BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 122 (ET) of 2019

(Arising out of order of the learned JCST (Appeal), Sundargarh Territorial Range, Rourkela in First Appeal Case No. AA (V) 19 ET of 2016-17 disposed of on dated 26.08.2019)

Present: Shri R.K. Pattanaik,
Chairman

M/s. ISGEC Heavy Engineering Limited,
Inside OCL Limited, Rajgangpur,
Dist. Sundargarh ... Appellant

-Versus-

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

For the Appellant : Sri C.R. Das, Advocate
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 22.02.2021 ***** Date of order: 15.03.2021

O R D E R

Present appeal under Section 17(1) of the Odisha Entry Tax Act, 1999 (hereinafter referred to as 'the Act') is at the behest of the dealer assessee assailing the impugned order dated 26.08.2019 promulgated in Appeal Case No. AA (V) 19 ET of 2016-17 by the learned Joint Commissioner of Sales Tax (Appeal), Sundargarh Territorial Range, Rourkela (in short, 'FAA') vis-a-vis the order of assessment dated 12.08.2016 passed under Section 9C of the Act by the learned

Sales Tax Officer, Rourkela-I Circle, Uditnagar (hence called 'AA') for the tax periods 01.04.2009 to 31.03.2014 on the stated grounds.

2. The dealer assessee is a limited company and engaged in execution of works contract and it was subjected to audit assessment under Section 9C of the Act. The AA finally raised additional demand to the tune of ₹11,83,568.00 including penalty and interest against the dealer assessee. Being dissatisfied, the dealer assessee approached the FAA, who reduced the tax demand to ₹5,84,244.00 deleting the interest only. But then, the dealer assessee, still not being satisfied, has knocked the doors of the Tribunal by filing the instant appeal.

3. In fact, the dealer assessee has confined its argument only to the extent of disallowance of ₹2,76,060.00, a payment which is claimed to have been made prior to the receipt of audit notice dated 29.09.2014 and also with respect to levy of penalty on the ground that none of the ingredients of Section 9C(1) of the Act is fulfilled.

4. The learned Counsel for the dealer assessee contended that the admitted tax of ₹2,76,060.00 was paid under a chalan dated 10.06.2014 with a mistake mentioned therein as regards the period to which payment relates and in order to rectify the same, a petition dated 12.01.2017 was moved but it was not attended to. It is contended that a period from 01.05.2014 to 31.05.2014 was inadvertently reflected in the said chalan and moreover, the amount of ₹2,76,060.00, at no point of time, was claimed as a payment made towards admitted tax in the return for the period of 01.04.2014 to 30.06.2014. But, in spite of that, the authorities

below failed to consider the same, rather, excluded it for not being related to the period under assessment. It is further contended that levy of penalty under Section 9C(5) of the Act, in the facts and circumstances of the case, was totally uncalled for and thus, unwarranted.

5. State by way of a cross-objection urged that rightly the FAA rejected the payment of ₹2,76,060.00, since it was not concerned with the period from 01.04.2009 to 31.03.2014. As regards imposition of penalty, it is the stand of the State that it had to be levied under Section 9C(5) of the Act irrespective of any malafide intention or mens rea involved and hence, the grounds so raised by the dealer assessee are devoid of any substance and therefore, the appeal is liable to be dismissed outrightly. The learned Standing Counsel (CT) for the State contended that when the alleged payment could not be related to the audit period, no wrong, as such, was committed by the FAA in disallowing it. It is apprised that an amount of ₹1,37,715.00 deposited vide chalan dated 01.10.2013 was adjusted against the balance tax of ₹3,32,463.00 and the differential amount of ₹1,94,748.00 with penalty was demanded which is as per and in accordance with law and for that matter, the impugned order dated 26.08.2019 suffers no legal infirmity.

6. A copy of chalan dated 10.06.2014 is made available to the Tribunal by the learned Counsel for the dealer assessee. The copies of audit notice dated 29.09.2014; return for the period 01.04.2014 to 30.06.2014 and e-filing acknowledgment dated 21.07.2014 have also been produced in order to substantiate the claim of the dealer assessee to the effect that said payment of

₹2,76,060.00 was, in fact, related to the periods from 01.04.2009 to 31.03.2014. Besides the above, a copy of the petition filed under Section 20(1) of the Act initially moved was produced in order to satisfy the Tribunal that the alleged payment was related to the period under assessment but by inadvertence, a wrong duration was shown in the chalan and more so when, the payment has not been stated in the return filed by the dealer assessee for the period 2014-15 and any time later. Truly, such a claim of the dealer assessee for a rectification does not appear to have been taken care of. Again it was left unattended at the appellate stage. The FAA simply denied accepting the payment on the ground that it was not related to the assessment period under consideration. The fact of payments of ₹1,37,715.00 and ₹2,76,060.00 totalling to ₹4,13,775.00 vide chalans dated 01.10.2013 and 10.06.2014 respectively was brought to the notice of the FAA, but, the later deposit was disallowed for not being concerned to the period from 01.04.2009 to 31.03.2014. If such was a claim from the side of the dealer assessee, it ought to have been looked into to do justice to the case. From the copies of the documents, which are now being submitted to the Tribunal, it is made to suggest that the payment in question has not been adjusted even at any subsequent time. In under the above circumstances, the Tribunal is of the view that a fresh examination is needed to ascertain as to if the payment of ₹2,76,060.00 was really related to the tax period 01.04.2009 to 31.03.2014 in juxtaposition to the claim of the dealer assessee. If by mistake, a different period was mentioned in the alleged chalan and there was no adjustment of ₹2,76,060.00 made later on, then, in that case, the demand of the

dealer assessee should be accepted. In other words, if the said amount was related to the period 01.04.2009 to 31.03.2014 and the unintentional error in chalan had been brought to the notice of the FAA, such a claim of the dealer assessee would have been promptly addressed to and accepted, on being established. Thus, considering the contention of the dealer assessee, the Tribunal reaches at a decision that payment of ₹2,76,060.00 ought to be accepted as a payment for the period 01.04.2009 to 31.03.2014, if it is proved to be so, notwithstanding any mistake in the chalan dated 10.06.2014. Therefore, on the anvil of the documents produced by the dealer assessee, the above claim is required to be freshly examined by the AA.

7. If said amount of ₹2,76,060.00 on verification of records is ultimately allowed by the AA, in such eventuality, no tax due would remain against the dealer assessee. However, in case of enquiry and considering the claim of the dealer assessee, it is held by the AA that such amount does not relate to the tax periods 01.04.2009 to 31.03.2014, then, definitely a question would arise as to levy of penalty. It is made to appear that entry tax payable by the dealer assessee stands at ₹6,19,886.00 as against the payment made for ₹2,87,423.00 with balance payable at ₹3,32,463.00. It has been the recent view of the Tribunal that before imposing penalty, apart from fulfilment of condition(s) of Section 9C(1) of the Act, conduct of a dealer assessee is to be gone into. In the present facts and circumstances of the case, it would, rather, be better to leave the AA to exercise the discretion as to levy penalty or not considering the conduct and explanation offered by the dealer assessee after examining its claim.

8. Hence, it is ordered.

9. In the result, the appeal is partly allowed. As a logical sequitur, the impugned order dated 26.08.2019 passed in Appeal No. AA (V) 19 ET of 2016-17 is hereby set aside to the extent indicated above. The matter is remitted back to the AA to consider and examine the claim with respect to the payment of ₹2,76,060.00, whether, it relates to the tax periods 01.04.2009 to 31.03.2014 and to pass appropriate order determining the tax liability vis-a-vis the dealer assessee and also on penalty in light of the observations of the Tribunal, preferably, within a period of three months from the date of receipt of the above order. The cross-objection filed by the State is accordingly disposed of.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman