

the first appellate authority interpreted the sale of goods worth `42,46,78,589.00 as the sale in course of inter-State trade erroneously and deleted the same from the liability of entry tax. As the order passed by the first appellate authority is not in consonance with the provisions of Odisha Entry Tax Act, 1999 (OET Act), the appellant preferred this appeal for quashing the same and to restore the order of the assessing authority in the matter.

2. The facts which occasioned for this appeal are as follows :-

The assessee-firm, named and styled as M/s. Apex Energy Resources Pvt. Ltd., was granted Certificate of Registration w.e.f. 27.05.2005 in the State of Odisha as well as in other States at Visakhapatnam, Kolkata and Dhanbad. The assessee-dealer trades in coal and coke on wholesale basis and as such, purchases as well as sells coal and coke both inside and outside the State. It has also availed ITC (Input Tax Credit) on the intra-State purchases. As revealed from the Audit Visit Report (AVR) concerning the Company of the dealer-assessee , it was found that the dealer had purchased scheduled goods worth `68,75,85,136.00 and sent some portion of it worth `26,29,06,547.00 to places outside Odisha. Thus, the goods worth `42,46,78,589.00, liable for payment of entry tax, remained with him. The dealer also paid entry tax amounting to `42,83,936.00 through filing returns in respect of the aforesaid goods. However, it is alleged that

the dealer-Company could not explain anything regarding payment of entry tax on freight and other handling charges for which the assessing authority found that the dealer was supposed to pay freight and other handling charges @ 3% calculated to ₹1,27,40,358.00 on entry tax payable goods worth ₹42,46,78,589.00 on account of which total purchase value of scheduled goods determined at ₹43,74,18,946.67 which is exigible to entry tax @ 1%. Against entry tax due of ₹43,74,189.00, he had already paid a sum of ₹42,83,936.00 and as such, held him liable to pay balance amount of ₹90,253.00.

3. After receiving the copy of AVR, the dealer-assessee filed a written statement taking the plea that as per contract and order, which was furnished in course of audit assessment, addition of freight charges by the audit team was illegal since the seller and buyer in respect of the goods, liable for entry tax, had transacted at the same place. However, as the dealer could not produce any valid documents supporting such explanation, the assessing authority in course of assessment under sub-section (3) of Sec. 9C of the OET Act held the dealer-firm liable to pay a sum of ₹42,83,936.00 during the period under assessment, i.e. from 01.04.2012 to

31.03.2014, with penalty of `1,80,506.92 as per the provision of Sec. 9C(5) of the OET Act.

4. Being aggrieved with the said order, the dealer-assessee preferred appeal before the Joint Commissioner of Sales Tax, Cuttack-I Range, Cuttack, and while deciding the said appeal, learned first appellate authority clearly held that the total purchases effected during the period under assessment was to the tune of 72,74,94,061.00 which included entry tax paid on intra-State purchases to the tune of `3,99,08,925.00 and outside purchases for an amount of `68,75,85,136.00. The turnover liable for entry tax was thus, computed at `42,46,78,589.00 following deduction of a sum of `26,29,06,547.00 against inter-State sales and an amount of `3,99,08,925.00 against entry tax suffered purchases from the total purchase. Ultimately, the first appellate authority held that as the concerned assessing authority had passed an order of assessment u/s. 10(1) of the OET Act for the said materials pertaining to the tax period from 01.04.2012 to 31.03.2014, whereby no freight and handling charges were added to the turnover liable for entry tax, he allowed the appeal.

5. Now the State came up with the present appeal challenging the findings of the first appellate authority. In course of hearing of appeal, learned Addl. Standing Counsel (CT) for the State submitted that when delivery of goods was completed on being receipt of those goods by the

dealer, provision of Sec. 3(2) of the OET Act should be applied for levy of entry tax at that point of time. The first appellate authority has not assigned any reason as to why entry tax should not be realized in respect of goods worth `42,46,78,589.00 when there is absolutely no evidence to the effect that the dealer had not taken delivery of those goods. He contended that the first appellate authority remained totally silent on this aspect while allowing exemption in favour of the dealer in respect of entry tax and freight and handling charges, which he (the dealer) was supposed to pay for the relevant assessment period. However, learned Counsel for the respondent in reply to this submission, contended that the AVR in respect of the assessee-dealer clearly revealed that the registered Company had received the goods at its Kolkata Office and the assessing authority in subsequent assessment of the Company u/S. 10(1) of the OET Act initiated escaped assessment proceeding after receipt of objection from the A.G. (Audit), which revealed as follows :-

Quote -

“Improper scrutiny of returns resulted in short payment of Entry Tax and Penalty of `1,82,466.00”. The objection of Audit is that Scrutiny of the Entry Tax/VAT returns for the year 2012-13 and cross check of the Balance sheet submitted for the year 2012-13 revealed that the instant dealer purchased Coke for `43,97,58,351.00 from outside the State during the year 2012-13. But the dealer paid Entry

Tax of `42,83,936.00 only on the stock of `42,46,78,589.00 and stock worth `1,50,79,762.00 shown as stock sent outside the state otherwise than by way of sale and no ET has been paid on the said stock.

Cross verification of the return figures with the figures of Balance sheet/VAT returns revealed that the dealer had not effected any branch transfer during 2012-13. Thus the total turnover shown under branch transfer escaped ET. The Entry Tax required to be levied is `1,50,798.00 on the escaped turnover. Besides the dealer is also liable to pay interest of `31,668.00 (for 630 days i.e. for 2013-14 and upto of 22.10.14).

Thus due to lack of return scrutiny or ineffective scrutiny of returns resulted in less payment of Entry Tax and interest thereon of `1,82,466.00." Unquote.

Thus, in the assessment order dt. 17.10.2015, in the proceeding undertaken under Sec. 10(1) of the OET Act, the assessing authority clearly held that "During the tax period from 1.4.2012 to 31.03.2013, the dealer has disclosed inter-state purchase of Scheduled goods to the tune of `43,97,58,351.00. Out of these goods, the value of scheduled goods sent outside Odisha by way of sale stands at `1,50,79,762.00. Balance value of Scheduled goods on which Entry Tax is payable is `42,46,789,589.00. Entry

Tax payable on `42,46,78,589.00 calculated comes to `42,83,936.00 against which the dealer has paid `42,83,936.00 through filing returns. The balance entry tax payable by the dealer comes to `Nil.”

6. Learned Counsel for the respondent placed the aforesaid assessment order dt. 17.10.2015 covering the assessment period from 01.04.2012 to 31.03.2013 passed by the Assessing Authority, Cuttack-I City Circle, Cuttack in course of hearing of this matter. On perusal of the above order, learned Addl. Standing Counsel (CT) for the State fairly conceded that in view of the above facts, he had got nothing more to say in respect of the order passed by the first appellate authority.

7. In the result, on a thorough scrutiny of the assessment order, the order passed by the first appellate authority and more particularly the order passed by the same assessing authority dt. 17.10.2015 in respect of the dealer-assessee, it is found that there is absolutely no reason to interfere with the findings of the first appellate authority. Hence, the appeal is dismissed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

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