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

S.A.No.161(E)/2009-10

(Arising out of order of the Id.DCST, Cuttack-I Range, Cuttack,
in Appeal No.AA(ET)-89/CUIE/2008-09,
disposed of on dt.16.2.2009)

Present: Miss S.Mohapatra & Sri J.Pradhan
Judicial Member-I Accounts Member-II

M/s.Andhra Cements Ltd.,
Mahanadi Vihar,
Dist.Cuttack.

... Appellant

-Versus-

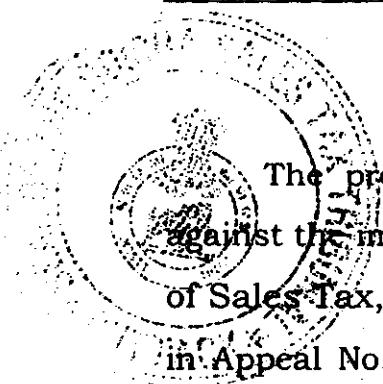
State of Odisha represented by the
Commissioner of.Sales Tax,
Orissa, Cuttack.

... Respondent

For the appellant : Mr.S.K.Mohapatra, Advocate
For the respondent : Mr.S.S.Roy, DCCT(Appeal)

Date of Hearing: 11.08.2014 *** Date of Order: 25.08.2014

ORDER



The present appeal preferred by the dealer-appellant is directed against the impugned order passed by the learned Deputy Commissioner of Sales Tax, Cuttack-I Range, Cuttack (in short 'DCST') dt.16.02.2009 in Appeal No. AA(ET)-89/CUIE/2008-09 in confirming the assessment order passed by the learned Sales Tax Officer, Cuttack-I East Circle, Cuttack (in short 'STO') for the year 2004-05 U/s.7(4) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act').

2. In the instant case the dealer-appellant deals in cement. During the material period the dealer-appellant found to have received 40,447.00 MT of cement by way of stock transfer from it's head office located outside the State of Odisha and the value of such quantity of cement including the freight charges etc. has been disclosed at Rs.7,11,00,948.00. The learned Assessing Officer (herein after in short

LAO) at the stage of assessment taking into account the proviso to section 2(j) of the OET Act, which speak as *"if the scheduled goods are required/obtained otherwise than by way of purchase, than the purchase value shall be the value or the price at which the scheduled goods of like kind or quality is sold or is capable of being sold in open market"* and also taking into consideration the sale value of cement as disclosed by the dealer-appellant, determined the value of the scheduled goods so received at Rs.9,22,69,509.71. Accordingly entry tax @1% thereon was calculated at Rs.9,22,695.00. The dealer-assessee having already paid an amount of Rs.7,14,293.00, he was made liable to pay the balance amount of Rs.2,08,402.00.

3. The learned DCST (the first appellate authority) while disposing of the first appeal filed before him, observed that since the buyer and the seller is a single entity the value of goods shown in the stock transfer notes may not be the purchase price and thus found justified the levy of entry tax by the LAO as per the proviso to section 2(j) of the OET Act.

4. Being aggrieved by the orders of the learned DCST, the dealer-appellant filed this second appeal before this forum on the following grounds:

(a) The appellant's branch is a reputed manufacturer of cement company M/s.Andhra Cements Ltd., having its plant at Visakhapatnam (A.P.). The goods are directly despatched to its branch through "Excise-Cum-Stock transfer Invoice". The invoice issued by the appellant duly passed by Excise Gate and authenticated by the Excise Department.

(b) The invoice raised by the manufacturing plant clearly indicate its Serial No., Excise Gate pass no., quantity, value of goods, central excise duty paid, freight charges etc. The branch at Cuttack on receipt of those goods duly in corporate with entries into the stock register. The entry tax is paid by the appellant on the total amount declared in the invoice which includes all the charges and taxes.

(c) That the order of assessment as well as first appellate order is one side, arbitrary and excessive. As per the charging provision U/s.3(1) of

OET Act the entry tax shall be charged on the entry of the scheduled goods "coming to local area for the purpose of consumption, uses and sale thereon". The tax shall be charged on its entry only but not on the sale. The provision U/s.2(j) of OET Act never empowers to impose tax on sale, since sufficient proof of document relating to value, quantity of goods entered to local area is available very much on the hands of Id.AO.

(d) That the entry tax is not at all a species of sales tax. It is a tax on entry of schedule goods and not a tax on goods. The point of levy is 'entry only'. Therefore applying the 'provided' provision U/s.2(j) of OET Act when first provision is very much satisfied the imposition of further demand is definitely unjustified, illegal and needs to be quashed.

(e) That Ld.DCST(Appeal) has not provided a speaking order regarding the rejection claim of imposition of E.T. on purchase value declared under "excise-cum-stock transfer invoice". More over all the invoices are duly authenticated by central excise dept. and declared value of goods was despatched to branch/depot. Therefore the same need not be disputed by the taxing authority.

(f) That in presence of all evidence of cost of goods taken to stock, the entry tax should be charged on its entry value and never on sale value.

5. In this case the State-respondent has not filed any cross objection.

We have carefully heard on the matter from both the parties present, gone through the orders of fora below and the materials on record. At the stage of hearing of the second appeal Sri S.K. Mohapatra learned counsel appearing for the appellant vehemently opposed the action of the learned foras below in levying entry tax on the sale value of the goods and through a written statement challenged the levy of entry tax basing on the proviso to section 2(j) of the OET Act when the appellant has produced the original invoices which includes charges like Excise Duties, insurance charges etc. He has also relied on various judgments of different Hon'ble Courts such as Hon'ble Madhya Pradesh High Court in the case of CST Vrs. Gujarat Steel Tubes, (Indore) 4 STJ 279, and of the same Hon'ble High Court in the case of M/s Sanjay Trading Vrs. CST, 93 STC

589 and prayed to accept the figure returned by the dealer-appellant. Further the learned Counsel of the dealer-appellant also furnished the copies of orders of this Tribunal passed in SA No.284(ET)/2008-09 dated 11.02.2014 (Full Bench), SA No.128(ET) of 2010-11 dated 26.03.2014 (Division Bench) and SA No.185(ET) of 2009-10 dated 06.03.2012 (Division Bench) in support of his claim.

On the other hand the State-respondent by way of filing a written statement supported the action of the LAO to be just and proper as per the provision of section 2(j) of the OET Act and urged this forum to dismiss the appeal filed by the dealer being not based on facts and merits.

7. Before going to adjudicate on the matter as to whether the LAO is justified in his action in levying entry tax on sale value of the scheduled goods brought by way of stock transfer, it warrants to understand the meaning of "Purchase Value" as defined U/s 2 (j) of the OET Act. As per the aforesaid section **Purchase Value** means "the value of the scheduled goods as ascertained from original invoice or bills and includes insurance charges, excise duties, countervailing charges, sales tax, value added tax or, as the case may be, turnover tax, transport charges, freight charges and all other charges incidental to the purchase of such goods." **Provided that** where purchase value of any scheduled goods is not ascertainable on account of non-availability or non-production of the original invoice or bill or when the invoice or bill proved to be false or if the scheduled goods are required or obtained otherwise than by way of purchase, then the purchase value shall be the value or the price at which the scheduled goods of like kind or quality is sold or is capable of being sold in market value;

It is not disputed that entry tax always levied on the entry of the scheduled goods into a local area. But before levy of such tax the purchase value of the scheduled goods are to be ascertained. From the above definition of *purchase value* it became clear that the same to be ascertained from the original invoice or bills which includes insurance charges, excise duties, countervailing charges, sales tax, value added tax or, as the case may be, turnover tax, transport charges, freight charges

and all other charges incidental to the purchase of such goods. When there is non-availability of original invoice or bills or the scheduled goods were obtained otherwise than by way of purchase, then the purchase value of the scheduled goods are to be determined at the price at which the scheduled goods are sold in the market. In this case the dealer-appellant has obtained the scheduled goods otherwise than by way of purchase i.e. by way of stock transfer. Thus it became clear that the appellant has not purchased the goods but received by way of stock transfer from its Principal at Visakhapatnam (Andhra Pradesh), hence the appellant failed to produce any original invoice or bills showing purchase of the scheduled goods. On the other hand the appellant stated to have produced the stock transfer notes in which the Principal has declared the value of the goods and also declared other incidental charges including the freight charges. As per the provision of the Act, when the original invoice or bills are available, the purchase value of the scheduled goods can only be determined on the basis of amount mentioned on the original purchase invoice or bills but not on any other documents such as stock transfer notes etc.

Unless a discussion is made on the various judgements of the Hon'ble Court and also of this Tribunal as cited by the learned counsel of the dealer-appellant, in our view offering of concluding remarks in the present case would be not proper. The Hon'ble High Court of Madhya Pradesh in the case of CST Vrs Gujrat Steel Tubes (Indore) (2004) 4 STJ 279 and in the case of M/s Sanjay Trading Vrs. CST 93 STC 589 emphasized levy of entry tax on the entry of scheduled goods and upholding the observation of the Appellate Tribunal observed that, when the goods are transported by the manufacturer from Head Office to branch at the (manufacturing) cost price then entry tax would be payable on such cost price plus transport expenses and not on the price the goods would fetch in the market basing on the charging Section 3(1) of the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (Entry Tax) where in it is provided that there shall be levied an entry tax on the entry in the course of business of a dealer of goods specified in

Schedule II, into local area for consumption, use or sale therein. But in the said Act (Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, 1976 (Entry Tax), the proviso like as provided to section 2(j) of the Odisha Entry Tax Act, 1999 is found absent. In the proviso to section 2(j) of the OET Act in clear terms it has been clarified how to determine the purchase value when the goods are obtained otherwise than by way of purchase.

8. Further the observations of this Tribunal passed in SA No.284 (ET)/2008-09 dated 11.02.2014 (Full Bench), SA No.128(ET) of 2010-11 dated 26.03.2014 (Division Bench) and SA No.185(ET) of 2009-10 dated 06.03.2012 (Division Bench) as cited by the learned counsel of the dealer-appellant are of no help to him. While the order dated 11.02.2014 (Full Bench) and order dated 26.03.2014 (Division Bench) of this Tribunal dealt in only addition of percentage of freight charges in case of a traders who purchases and sells goods, the order dated 06.03.2012 (Division Bench) was passed basing on the observation of the Hon'ble High Court of Madhya Pradesh in the case of CST Vrs Gujrat Steel Tubes (Indore) (2004) 4 STJ 279, to which we have already discussed in the foregoing paragraphs regarding its inapplicability in the context of the Odisha Entry Tax Act, 1999 in as much as proviso to section 2(j) of the said Act is concerned. Thus, under the facts and circumstances of the case, we are inclined to disposed of the appeal negatively i.e. against the dealer-appellant and in favour of the State-respondent.

9. In the result the appeal filed by the dealer-appellant is dismissed being devoid of any merit and the impugned orders of the learned DCST stands confirmed.

Dictated & corrected by me,

Sd/-
(S.Mohapatra)
Judicial Member-I

Sd/-
(S.Mohapatra)
Judicial Member-I

I agree,

Sd/-
(J.Pradhan)
Accounts Member-II

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