IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.10347 of 2016

M/s. Pawanjay Sponge Iron Limited, Rourkela	....	***Petitioner***

Mr. Basudev Panda, Senior Advocate
assisted by Mr. B. Panda, Advocate

-versus-

The Deputy Commissioner of Sales Tax, Rourkela-II Circle and others	....	***Opposite Parties***

Mr. Sunil Mishra, Additional Standing Counsel
for Revenue Department

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
28.11.2022

Order No.

07. 1. The challenge in the present petition is to an assessment order dated 15th March, 2016 passed by the Deputy Commissioner of Sales Tax, Rourkela II Circle-Assessing Officer (AO) under Section 10 of the Orissa Entry Tax Act, 1999 (OET Act) for two assessment periods i.e. 1st April, 2011 to 31st March, 2013 and 1st April, 2014 to 31st March, 2015.

2. For the same periods, as regards the assessment under Section 43 of the Orissa Value Added Tax Act, 2004 (OVAT Act), the assessment order passed by the AO on 15th March, 2016 was challenged by the very same Petitioner in W.P.(C) No.10349 of 2016, which has been disposed of by this Court by a separate order passed today whereby while permitting the Petitioner to challenge the said assessment order so far as it concerns the period from 1st April, 2011 to 31st March, 2013 in accordance with law, this Court

has quashed the said assessment order in so far as it concerns the 2nd period i.e. 1st April, 2014 to 31st March, 2015 on the ground that without the acceptance of the self-assessment return filed by the Petitioner under Section 39(2) of the OVAT Act, the said assessment order under Section 43 of the OVAT Act would be bad in law. In doing so, this Court has relied on the judgment dated 1st December, 2021 read with the subsequent order dated 8th April, 2022 of this Court in STREV No.64 of 2016 (***M/s. Keshab Automobiles v. State of Odisha***). The said judgment was affirmed by the Supreme Court of India in its order dated 13th July, 2022 in Special Leave to Appeal (C) No.9912 of 2022 (***Deputy Commissioner of Sales Tax v. M/s. Rathi Steel and Power Limited***).

3. The present petition concerns the assessment under the OET Act for the same periods. The position under the OET Act stands covered by the judgment of the Full Bench of this Court dated 5th August, 2022 in W.P.(C) No.7458 of 2015 (***M/s. ECMAS Resins Pvt. Ltd. v. State of Odisha***), in which it was held that unless the return filed by way of self-assessment under Section 9(1) read with Section 9(2) of the OET Act is 'accepted' by the Department by a formal communication, it cannot trigger a notice for re-assessment under Section 10(1) of the OET Act read with Rule 15 B of the OET Rules.

4. Accordingly, this writ petition is disposed of with the following directions:

(i) In so far as the challenge to the assessment order dated 15th March, 2016 for the assessment period i.e. 1st April, 2011 to 31st March, 2013, the writ petition is permitted to be withdrawn as prayed for by the Petitioner with liberty to the Petitioner to challenge it in accordance with law;

(ii) The impugned assessment order dated 15^{th} March, 2016 for the 2^{nd} period i.e. 1^{st} April, 2014 to 31^{st} March, 2015, is hereby quashed;

(iii) The matter is remanded to the AO for re-working the impugned demand on the above basis and passing a fresh assessment order limited to the period i.e. 1^{st} April, 2011 to 31^{st} March, 2013.

(iv) For the above purpose, the matter will be listed before the AO on 1^{st} February, 2023 on which dated the Petitioner-Assessee will produce a downloaded copy of this order for necessary steps to be taken by the AO. It is clarified that after the AO issues the modified assessment order and demand, it will be open to the Petitioner-Assessee to seek appropriate remedies against it in accordance with law.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda