BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A.No.58 (ET) of 2013-14

(Arising out of order of the learned JCST, Angul Range, Angul in Appeal No. AA/134/ET/DL/2006-07, disposed of on 22.03.2013.)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri B. Bhoi, Accounts Member-I

M/s. Bharat Heavy Electricals Limited,
NTPC Site, Kaniha, Talcher, Angul. ... Appellant

-Versus-

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

For the Appellant : : Mr. B. Mohanti, Sr. Advocate
: : Mr. S.S. Swain, ld. Advocate
For the Respondent: : Mr. D. Behura, ld. SC(C.T.)
: : Mr. N.K. Rout, ld. ASC(C.T.)

Date of hearing : 18.04.2024 * * * Date of order : 17.05.2024

O R D E R

The dealer is in appeal against the order dated 22.03.2013 of the Joint Commissioner of Sales Tax, Angul Range, Angul (hereinafter referred to as 'ld. FAA) passed in First Appeal Case No.AA/134/ET/DL/2006-07 enhancing the demand to ₹20,59,902.00 raised in assessment undertaken under Section-7 of the OET Act pertaining to the assessment year, 2002-03.

2. M/s. Bharat Heavy Electricals Limited, NTPC Site, Kaniha, Talcher, Angul (in short, BHEL) is primarily engaged in works contracts at NALCO and NTPC carrying out repair works, supply of equipments , designs, manufacture, erection of power plants, modernization works, commissioning of power plants etc. in pursuance of the agreements/contracts as entered into with the contractees. It has its principal office at New Delhi and several branch offices located at various places inside the country. BHEL, Kaniha, Talcher is one of such offices falling under the jurisdiction of the OST Act.

3. BHEL was assessed under Section 7 of the OET Act by the Assessing Authority, Dhenkanal Circle, Angul for the assessment year, 2002-03. The dealer-company is seen to have disclosed receipt of scheduled goods from outside the local area involving ₹70,34,573.00 in returns for the year under assessment. During the course of assessment, the ld. Assessing Authority on verification of the utilization statement of waybills could find that scheduled goods such as cable, electrical goods, paints, acid, alkali, black paints, hydrated lime, chemicals etc. involving ₹4,24,10,126.00 have not been disclosed in returns and thus, the same were brought into tax net. As many as 14nos of waybills were detected wherein there were no mention of the cost of the

goods brought in. The ld. Assessing Authority estimated the cost of such goods at ₹1,60,92,424.00. The ld. Assessing Authority rejected the books of accounts and resorted to best judgment determining the taxable turnover at ₹10,69,53,916.00. The ld. Assessing Authority on levy of entry tax @ 1% on ₹1,11,17,364.00, @2% on ₹9,57,11,752.00 and @ 12% on ₹1,24,800.00 calculated the tax due at ₹20,40,384.68 against which, the dealer-company having paid ₹1,01,434.00 earlier, the balance amount of tax payable arrived at ₹19,38,951.00. In first appeal, the ld. FAA re-determined the taxable turnover at ₹11,39,88,489.00 by taking into account the returned figure of ₹70,34,573.00 and the taxable turnover of ₹10,69,53,916.00 determined in assessment. In result, the amount of tax payable has been escalated to ₹20,59,902.00 in place of ₹19,38,951.00

4. The outcome of the first appeal having not yielded substantial relief as cherished for, the dealer-company approached this forum for justice rebutting vehemently as to the levy of entry tax on the used plants and machineries transported from other work sites outside the state for deployment in execution of works contract inside the state of Odisha. The emphasis latent in the grounds of appeal is on whimsical estimation of purchase suppression based on goods consigned

through waybills. Mr. B. Mahanti, ld. Senior Advocate for the dealer-appellant clarifies that in course of execution of the contracts awarded by NALCO and NTPC, the dealer-appellant used to bring its own equipments, machineries, tools, heavy duty cranes, generators, rollers and other erection and construction equipments from other sites outside the state of Odisha for use in the contract works at NALCO and NTPC. It is submitted that consequent upon completion of the assigned job, the said machineries and equipments are transported to other sites as requisitioned. The movement of such goods is, in fact, occasioned through waybills with either mention of certain nominal value therein or without mention of such value. It is, therefore, submitted that the movement of such goods from one work site to another is in the nature of transit. Reliance is placed on the decision of Hon'ble High Court of Odisha made in the judgment dated 13.11.2002 in O.J.C No.3995 of 2000 in case of **Indian Metals and Ferro Alloys Corporation of Orissa** wherein it is observed that "*unless the basic ingredients i.e. entry of scheduled goods for the purpose of consumption, use or sale are satisfied, the provisions of the Orissa Entry Tax Act, 1999 shall not be attracted. The goods which enter into local area/areas only for the purpose of transit will not be subject to entry tax.*" It is thus submitted that

the equipments and machineries have entered into the local area for the purpose of transit and shifted out of the local area after employment of such goods for the required job. It is pleaded that the fora below have utterly failed to discharge their respective *onus* by proving that the old goods were consumed or used or sold within the local area and they had purchase value. Nonetheless, as the goods were used ones, determination of value on an unethical manner through guess work is detrimental to natural justice. It is argued that the value mentioned in the waybills cannot be reckoned as the guiding factor for levy of entry tax without segregation of the quantum of scheduled goods brought into the local area. Furthermore, it is submitted that the dealer-company was not given a chance to rebut before resorting to best judgment. With the above contentions, it is urged that the orders of the forums below are destined to be quashed.

The State has filed cross objection contending the orders of the forums below as correct and justified inasmuch as that the decision relied on by the dealer-company supra in the context of non-exigibility of entry tax on old machineries brought into local area for use is not applicable under the facts and circumstances of the case in hand.

5. Having heard both the rival contentions and on perusal of the orders of the forums below, grounds of appeal and the materials available on record, it is brought out that the dealer-company during the year under appeal had undertaken job contracts at NALCO, Banarpal and NTPC, Kaniha, Talcher in the district of Angul executing repair works, supply of equipments, designs, manufacture, erection of power plants, modernization works, commissioning of power plants etc. In the process of executing these contracts, the dealer-company was required to employ its own machinery, tools, tackles including cranes brought in from other work-sites and after completion of the assigned job, transported the same to its other work-site where similar works contract were under execution. The transportation of such old and used goods from other work places was being done accompanying Govt. waybills. As is evident, BHEL is a New Delhi based Company having its registered office at 'BHEL HOUSE', Siri Fort, New Delhi. Apart from its project in operation in Odisha at NALCO and NTPC in Angul district, it has other projects at work at various places inside the country. It is natural on common business parlance that machinery, tools, tackles including cranes etc. are shifted from one unit to another as and when required and pressed for service in other units and again brought back the same when

required. Imposition of entry tax on every occasion of entry of the same used goods into local area would defeat the legislative intent speculated in the statute. It is, therefore, of the view that the decision of the Hon'ble High Court of Odisha in case of **Indian Metals and Ferro Alloys Corporation of Orissa** (supra) holding goods entering the local area for the purpose of transit will not be subject to entry tax might be applicable. Notwithstanding the above, the ld. Assessing Authority is observed to have estimated the purchase value at ₹1,60,92,424.00 against 23 nos of waybills found not adorned with value on hypothetical assumption. The entire exercise taken recourse to by the ld. Assessing Authority appears to be baseless contrary to the proviso to Section 2(j) of the OET Act. The fora below have failed to place on record as to the basis upon which, such fanciful derivation has been adopted in determination of the purchase value of the goods brought through waybills seemingly without considering upon the taxability of such goods. The orders of the forums below cast a shadow of ambiguity on this score calling for re-look and detail analysis by the ld. Assessing Authority.

6. In result, the appeal filed by the dealer-company is partly allowed. The order of the ld. FAA is set aside. The case is remitted back to the ld. Assessing Authority to assess the dealer-company

afresh in the light of the above observations providing reasonable opportunity of being heard to the dealer-appellant within four months from the date of receipt of this order. The cross objection is accordingly disposed of.

Dictated and corrected by me.

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member