

BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 71(ET) of 2018

(Arising out of order of the learned Additional CST (Appeal), South Zone,
Berhampur in Appeal Case No. AA (ET) 01/2017-18
disposed of on dated 24.02.2018)

Present: Shri R.K. Pattanaik,
Chairman

M/s. New Laxmi Steel & Power Pvt. Ltd.,
Sarua Industrial Estate, Khordha ... Appellant

-Versus-

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

For the Appellant : Sri B.N. Joshi, Advocate
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 19.01.2021 ***** Date of order: 04.02.2021

ORDER

Present appeal under Section 17(1) of the Odisha Entry Tax Act, 1999 (hereinafter referred to as 'the Act') is at the instance of the dealer assessee directed against the impugned order dated 24.02.2018 promulgated in Appeal Case No. AA (ET) 01/2017-18 by the learned Additional Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, 'FAA'), who confirmed the order of assessment dated 17.10.2017 passed under Section 9C of the Act by the learned Joint Commissioner of Sales Tax, Puri Range, Puri (hence called, 'AA'), for

the tax period from 01.04.2013 to 31.03.2015 on the grounds inter alia it is not legally sustainable and thus, liable to be quashed.

2. The dealer assessee is engaged in manufacturing and sale of iron ingot, TMT Bar, etc. out of the raw materials and as limited company effects purchase of goods from inside and outside the State of Odisha and also carries on business in the trading of MS rod and rough Granite in course of intra-State, inter-State and export. In fact, tax audit was conducted vis-a-vis the dealer assessee and vide Audit Visit Report (AVR), recommendation was made to verify E-15 forms furnished on the sales of scheduled goods at concessional rate and also to examine refund claim with respect to export sale of Granite slabs. On receiving the AVR, a proceeding under Section 9C of the Act was set in motion with direction to the dealer assessee to appear and produce the books of accounts for its verification. The dealer assessee on entering appearance was confronted with the AVR and its findings and thereafter, the books of accounts were examined by the AA, who finally concluded that the dealer assessee is liable to pay entry tax on purchases under Section 3(2) of the Act and for the sales in view of Section 26 thereof and thus, demanded additional tax with penalty to the tune of ₹1,96,323.00. The dealer assessee being dissatisfied as to the additional demand knocked the doors of the FAA, but was again unsuccessful. In other words, the audit assessment and the additional demand inclusive of penalty were confirmed in appeal. Against the impugned order dated 24.02.2018, the dealer assessee is before the Tribunal contending that the authorities below failed to consider the materials on record,

while raising additional demand and not only that, both the forums travelled beyond the AVR which is against the settled position of law as laid down in the case of Bhushan Power & Steel Ltd. Vs. State of Orissa and others reported in (2012) 47 VST 466 (Orissa). The State, on the other hand, justified the action of the authorities below initiated under Section 9C of the Act against the background that the dealer assessee despite evidence of purchases and sales did not pay the entry tax @ 1% each as is enjoined in Section(s) 3(2) and 26 of the Act. It is further contended that as per the AVR, the dealer assessee disclosed purchase of scheduled goods to the tune of ₹61,65,199.00 and sale of manufactured goods worth of ₹3,79,014.00 and in order to ascertain the genuineness of the transactions that it had occasioned within the same local area, the AA directed it to produce materials in support thereof, however, neither any such material was produced nor details of it were disclosed consequent upon which the authorities below were left with no option except to levy entry tax thereon and in such view of the matter, the confirmation of assessment vide the impugned order dated 24.02.2018 cannot be interfered with, in any manner or whatsoever.

3. As submitted by the learned Counsel for the dealer assessee, both the forums below fell into serious error in travelling beyond the AVR, when there was no specific objection raised with respect to purchase and sale of goods and its tax compliance. While contending so, the decision of the Hon'ble Court *ibid* was placed in reliance. It is claimed that when there was no such findings in the audit vis-a-vis the purchase and sale of scheduled goods in spite of the books of

accounts being examined, it was not at all justified on the part of the authorities to consider it for which it can be said that the assessment travelled beyond the AVR. Per contra, the State apprised that such a contention of the dealer assessee cannot be sustained, inasmuch as, the AA only examined the admissibility of such local purchase and sale of scheduled goods and never travelled beyond the AVR. In so far as the decision of the Hon'ble Court in Bhushan's case is concerned, a fraud report was utilized against the dealer assessee, who did not receive a fair amount of opportunity to meet, explain and controvert the allegation contained therein before being condemned. In that context, when a material alien to the AVR was referred to and acted upon and that too without proper opportunity of being heard provided to the dealer assessee, the Hon'ble Court in the case supra held and observed that the assessment travelled beyond the AVR. In the instant case, no such extraneous material has been used and utilized during assessment save and except the AVR. Of course, the learned Counsel for the dealer assessee advanced an argument to the effect that when there was no specific observation as to entry tax paid on purchase of goods or not and with respect to sale of goods being pointed out during the audit inspection, which formed no part of the AVR, the authorities below can, therefore, be held to have travelled beyond the AVR. From the impugned order dated 24.02.2018, it is made to understand that a general observation was made in the AVR to verify E-15 forms and simultaneously to consider the claim of refund of the dealer assessee with respect to export sale of Granite slabs. Under the above circumstances, the AA examined the purchase and

sale of scheduled goods and then raised the additional demand. The suggestion of the audit unit to examine the refund claim as advanced by the dealer assessee, whether has been considered or not, is not revealed from the order of assessment dated 17.10.2017, but in so far as the suggestion to verify E-15 forms received vide the AVR, the AA was duty bound to comply the same. It is with regard to purchase of scheduled goods and for considering payment of entry tax in terms of Section 3(2) of the Act that the AA was recommended to examine and in the considered view of the Tribunal, examination of books of accounts in that respect cannot be treated as travelling beyond the AVR. Admittedly, no any foreign material was allegedly considered by the AA, while recommending the tax liability of the dealer assessee excepting the materials on record vis-a-vis the findings of AVR. Hence, in view of the discussions made herein before, the Tribunal reaches at a logical conclusion that the authorities below substantially confirmed to the observations made in the AVR and did not travel beyond it, while considering the audit assessment in terms of Section 9C of the Act.

4. In course of argument, the learned Counsel for the dealer assessee produced bunch of documents, such as, purchase statements, names of selling dealers, tax invoices etc. for perusal of the Tribunal and contended that the forums below have not examined the same, but instead raised the disputed demand on entry tax. The stand, as it seems, before the authorities below was that the purchase and sale were made in the same local area, whereas, at present, by submitting the purchase details, it is claimed that entry tax was paid and as such,

the tax liability has been fully discharged. The additional evidence so produced before the Tribunal needs verification by the AA in order to find out and ascertain with regard to the purchase of scheduled goods worth of ₹61,65,199.00 and if entry tax was paid or not. With respect to sale of scheduled goods for ₹3,79,014.30 and payable entry tax as per Section 26 of the Act, the learned Counsel for the dealer assessee has invited the attention of the Tribunal that it was with respect to sales of pre-stressed concrete pole (PSC) which is not a scheduled goods under the Act the aspect which was examined by the audit unit and no objection was raised being found to be in order. The details of the sales statement with sample copies of invoices have again been produced before the Tribunal for consideration. In the considered view of the Tribunal, nevertheless absence of any observation in the AVR, still when additional demand is alleged and the dealer assessee has readily produced the details of the sales statement, it needs scrutiny and examination. As to the penalty, which has been a part of the additional demand, its leviability shall depend on the outcome of the scrutiny and verification of the purchase and sale statements, an exercise, which, as has been directed, is necessarily to be undertaken and accomplished by the AA.

5. Hence, it is ordered.

6. In the result, the appeal stands allowed in part. As a logical sequitur, the impugned order dated 24.02.2018 passed in Appeal Case No. AA (ET) 01/2017-18 is hereby set aside. Consequently, the matter is remitted back to the AA to consider all the materials vis-a-vis the claims of the dealer assessee as regards

the relevant period from 01.04.2013 to 31.03.2015 and then, to pass appropriate order in accordance with law keeping in view the observations of the Tribunal and to expedite the process, preferably, within a period of three months from the date of receipt of the above order. The cross-objection is accordingly disposed of.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman