the matter is remitted back to the assessing authority for computation of tax liability afresh with a direction to give an opportunity to the appellant to

produce all the relevant documents in original in order to substantiate his plea that he purchased goods such as, sand, chips, morum etc. within the local area for which those are not exigible to entry tax and to examine the genuineness of those documents before coming to any conclusion. The assessing authority is to complete the entire exercise within a period of three months from the date of receipt of this order. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-  
(A.K. Das)  
Chairman

Sd/-  
(A.K. Das)  
Chairman