

**BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.**

**S.A.No.31(ET) of 2017-18**

(Arising out of the order of the learned JCST, Sambalpur Range,  
Sambalpur, in Appeal case No.AA.310/SA-I/ET/2014-15,  
disposed of on 28.03.2017)

M/s.Mamata Hosiery,  
At.Gujrati Colony,  
Po:Sambalpur, Odisha. ... Appellant.

**- V e r s u s -**

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

For the Appellant ... Mr. Mukesh Agarwal, 1d. Advocate.  
For the Respondent ... Mr. M.S.Raman, 1d. Addl. S.C.(C.T.).

Date of hearing: 26.04.2019 \* \* \* \* Date of Order: 07.05.2019

## **O R D E R**

This appeal has been preferred by the dealer appellant under the name and style of M/s. Mamata Hosiery, Gujrati Colony, Sambalpur against the order dated 28.03.2017 passed by the learned Joint Commissioner of Sales Tax, Sambalpur Range, Sambalpur (in short, 'Id. JCST') in first appeal case No.AA.310/SA-I/ET/2014-15, wherein and whereby he has allowed the appeal preferred by the dealer appellant in part by reducing the demand of tax and penalty to Rs.1,13,721.00 from Rs.8,82,351.00 raised by the learned Deputy Commissioner of Sales Tax, Sambalpur-I Circle, Sambalpur (in short, 'Id. DCST') in his order of assessment passed under Section-10 of the Orissa Entry Tax Act, 1999 (in short, 'the OET Act') for the tax periods from 01.04.2009 to 31.03.2011.

2. The facts in nut-shell are as follows:

The dealer-appellant in the instant case is a partnership concern dealing in readymade garments, under garments and hosiery goods of ladies, gents and children on wholesale-cum-retail sale basis effecting purchases from outside the state and effecting sales of the same in the local market only. The assessment for the tax periods 01.04.2009 to 31.03.2011 was reopened as per Section 10 of the OET Act, 1999 on the basis of one fraud case report submitted by the Sales Tax Officer, Sambalpur I Circle who paid a visit to the business premises of the dealer-assessee along with the Enforcement Officials and recovered and seized some incriminating documents relating to the business activities and detected purchase suppression of goods valued Rs.2,48,593.00 and by adding thereon 20% towards margin of profit sale value has been determined at Rs.2,98,311.00. Again sale suppression of goods valued Rs.18,27,512.00 has been detected by the Visiting Officials. As the dealer could not produce the books of accounts, the physical stock of various items valued Rs.1,42,13,980.00 is treated as out of account by the Visiting Official. As the dealer displayed utter non-cooperation in appearing before the 1d.DCST on the date fixed for hearing of the case, the sale suppression amounting to Rs.1,63,39,803.00 has been established by the assessing officer and to arrive at the equivalent purchase suppression 10% was deducted from the estimated sale value and the purchase suppression of scheduled goods is accordingly worked out to Rs.1,47,05,823.00 which was made exigible to entry tax @2%. Accordingly the assessment was resulted in extra demand of tax and penalty u/s. 10(2) of OET Act to the tune of Rs.8,82,351.00. This led the dealer-assessee to file appeal against the order of assessment before the 1d. JCST.

On careful consideration of the impugned order of assessment, the grounds of appeal, written submission vis-a-vis materials available in the record and the arguments proffered by the 1d. Counsel at the time of hearing, upheld the initiation of

assessment proceedings u/s.10(1) of the OET Act but deleted the value of physical stock of goods worth Rs.1,42,13,980.00 treated as suppression of sale on verification of stock position as per the audited accounts of profit and loss reflecting closing stocks for 2009-10 and 2010-11 with reference to the details of purchase and sales reflected through the returns, but arrived at corresponding purchase suppression in respect of sale suppression established to the tune of Rs.21,05,936.00 by deducting 10% which is calculated to Rs.18,95,342.40. Accordingly the 1d. JCST reduced the tax and penalty from Rs.8,82,351.00 to Rs.1,13,721.00 which is inclusive of penalty of Rs.75,813.69 imposed u/s.10(2) of the OET Act as the escapement of turnover of scheduled goods is without any reasonable cause.

3. Being further aggrieved with the appeal order of the 1d. JCST the dealer-assessee has approached this Tribunal on the following grounds like, the assessment order passed under Section 10 of the OET Act, 1999 is bad in law and the procedures to be adopted before issuing of notice in Form E-32 was not followed by the assessing authority for which the order is totally illegal and liable to be quashed. The dealer has challenged before this forum that the order of assessment contains misrepresentation of facts by the visiting officials of the enforcement wing by not considering the statements of the appellant at the time of verification of books of accounts and the order passed by the 1d. DCST on such report is illegal and liable to be quashed which fact was also not considered by the first appellate authority. The order of assessment issued in form E-7 does not contain the GTO and TTO, the assessing authority has not applied his mind independently to the fraud case report and the reopening is purely mechanical one without verification of correctness of the statement given by the appellant for which the assessment is biased one and liable to be quashed and imposition of penalty is illegal.

4. On the other hand, the respondent revenue has filed cross objection supporting and defending the orders of the lower forum as just and proper which were passed in accordance with the statutory provisions under the Acts and Rules. There is no reasonable merit in the second appeal filed by the dealer which is not sustainable in the eyes of law. That the learned assessing officer and first appellate authority have rightly completed the assessment/appeal basing on the statutory provisions. That, his contention of questioning the validity of reopening of assessment u/s.10 of OET Act read with rule 15(4) of OET rules which is self explanatory and throws light regarding deem acceptance as self assessed when there is no need of communication when there is no arithmetical mistake apparent on the face of such return. So proceeding initiated U/s.10 of OET Act is justified.

It is humbly submitted that self assessment as defined U/s.2(47) of the OVAT Act read with Rule 34 of OET Rules has been accepted as self assessed as enumerated U/s.9 of the OET Act as evident from the order of assessment. It proves the self assessment for the tax periods were accepted and the dealer appellant enjoyed all the benefits of self assessment. Hence the scrutiny and acceptance of return relate to only arithmetical errors apparent on the face of the return and is no way connected with the actual business activity made by the dealer-appellant. Hence on investigation made by the competent authority as per the authority of law U/s.22 of OET Act, the reports received were analyzed with the return filed that is self assessment made by the appellant dealer, which gave a certain conclusive indications and presumption of facts that there has been loss of revenue which were neither available in the return nor in the books of account maintained by the dealer.

On investigation and completion of the same, a report was framed and submitted to the assessing authority. The report submitted was the finding in comparison to the returns filed which

was accepted in self assessment U/s.9 and remained vogue till the order of assessment was framed.

That, on sl. no.4 of the grounds of appeal, the dealer has taken contention that 1d. DCST has not determined the GTO and TTO but has simply proceeded to compute the tax liability and imposition of penalty which is not absolutely true because he has determined the GTO and TTO at Rs.18,95,342.40 by way of deduction 10% from the estimated sale suppression in order to arrive at the corresponding purchase suppression made by the dealer, which is very well understandable from his order. The assessment was made U/s.10 of OET Act which specifies the assessment to be made on escapement of turnover. Here the escaped purchase turnover on purchase was Rs.18,95,342.40.

The order of the first appellate authority is crystal clear with respect to the other points raised by the dealer. He (The 1d. JCST) has dealt each and every item which is self explanatory & requires no further interference.

5. Mr. Mukesh Agrawal, the 1d. Advocate appearing on behalf of the dealer-appellant reiterated the points raised in the grounds of appeal and vehemently argued that initiation of reassessment u/s.10 of the OET Act is not just and proper hence liable to be quashed. There is no mention of GTO and TTO of the dealer-appellant. The 1d. DCST has not formed any opinion while initiating reassessment proceeding u/s.10 of the OET Act for there is no mention of reason in writing in the order sheet maintained for this purpose which was not signed by the 1d. DCST. In support of his contention the learned Counsel for the dealer appellant Mr. Agrawal relied upon the following decisions:

- (i) Sales Tax Officer Vrs. Uttareswari Rice Mills (1972) 30 STC 567(SC)
- (ii) Indure Limited V. Commissioner of Sales Tax (2006) 148 STC 61 (Ori)

- (iii) State of Orissa V. Ugratara Bhojanalaya (1993) 91 STC 76 (Ori)
- (iv) Suburban Industries Kalinga Private Ltd. Vrs. Sales Tax Officer (1993) 90 STC 280(Ori)
- (v) Orient Paper Mills Ltd. Vrs. Union of India, AIR 1970 SC 1498

6. Per contra, Mr. M. S. Raman, the 1d. Additional Standing Counsel appearing on behalf of the Revenue took the contention that the order passed by the 1d. JCST being just and proper and in accordance with the provision contained under the law deserves to be confirmed. He submits that subsequent to the completion of self assessment based on the returns submitted by the dealer-appellant, the business premises of the appellant was inspected by the officers of the Sambalpur-I Circle, Sambalpur along with the enforcement officials of Sambalpur enforcement Range, Sambalpur. During the course of which certain incriminating materials were found and on the basis of those materials, a factual conclusion was arrived at that the appellant is engaged in suppression of both purchase and sales. Consequent upon receipt of the fraud case report from the inspecting officials finding prima facie suppression of purchases leading to suppression of sale of scheduled goods reassessment proceeding was initiated for ascertaining tax liability of the dealer on the ground that certain turnover pertaining to the scheduled goods has escaped assessment of tax under the OET Act. He produced before the Bench the relevant assessment record showing evidence of issue of notice and intimations and service of the same on the dealer-appellant but there was no response and no participation in the assessment proceeding before the 1d. DCST. He has further submitted that since this is a reassessment the GTO and TTO determined by the 1d. DCST is over and above the GTO and TTO disclosed by the dealer through returns. He further argued that

the reassessment should not be treated as improper solely on the ground that the assessing authority has not signed the order sheet. As a matter of fact the reassessment proceeding was initiated upon receipt of a fraud case report against the business activities and there is a mention of prima-facie opinion of the 1d. DCST in the reassessment order passed u/s.10 of the OET Act. He contended that assessment proceedings cannot be treated as invalid merely on the ground that the 1d. DCST (assessing officer) has not put his signature in the order sheet. The dealer has never challenged the notice even though the same was duly served on it and he has filed appeal against the assessment order. He has further brought to the notice of this Bench the Judgment dtd. 07.12.2016 rendered by our Hon'ble High Court in the case of M/s. Neelachal Ispat Nigam Ltd. Vrs. State of Odisha and Others vide W.P.(C) No.22343 of 2015 in connection with the self-assessment u/s.9 of the OET Act and escaped assessment u/s.10 of the OET Act. The Hon'ble High Court observed that "under the Taxation Rule the assessee is required to furnish self assessment and the authority is required to assess the same there is no provision provided under the Act to communicate in case of acceptance of the assessment."

7. Heard both the parties. Perused the impugned orders of assessment and appeal, grounds of appeal, cross objection filed by the State and the records of assessment and appeal. The core issue involved in this appeal for adjudication before this Bench is whether the reopening of the case u/s.10 of OET Act in respect of the dealer assessee is legally valid or not? This aspect was also discussed by the 1d. JCST in his appeal order. The findings of the 1d. JCST at Page-4 of the appeal order is relevant which runs as follows:

"In course of appeal hearing at this forum, the learned Advocate reiterating the grounds of appeal argued that the reopening of the case U/s.10 of the OET Act is irregular and the order of

assessment does not stand in the eye of law. As regard to the initiation of assessment proceeding U/s.10 of the OET Act, it is relevant to mention Section 10(1) of OET Act that “Where for any reason all or any of the scheduled goods brought by a dealer has escaped assessment of tax, or where value of all or any of the scheduled goods has been under assessed, or any deduction has been allowed wrongly, the assessing authority, on the basis of information in his possession, may within a period of five years from the end of the year to which the tax period relates, serve a notice on the dealer in such form and in such manner as may be prescribed and after making such enquiry as he considers necessary and after giving the dealer a reasonable opportunity of being heard, proceed to assess the dealer accordingly.” Hence it is inferred that initiation of assessment proceeding does not appear to be suffering from any infirmity.”

It cannot be said that the 1d.DCST has merely issued notice for reassessment mechanically there was no self-same matter or review of one's own finding or change of opinion basing on which reassessment proceeding was initiated. On perusal of record it is revealed that the dealer-assessee deals in scheduled goods and reported to have effected purchases of goods from outside the State of Odisha and the place of business of the dealer was visited/ inspected by the Sales Tax Officer of the Sambalpur-I Circle, Sambalpur along with the Sales Tax Officers of Enforcement Range of Sambalpur. As the fraud case report alleges both suppression of purchase and sale and the dealer deals in scheduled goods obviously there is escapement of assessment coming to the surface on the basis of inspection conducted by the concerned authorities at the business premises of the dealer. The dealer could not substantiate the allegation levelled basing on the incriminating materials recovered from the business premises. The dealer appellant could have explained the matter in response to the notice issued by the 1d.DCST. Instead of appearing and

refuting the charges levelled against the business the dealer assessee preferred not to participate in hearing for assessment. The dealer-appellant also failed to explain with books of accounts the alleged suppression of purchases and sales reflected on 22 pages of written loose slips recovered from the business premises of the dealer-appellant. As the physical stock position could be explained with the documentary evidences before the ld. JCST the same was considered and the substantial relief was allowed. It is not a fact that the assessing officer initiated the reassessment proceeding without rhyme or reason. Basing on the allegations of out of account transactions involving both suppression of purchases as well as sales the ld. DCST has initiated proceeding u/s.10 of OET Act by issuing notice in Form E-32 to assess the dealer appellant inasmuch as the turnover of scheduled goods for the relevant period has escaped assessment of tax. In view of the facts stated in the foregoing Paragraphs it goes without saying that the ld. DCST as an assessing authority has rightly initiated reassessment proceeding and the assessment cannot be considered as invalid merely on the technical ground of lack of signature in the order Sheet. Issue of notice thereby allowing opportunity for hearing in the matter is in accordance with the provision of law. The dealer appellant should have participated in the hearing before the ld.DCST. As the dealer-assessee failed to substantiate the transactions mentioned in the 22 written slips recovered from its place of business with reference to the books of accounts maintained in respect of the business either before the inspecting officers or before the assessing authorities or before the first appellate authority but only harped on technical point of initiation of reassessment proceeding u/s.10 of the OET Act, we are of the view that the proceeding initiated is in order and the dealer-appellant has no documentary evidences to explain the incriminating written slips recovered from the business premises in the face of facts and the provision under the law. We are of the

view that the appeal order passed by the 1d. JCST is just and proper hence warrants no interference.

7. Therefore as per the discussions made in the foregoing paragraphs we are of the view that the order of the 1d. JCST reducing the assessment and allowing the appeal in part is neither unreasonable nor unjustified in any manner inviting interference by this Tribunal.

8. In the result, the appeal being devoid of merit is dismissed and the impugned order of 1d. JCST is confirmed. The cross objection is disposed of accordingly.

Dictated and Corrected by me,

**Sd/-  
(P.C.Pathy)  
Accounts Member-I.**

**Sd/-  
(P.C.Pathy)  
Accounts Member-I.**

**I agree,**

**Sd/-  
(Suchismita Misra)  
Chairman.**