

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 3280 of 2017

M/s. Sri Jagannath Alloys Pvt.Ltd.,

Petitioner

None

-versus-

Sales Tax Officer, Rourkela 1

Opposite Party

Mr. Sidharth Shankar Padhy, ASC

**CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN**

**ORDER
09.03.2022**

Order No.

- 03.**
- 1.** This matter is taken up by virtual/physical mode.
 - 2.** None appears for the Petitioner at the time of call.
 - 3.** Heard Mr. Sidharth Shankar Padhy, Advocate for the CT and GST Organization (Opposite Party).
 - 4.** The Petitioner is before this Court assailing the assessment order dated 06.10.2016 passed U/s 10 by the Entry Tax Act, 1999 for the tax periods from 01.04.2009 to 31.03.2012, whereby the demand to the tune of Rs.5,24,409/- (Tax amounting to Rs.1,74,803/- + penalty of Rs.3,49,606/-) has been raised.

5. In the petition, the Petitioner has contended that penalty should not have been imposed as there was refund of tax under the Odisha Value Added Tax Act, 2004.

6. Mr. Padhy, counsel for the CT & GST Organization (Opposite Party) submits that whereas the assessment order vide Annexure-3 is dated 06.10.2016, refund order under the OVAT Act, 2004 pertaining for the period from 2009-10 to 2011-12 has been made on 29.12.2016 (Annexure-1). Against the refund of Rs.72,45,332/- sanctioned under the said O.V.A.T. Act, 2004, the Deputy Commissioner of Sales Tax has adjusted the demand of Rs.5,24,409/- raised in the assessment under the OET Act, thereby, the entire demand vide assessment order dated 06.10.2016 (Annexure-3) stands recovered from the Petitioner. He also submits that since the Petitioner has not disputed in the writ petition the tax liability, there is no infirmity in recovering the total demand raised in the assessment U/s 10 of the OET Act by adjustment against the refund that was sanctioned under the O.V.A.T. Act, 2004.

7. In view of the above, since entire demand raised under the OET Act has been recovered by the Revenue, nothing survives for adjudication in the writ petition, as such the petition is rendered infructuous.

8. Accordingly, the writ petition is disposed of as infructuous.

(Jaswant Singh)

Judge

(M.S.Raman)

Judge

Laxmikant

March 9th, 2022 Cuttack

