Panoramic view on legal issues

The first attempt to bring tax-laws relating to sale and purchase of goods into the fold of statutory law was made in England in 1676, when British Parliament passed Statute of fraud. The title of the law was read as "An Act for prevention of Frauds & Perjuries". As the name signifies, it was meant to arrest rampant corruption associated with sale & purchase of goods. The Statute of fraud came with bouquet of other laws and had a mnemonic as MY LEGS to signify as following laws:

M-arriage

y-ear above contracts

L-and contracts

E-State contracts

G-oods contract

S-urety

Statute of fraud was further refined into English Sales of Goods Act, 1893, under the wisdom and guidance of Lord Denning which was so well drafted that, when it was repealed during 1979, the reintroduced law had the same words and phrases as in the old Act. The Indian Sales of Goods Act is similarly worded as English Sales of Goods Act except the word "English". It is preserved in the Constitution of India as a pre-independence Act and continue to be classic in the field of tax on sale and purchase of goods. It is a must read for all. The Orissa Sales Tax Act 1947 was repealed and VAT was introduced on 01.04.2005. The objective of Odisha VAT Law is reflected in the white paper. They were inter-alia to introduce a self balancing tax law with set off of input tax against the output tax.

The assessment under VAT Law is audit based and on selection basis. Various issues emerged as the wheel of VAT rolled on. Laws relating to jurisdiction, limitation, claim of input tax credit were hotly contested in Courts, where Department suffered reverses leading to amendments of statutory provisions. But, issues relating to jurisdiction continue to vex the department. As assessments continue to be assailed and quashed on the grounds of being antedated, we are placing various Court decisions where Courts have opened their mind on the issues and have thrown light on their operation.

Issues relating Entry Tax Act are contested in Supreme Court where the matter is pending in the larger bench. But the Entry Tax Act continuous to be valid as per two successive decisions of Orissa High Court. The Department also won the litigation relating to levy of Entry Tax on imported goods, which has resulted in good inflow of revenue.

Legal Issues

JURISDICTION:

01. *B.P. Enterprises Vrs. State of Odisha, (2008) 18 VST 405 (Ori):*

    Even if the dealer does not take any objection in regard to jurisdiction of the assessing authority before the said authority, it becomes the duty of the assessing authority himself to keep the jurisdictional issue in mind.

02. *Deepak Agro Foods Vrs. State of Rajasthan, (2008) 16 VST 454 (SC):*

    Assessment proceedings are not in the nature of judicial proceeding. Irregular assessment orders are curable but assessment orders passed without jurisdiction are null and void.

ASSESSMENT UNDER SECTION 42:

I. ANTE-DATED ASSESSMENT ORDERS:

01. *Geetanjali Cement Products Vrs. Sales Tax Officer, (2010) 36 VST 380 (Ori):*

There was lack of regularity of maintenance of order-sheets. Order of assessment and demand notice should be issued to the dealers by registered post with A.D. The signature of authorized representative or dealer shall be obtained on the body of the order-sheet on the date of his appearance.

The following direction was given in this case: "…Before parting with this case, we direct the State Govt. as well as the Commissioner of Commercial Taxes, Orissa, to issue a notification to the following effect:

(1) Instructing all the assessing officers to use the Government printed order sheet forms from 1st December, 2009,

(2) The order of assessment & the demand notice ahall be issued to the dealers by registered Post with A.D. &

(3) The record shall be maintained up to date & when the dealer or his authorized representative appears before the assessing authority or any other appellate authority, his signature shall be taken on the body of the order sheet on the date of his appearance."

01. *Delhi Footwear Vrs. STO, (2015) 77 VST 146 (Ori):*

Assessment order passed in January, 2007, but issued in December, 2008. Since there was delay in service of assessment order, presumption is to be drawn that the order is not passed on the date which is reflected on the face of the order.

The use of expressions “shall” and “not less thirty days” in sub-section (2) of section 42 made it amply clear that the assessing officer was bound to allow minimum thirty days time of production of books of accounts & documents. Sub Section (2) further revealed that discretion was vested on the assessing officer to allow more than thirty days time of production of books of accounts, but he had no jurisdiction to allow less than thirty days’ time there for. Issue of notice U/s 42 (2) of the OVAT Act was a condition precedent to the validity of any assessment U/s 42 of the OVAT Act. If the notice issued is invalid for any reason, then the proceeding initiated in pursuance of such notice would be illegal & invalid. Section 42(2) of OVAT Act was mandatory provision not with regard to any procedural law, but with regard to a substantive right. Any infirmity or invalidity in the notice U/s 42 (2) of the OVAT Act went to the root of the jurisdiction of the assessing authority. Therefore the notice issued to the petitioner being invalid in law the order of assessment & demand notice passed / issued were not sustainable in Law.

Chandrika Sao Vrs. STO, 2015 (I) OLR 628:

In the instant case, there is no explanation for the delay of more than four months caused in issuing the assessment order to the petitioner except stating that due to clerical mistake there has been a delay of four months. Nothing has been stated in detail as to when the order of assessment has been handed over to the dispatch section and who is responsible for such delay. Therefore, we have no hesitation to hold that the order of assessment under Annexure-1 was not made on the date it was purported to have been made. In order to give an impression that the impugned order of assessment was passed within the period of limitation, the order bears the date 18.6.2008 whereas it has been passed much later that.

REPEATED AUDIT ASSESSMENT COVERING SAME TAX PERIOD(S):

01. Nayak Variety Store Vrs. CST, (2008) 18 VST 500 (Ori):

The Legislature never intended to have repeated tax audits and audit assessments for the same tax period(s) because such an interpretation would render the provisions contained in sub-sections (6) and (7) of Section 42 redundant, as the department in case of failure to complete an audit assessment within the time prescribed can always start a new audit for fresh audit assessment and thereby it will become a never ending process. Besides, once audit assessment under Section 42 is completed for a particular period, the assessing officer becomes *functus officio* for the same period so far as the second and subsequent assessment under that section is concerned.

The interest of revenue is well protected under Section 43 which provides a longer period of limitation of five years to take action under that section, where audit assessment under Section 42 of the Act had been completed. There being adequate safeguard provided in the statute for assessing the undisclosed/escaped turnover/under-assessments for different reasons as contained in Section 43, resorting to repeated tax audits and audit assessments is wholly unjustified, arbitrary and illegal.

02. Bhushan Power & Steel Ltd. Vrs. State of Odisha, (2012) 47 VST 466 (Ori):

Assessing authority cannot utilize adverse report other than the audit visit report against a dealer while making audit assessment.

03. Steel Junction Vrs. DCST, W.P.(C) No. 20442 of 2014, disposed of on 10.11.2014:

AVR did not contain allegation regarding disallowance of ITC and rejection of claim of exempted sales. The assessing authority was required to afford opportunity to disallow the same.

<u>ASSESSMENT UNDER SECTION 43:</u>

I. <u>TAX AUDIT / AUDIT ASSESSMENT AFTER COMPLETION OF ASSESSMENT UNDER SECTION 43:</u>

01. Balaji Tobacco Store Vrs. STO, W.P.(C) No. 31251 of 2011, disposed of 18.03.2015:

Assessment of escaped turnover under Section 43, OVAT Act can be made even after completion of audit assessment under Section 42 for self-same tax period.

Now, if we closely look at Section 42, which speaks of audit assessment, we will find that where the tax audit conducted under sub- section (3) of Section 41 results in detection of suppression of purchase or sale or both, erroneous claims of deduction including input tax audit, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the assessing authority may notwithstanding the fact that the dealer may have been assessed under Section 39 or 40, serve on such dealer a notice as prescribed under the Rules along with a copy of the audit visit report for making an audit assessment. Therefore, if audit assessment has to be made after completion of any other assessment provided under the OVAT Act, the same is restricted to assessment made under Section 39 or Section 40 of the OVAT Act and all other types of assessment provided under the said Act are impliedly excluded. If the Legislature in its wisdom has taken away assessment as contemplated under Section 43 from Section 42 for the purpose of making audit assessment, after completion of any other assessment under the OVAT Act, Section 43 cannot be read into Section 42 by the State.

RE-ASSESSMENT ON REMAND BY HIGHER AUTHORITY / COURT CONSEQUENT UPON ASSESSMENT ORDER BEING SET ASIDE:

01. *Veena House Vrs. STO, W.P.(C) No. 22697 of 2014, disposed of 30.03.2015:*

Jurisdiction of assessing authority in respect of dealer assigned with TIN was under challenge before the Tribunal. On 02.05.2009, the Tribunal set aside the order and remanded the matter for fresh assessment by competent authority. Period of limitation in such cases runs from 02.05.2009 and expires on 01.05.2014. Notice for re-assessment in order to comply with the order of Tribunal being issued on 13.02.2015, the same is time barred.

REASONS FOR RE-OPENING AND CERTIFIED COPIES OF DOCUMENTS AND STAGE OF PROVIDING THE SAME:

01. *Adhunik Metaliks Ltd. Vrs. CST, W.P.(C) No.3303, 3309 & 2211 of 2013, disposed of on 14.05.2013:*

Assessing authority is free to collect adverse material behind the back of the assessee, but to confront the materials sought to be utilized against the dealer.

02. *Deo Ispat Alloys Vrs. CCT, 119 (2015) CLT 702 = 2014 (II) ILR CUT 1166:*

An assessing authority is entitled to collect the materials behind the back of the assessee. It is not necessary that all the materials so collected by the assessing authority need be confronted to the assessee. Only those materials which the assessing authority intends to utilize against the assessee during assessment are bound to be disclosed to the assessee.

The next question relates to the stage at which the copy of the seized documents should be supplied to the petitioner-dealer. Should it be

supplied before or after production of books of account for verification by the assessing officer? We should keep in mind that in order to plug the leakage of revenue, the fiscal statutes provide various measures to be taken by the departmental officers including surprise visit to the place of business, audit visit, establishment of check-post, inspection of goods in transit, etc. Pursuant to such provisions, very often departmental officers used to pay surprise visit to the business premises of the dealer to find out whether all the transactions effected by a dealer in his day-to-day business are recorded in his regular books of account maintained for the purpose of paying tax. It is not uncommon that unscrupulous businessmen who effect purchase and sale outside, the regular books of account keep note of the same in some slips/chits or secret account for the purpose of their own reference. The inspecting officers while conducting inspection at the place of business of the dealer, invariably try to trace out such duplicate accounts. If any such account comes to their possession, they cross-verify the same with regular books of account maintained by the dealer and submit their verification report to the assessing officer alleging suppression of purchase and/or sale, if any, found on such verification. In such event, the assessing officer is not bound to accept the view of the inspecting officer in respect of the allegations raised against the dealer in the report in entirety. He may not accept the report at all. He may accept the report in part. Therefore, part of the report containing allegation against the dealer and the materials on the basis of which such allegation has been made must have to be disclosed to the dealer for his rebuttal, if the assessing officer wants to utilize the same against the dealer.

03. Lakhiram Jain & Sons Vrs. STO, (2009) 21 VST 280 (Ori):

Production of books of account prior to issuance of certified copy of the seized materials is necessary to rule out the possibility of preparation of accounts in line with the seized documents.

04. Jai Balaji Jyoti Steels Ltd. Vrs. DCST, W.P.(C) No. 23473 of 2013, disposed of 10.02.2015:

Petitioner is entitled to the reason which is nothing but the contents of the seized documents which were seized in course of inspection. Seized documents cannot be supplied before production of regular books of account.

Where the assessing authority concurs with the reason based on materials collected by the inspecting officer, and no additional material is available, the order is not vitiated.

05. K.J. Ispat Ltd. Vrs. CCT, (2012) 55 VST 228 (Ori):

All the materials collected behind the back of the assessee need not be confronted- those materials which the assessing officer wants to utilize against the assessee are bound to be disclosed to the assessee.

06. Hindalco Industries Ltd. Vrs. State of Odisha, W.P.(C) No. 14522 of 2014, disposed of 18.08.2014:

The dealer is required to be confronted with the material obtained against it and dealer shall be given opportunity to rebut such information. While applying prevailing market price to fact situation, and prices disclosed by similar units/dealers selling similar goods, opportunity to rebut has to be extended to the assessee.

07. United Chloro-Paraffin Pvt. Ltd. Vrs. STO, W.P.(C) No. 6029 of 2013, disposed of on 11.02.2014:

Re-assessment can be initiated only after formation of an opinion and reasons of such opinion are to be furnished, when sought for by the assessee.

08. *D.Ch. Guruvalu Son & Co. Vrs. STO, (2008) 14 VST 509 (Ori):*

If the dealer responds and participates in the proceeding, it is open to him to seek for the reasons which necessitated the reopening of the proceeding. At that stage, the assessing officer cannot take the plea that the reasons are not to be indicated. If he is in possession of the materials which he proposes to use against the dealer in the proceeding for re-assessment, he must before using the materials bring them to the notice of the dealer and give them adequate opportunity to explain and answer the case on the basis of those materials.

09. *Indure Ltd. Vrs. CST, (2006) 148 STC 61 (Ori):*

The approach has to be practical and some basis for re-opening has to be disclosed in the notice. In the case of *State of Odisha Vrs. Ugratara Bhojanalaya, (1993) 91 STC 76 (Ori),* it was held that the assessing officer is required to record the basis on which action for re-opening is proposed to be taken. Of course audit objection can be a valid factor which can be taken into consideration by the concerned officer for initiating a proceeding for re-opening assessment. But the concerned assessing officer must independently apply his mind and form an opinion that on the basis of audit objection, an order for re-opening of assessment can be passed. The assessing authority's formation of opinion cannot be dictated by audit objection. Notice should not be issued merely voicing the audit objection without recording any formation of opinion of his own. Notices should not be issued mechanically.

NATURAL JUSTICE:

I. REASONS FOR DISALLOWANCE:

01. Steel Authority of India Ltd. Vrs. STO, (2008) 16 VST 181 (SC):

Affected party is to be made known the reason why the decision went against him and the order indicates application of mind.

02. Larsen & Toubro Ltd. Vrs. State of Odisha, W.P.(C) No.13558 of 2014, disposed of on 03.11.2014:

Reason for disallowance of labour and service charges against the claim of the dealer is required to be ascribed by the authority.

II. ADJOURNMENTS:

01. Maa Ambika E. World Vrs. STO, W.P.(C) No. 5371 of 2015 disposed of on 04.05.2015:

Telephonically intimated the date of further hearing. Deprecated by the High Court.

"We are surprised to note that in the said order sheet, it is mentioned that the matter stands adjourned to 03.12.2014 but no counter signature of the counsel has been taken in the body of the order sheet and instead it is noted that the Dealer's Advocate has been intimated "telephonically" First of all, the communication through telephonically is not permissible under the relevant rules and it is incumbent upon the Assessing Officer that if he adjourns the matter, the counter signature of the counsel or representative of the Dealer is to be obtained in the body of the order sheet itself, signifying knowledge of the next date fixed by him.

In the present case, no such endorsement exists. The Assessing Officer was also duty bound to issue notice to the Dealer by R.P. with A.D, indicating the next date if at all. Failure to do so results in great injustice to various Dealers. We further find that the

assessment order is purportedly passed on 03.12.2014 and the Sales Tax Officer recorded as follows:

'After availing several opportunities, the dealer failed to produce books of accounts'. We fail to understand as to how such recording could be made in the facts and circumstance of the present case when the only date and adjournment has been sought for was purportedly on 19.11.2014."

02. Patra Electronics Vrs. STO, W.P.(C) No. 5805 of 2014 disposed of on 03.07.2014:

Assessing authority is duty bound to intimate the further date of hearing.

03. Laxmi Trading Co. Vrs. CCT, W.P.(C) No. 23782 of 2012 disposed of on 15.01.2013:

Assessing authority is given 6 months time to complete the assessment under Rule 12(3)(h) of the CST (O) Rules from the date of service of notice for assessment as a result of audit. Extension or seeking adjournment is not matter of right.

III. BIAS OF AUTHORITY:

01. ABB Ltd. Vrs. State of Odisha, (2015) 77 VST 124 (Ori):

DCCT, BBSR-II Circle instructed audit officer for enquiry. The officer conducted enquiry and submitted AVR. DCCT, BBSR-II Circle passed assessment order. The assessment order cannot be sustained.

02. Tata Sponge Iron Ltd. Vrs. State of Odisha, (2012) 49 VST 33 (Ori):

Person/authority involved in the audit process should not be the assessing authority.

IV. **<u>ADEQUATE OPPORTUNITY:</u>**

01. Patitapabana Bastralaya Vrs. Sales Tax Officer, (2015) 79 VST 425 (Ori): Delhi Footwear Vrs. STO, (2015) 77 VST 146 (Ori):

Notice in Form VAT-306 is required to be issued by giving not less than 30 days period for appearance and production of books of accounts in terms of Section 42(2) of the OVAT Act. The said provision is mandatory. Defect in the notice prejudices the party. The assessment order was set aside.

MAINTENANCE OF RECORDS IN THE ASSESSMENT PROCEEDINGS:

01. Geetanjali Cement Products Vs. Sales tax officer (2010) 36 VST 38(Ori)

The following direction was given in this case: "…Before parting with this case, we direct the State Govt. as well as the Commissioner of Commercial Taxes, Orissa, to issue a notification to the following effect:

(4) Instructing all the assessing officers to use the Government printed order sheet forms from 1st December, 2009,

(5) The order of assessment & the demand notice ahall be issued to the dealers by registered Post with A.D. &

(6) The record shall be maintained up to date & when the dealer or his authorized representative appears before the assessing authority or any other appellate authority, his signature shall be taken on the body of the order sheet on the date of his appearance."

Other Legal Guidelines

01. Srei International Finance Ltd. Vrs. State of Odisha, (2008) 16 VST 193 (Ori):

There is no estoppel against statute. If a person is not liable, within four corners of statute, to pay tax on any transaction, he cannot be assessed to tax merely because he previously admitted his liability on a wrong notion. Liability to pay tax has always to be imposed by law: it cannot be imposed on admission. Article 265 of the Constitution is very clear on this point.

02. *Govind Saran Ganga Saran Vrs. CST, (1985) 60 STC 1 (SC) = (1985) 155 ITR 144 (SC) = AIR 1985 SC 1041:*

The components which enter into the concept of a tax are well-known.

† The first is character of imposition known by its nature which prescribes the taxable event attracting the levy,

† the second is a clear indication of the person on whom the levy is imposed, and who is obliged to pay the tax,

† the third is rate at which the tax is imposed, and

† the fourth is the measure or value to which the rate will be applied for computing the tax liability.

If those points are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.

03. *New Medical (Agartala) Pvt. Ltd. Vrs. Superintendent of Taxes, (2014) 69 VST 465 (Gau):*

As sales tax the liability falls on the seller, who in his turn passes it on to the consumer. As purchase tax, the liability falls directly on the purchaser. [Ref.: *Poritts & Spencer (Asia) Ltd. Vrs. State of*

Haryna, (1978) 42 STC 433 (SC); Delhi Cloth & General Mills Co. Ltd. Vrs. State of Rajasthan, (1980) 46 STC 256 (SC) = (1980) 4 SCC 71].

04. *State of Odisha Vrs. Mahashakti Engineering Works, STREV No. 66 of 2011, disposed of on 12.02.2014 :*

Levy of tax is on sales which are to be met by the selling dealer; when the dealer is not selling dealer, Tribunal has rightly held that the dealer is not liable to pay tax at all.

05. *Nayak Variety Store Vrs. CST, (2008) 18 VST 500 (Ori):*

Where a statute requires a certain thing to be done in a certain way then the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden.

FATE OF REGISTRATION IN CASE OF DEATH OF PROPRIETOR

01. *Deepak Trading Company vs. State of Orissa, (2009) 23 VST 476 (Ori):*

In case of death of a proprietor, Registration Certificate granted to the proprietor meets civil death- can't be transferred in the name of any legal heirs of proprietor.

PENALTY

01. *National Aluminium Co. Ltd. vs. Deputy Commissioner of Commercial Taxes, (2012) 56 VST 68 (Ori):*

Willful concealment is not an essential ingredient for imposition of penalty.

DEALER CARRYING ON BUSINESS:

01. *State Bank of India Vrs. State of Odisha, 2014 (I) OLR 749 = 2014 (I) ILR CUT 824.*

† Bank is a dealer;

† Where bank effects auction sale of pledged/hypothecated goods, it carries on business. : *Federal Bank Ltd. Vrs. State of Kerala, (2007) 4 SCC 188 = (2007) 6 VST 736 (SC).*

02. *IndusInd Bank Vrs. Principal Secretary, W.P.(C) No.3127 of 2012 disposed of on 12.03.2012.*

03. *State of Odisha Vrs. Odisha Road Transport Co. Ltd., (1997) 107 STC 204 (SC).*

04. *State of Odisha Vrs. Steel Authority of India Ltd., (2011) 44 VST 50 (Ori):*

Sale of iron and steel products as unserviceable is ancillary and incidental to business. Steel Authority of India Ltd. becomes dealer in such goods. Sale of scrap attracts sales tax liability.

THE IMPLICATION OF THE TERM ASSESSMENT & MADE:

01. *P.G.Nagendra vs.CCT, 109 STC 143 (Kar)*

The implication of the terms “assessment made”, “assessment completed” & “assessment passed” is to be understood for the purpose of calculation of limitation period. wherever the term assessment made is subject matter of interpretation, it should be understood as assessment made by the Department. Period for issue & service does not come under the term assessment made & completed. However, when the term assessment passed comes for scrutiny it should be understood as assessment completed by the department & served on the dealer.

RIGHT TO USE

01. *BSNL-vrs- Commissioner of Sales Cuttack& Anr .Order of Hon'ble Supreme Court of India on dated. 25.07.2013 in C.A No. 2048/2008-148 STC 91:*

The Hon'ble Supreme Court of India have remanded 18 **BSNL** cases to respective assessing authority for fresh assessment taking into consideration the amount involved in sale of goods in respect of the impugned transaction. These transactions are claimed as deemed sale by State of Orissa on the ground of transfer of right to use goods & rendering of service by the dealer. The Supreme Court have directed to segregate the claim & come to a conclusion regarding the amount involved in deemed sale & in rendering of the service by the assessing authority.

SALE OF FLAT BY THE REAL ESTATE DEVELOPERS

01. *Apex Court Order dated. 26.09.2013 in case of Larson & Turbo-vrs-State of Karnataka in SLP© No. 17741/2007*

The question whether sale of flats by the real estate developers would be treated as works contract & the state would be able to recover sales Tax on account of such sales was decided by the Hon'ble Supreme Courts of India in case of Larson & Turbo Vrs. State of Karnataka. The Hon'ble Court held that where tripartite agreement is made between the land owner, developer & buyer, it would amount to sale of goods involved in execution of works contract even though goods are embedded on earth & is immovable.

INSTALLATION OF LIFT

01. *Order dated. 06.05.2014 of Hon'ble Supreme Court of India in W.P(C) No. 428/2009 in Case of M/S Kone Elevator India pvt. Ltd-vrs- Union of India & others*

The question whether installation of lift amounts to interstate sale or transfer of property of goods involved in execution of works contract has been considered by the Supreme Court of India in case of M/s Kone Elevators Vrs.- Others. The State of Orissa had levied works contract tax in all these transactions. Upholding the stand of the State the Honb'le Court held that installation of lift attracts works contract tax & will not amount to inter-state sale.

SUPPLY BY CLUB AMOUNTS TO SALE

01. *Order dated. 19.08.2014 of Hon'ble Supreme Court of India in SLP(C) No. 21231/2014& 21628/2014 in case of M/S Bhubaneswar Club-vrs-Commercial Taxes & Another*

The question whether consumption of food & drinks by the members of a club is pending consideration in the High Court of Orissa in case of BBSR Club vs. State of Orissa. The Hon'ble Court directed the petitioner to pay the entire tax demand. The dealer preferred appeal before the Supreme Court of India who directed the dealer to comply the order of the Hon'ble High Court of Orissa.

IMPORTED GOODS

01. *Tata steel ltd. vs. State in W.P.(C) No.15519/2010, order dt.09.10.12*

The State is authorised to levy entry tax on goods imported from outside the country.

GOODS PRODUCED IN THE STATE ARE NOT COVERED BY PARA 30

01. *M/S Nestle India Ltd.-vrs- CCT . Order dated. 05.08.2014 in W.P(C) No. 13573/2014*

This is a case relating to **Nestle India** Private Ltd. The dealer brings milk products into the state. Similar goods are also produced inside

the State. Earlier the Hon'ble High Court had granted stay on recovery of Entry Tax relying on their own judgment dt.18.02.08 in case of Reliance Industries. The tax demand was made on the dealer on the ground that similar goods are produced inside the State & the dealer is not entitled for conditional stay. Upon the writ petition filed by the dealer, the Hon'ble High Court directed the dealer to pay the entire demanded dues subject to the result of the writ petition.

02. M/s Shree Balaji Granite, order dt.23.11.15 in W.P.(C) No.20431/2015:

(a) returns shall be regularly filed by the petitioner as is necessary under the Odisha Entry Tax Act and the petitioner shall go on depositing 1/3rd of the said amount as Entry Tax due with the Revenue authorities;

(b) For the balance 2/3rd due, it shall deposit the said amount in any nationalized bank by way of a fixed deposit for a period of one year and the concerned Assessing Authority shall have lien over the said bank deposit. The said bank deposit has to be renewed annually until the final judgment of the Hon'ble Apex Court (supra) is rendered. It is made clear that the right to the said amount as deposited in the bank shall be dependent upon the final judgment of the Hon'ble Apex Court in the aforesaid case or any modifications made to the interim order dated 3.2.2010; and

(c) after filing of the returns, the petitioner shall provide to his assessing Authority, a photo copy of the fixed deposit receipt, along with a copy of the letter addressed to the bank and duly authenticated by the bank noting the lien in favour of the Assessing Authority.

On compliance of the aforesaid directions, the authorities concerned shall issue necessary way bills to the petitioner to carry on its business.

The aforesaid directions are limited to the cases covered in para-3O of the judgment of this Hon'ble Court in Reliance Industries Ltd. v. State of Odisha (2008) 16 VST 85(Ori).