A.F.R.

HIGH COURT OF ORISSA: CUTTACK

STREV No. 57 of 2013

In the matter of an application under Section 19(1) of the Orissa Entry Tax Act, 1999.

M/s. The Snow White Trading Corporation ... Petitioner

-Versus-

State of Orissa ... Opp. party

For Petitioner : Mr. N.Paikaray

For opp. party : Mr. M.S. Raman,
Standing Counsel (Sales Tax)

P R E S E N T:

THE HONOURABLE SHRI JUSTICE I. MAHANTY
A N D
THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment : 31.03.2014

B.N.Mahapatra, J In this Sales Tax Revision Petition challenge has been made to the validity, maintainability and sustainability of the order dated 02.11.2012 passed by the Division Bench of the Orissa Sales Tax Tribunal, Cuttack in S.A. No.53(ET) of 2011-12 pertaining to assessment year 2003-04 with a prayer for quashing the said order of the learned Tribunal confirming the order of assessment dated 09.03.2007 passed by the Sales Tax Officer and the First Appellate Authority dated 24.03.2011.

2. The petitioner's case in a nutshell is that it is a proprietorship concern and during the year 2003-04 had purchased

lubricants which were scheduled goods falling within the scope of Entry 40 of Part-I of schedule appended to the Orissa Entry Tax Act, 1999 (for short, "OET Act"). All the purchases in question were claimed to have been made from the registered dealers, namely, M/s Valvoline Cummins Ltd., Cuttack (RC No.CUIC 2243); M/s Gulf Oil India Ltd., Cuttack (CUIC 1716); M/s Penzoil Quaker State (I) Ltd., Cuttack (CUIC 1239) ; and M/s Lubrico, Bhubaneswar (BH I 895). The total purchases from those registered dealers were claimed to be Rs.99,84,912/-. The assessment was completed under Section 7 of the OET Act. In the assessment order, it has been observed that the petitioner has not paid the Entry Tax on the turnover of purchases to the tune of Rs.1,00,29,806/-. Being aggrieved at the assessment order, the petitioner preferred first appeal before the Joint Commissioner of Sales Tax, who passed the ex parte order. The petitioner carried further appeal to the Odisha Sales Tax Tribunal (for short, "Tribunal"), who upon hearing the same set aside the order passed in First Appeal and directed the First Appellate Authority to hear the matter afresh. Pursuant to the remand order of the learned Tribunal, the petitioner appeared before the First Appellate Authority and contended that it was not liable to pay Entry Tax as entry tax had been collected as handling charges etc. in the sale invoices. Reliance was also placed on Form E1 produced in support of the claim that the goods purchased by the petitioner have already suffered entry tax earlier. However, by order dated 24.03.2011 learned First Appellate Authority dismissed the appeal and upheld the levy by holding that there is no

mention on the invoices that entry tax has been collected from the petitioner by sellers of the goods. Being aggrieved, petitioner carried the matter before the Tribunal in Second Appeal, which was registered as SA No.53(ET)/2011-12. The learned Tribunal vide its order dated 02.11.2012 dismissed the Second Appeal holding that the action of the learned 1st Appellate Authority is appropriate and legal and there is no justifiable reason to interfere with the order of the learned JCST, which is found to be lawful. Hence, the present Sales Tax Revision Petition.

3. Mr.N.Paikaray, learned counsel appearing on behalf of the petitioner submitted that the impugned order of assessment dated 09.03.2007 passed under Section 7 of the OET Act is bad, unjust and illegal. Since no statutory notice was issued and served on the petitioner for the purpose of assessment under the Entry Tax Act, the order of assessment passed under Annexure-1 is void *ab initio* and *non est* in law.

The petitioner has purchased the scheduled goods from four registered dealers out of whom three registered dealers were carrying on business in Cuttack Municipal Corporation. As there is no entry of goods from outside the "local area", the dealer is not liable to pay entry tax on the scheduled goods purchased from the three registered dealers of Cuttack. Under Section 3 of the O.E.T. Act, which is a charging section, the dealer in scheduled goods is exigible to pay entry tax on the entry of scheduled goods or bringing such goods into the local area. Reading of Section 2(d) of the OET Act makes it clear that it is the entry of scheduled goods into a local area from any place outside that local area

or any place outside the State for consumption, use or sale therein which would be liable to levy of entry tax. Since the selling dealers were registered within the jurisdiction of the first appellate authority as well as Sales Tax Officer, Cuttack-I, Central Circle where the petitioner is registered, inquiry could have been conducted to verify whether entry tax had already been suffered in their hands earlier. While filing the Second Appeal, the dealer /petitioner filed an application for issue of summons to the registered dealers, from whom scheduled goods were purchased, to call for the connected records of selling registered dealers to verify and examine the correctness of the claim of the dealer-petitioner. To prove the bona fide of the petitioner's contention, the petitioner filed a copy of the order of assessment passed in respect of one of the sellers where entry tax has been paid by the aforestated seller. Before the learned Tribunal, the petitioner, inter alia, filed photocopy of the sale invoices dated 30.05.2003 and 09.07.2003 issued by M/s Lubrico, wherein it has been stated by the seller in the body of the sale invoice that inclusive of tax, which implies that the sale price was inclusive of entry tax, inasmuch as OST and surcharge have been charged separately in body of the sale invoice.

4. It was further submitted that under Rule 93(I) of the OST Rules, 1947 "lubricants" are declared to be taxed at the point at which the first of such sales is effected by a dealer. In the instant case, first sale is effected by four dealers registered in the State. Tax liability rests on these registered selling dealers under the OST Act. Under Section 3 of

the OET Act, the liability to pay tax was attached with them inasmuch as they had bought the lubricants into the "local area" from "outside the local area" by way of stock transfer. Since the selling dealers have made compliance of their statutory liability by paying the entry tax, no liability under the OET Act can be fastened with the petitioner. There has been misconstruction of taxable event and improper selection of taxable person. It is asserted by the petitioner that the entry tax has been paid by the selling dealer as per the provisions of OET Act, more particularly, the charging section and hence, onus to disprove shifts onto the Revenue, which has not been discharged by the authorities below. Therefore, the orders of the authorities below are liable to be held perverse.

5. Mr. Raman, learned Standing Counsel for the Sales Tax Department supported the order of the learned Tribunal as well as the orders of the first appellate authority and assessing authority.

6. In the present case, the petitioner is a dealer, inter alia, dealing with lubricants which are scheduled goods and liable to be taxed under the OET Act. He claims to have purchased lubricants worth Rs.99,84,912/- from four registered dealers belonging to Cuttack and Bhubaneswar as per the details given below:

(i)	M/s. Valvoline Cummins Ltd., Cuttack (RC No.CUIC 2243)	Rs.15,29,917/-
(ii)	M/s. Gulf Oil India Ltd., Cuttack (RC No.CUIC 1716)	Rs.71,74,941/-
(iii)	M/s. Penzoil Quaker State (I) Ltd., Cuttack (RC No. CUIC 1239)	Rs.12,10,569/-

(iv)	M/s. Lubrico, Bhubaneswar (RC No.BH I 895)	Rs.69,485/-
	Total:	Rs.99,84,912/-

7. Before the 1st appellate authority, the petitioner produced the purchase invoices issued by the above mentioned four registered dealers from whom the petitioner has purchased lubricants in support of its claim that selling dealers have collected entry tax from him. The learned first appellate authority on examination of such purchase invoices, observed as follows:

> "…. Thus, there is no mention on the invoices issued by the above dealers that entry tax has been collected from the dealer appellant by the sellers of goods.
>
> As per sub Rule 5 of Rule 3 of the O.E.T. Rules, 1999 in order to prove that goods have already been subjected to entry tax or that the entry tax has already been paid under the Act for such goods and no tax shall be further levied under the O.E.T. Rules in respect of such goods purchased by a dealer, the dealer is required to furnish a declaration in Form E-1. The dealer appellant has furnished declaration in form E-1 but bill/invoices No. and date and quantity and entry tax paid as per the invoices in column No.3,4 and 6 respectively have not been filled properly and correctly as prescribed U/r. 3(5) of the O.E.T. Rules to prove that no tax shall be levied further under this Rule in respect of the goods purchased by him. Hence this declaration furnished in form E-1 is not acceptable. It is apparently clear from the above discussion that the goods i.e. lubricants purchased by the dealer-appellant from the dealers of Orissa are not entry tax paid goods. Hence, I am not inclined to interfere in the order of assessment passed by the learned S.T.O. The order of assessment is confirmed."

8. The learned Tribunal in second appeal inter alia has observed as follows:

> "3. In the second journey to the Tribunal, the learned Advocate for the appellant filed Xerox copy of

statement of purchase and prayed for verification of the same by the lower forum. The State has also filed cross objection and submitted the order of learned JCST to be just and proper. The revenue has also pressed that the dealer failed to substantiate his claim u/r.3(5) of the OET Rules by submitting E1 form and that the forms produced as having deficiencies in Col. 3, 4 & 6.

4. Heard both the parties. It is evident from the order of the first appellate authority that in compliance to the order of this Tribunal he has verified the details as produced before him i.e. the purchase invoices of the following dealers.

(i) M/s. Golf Oil India Ltd.
(ii) M/s. Pennzoil Quaker State (I) Ltd.
(iii) M/s. Lubrico, Bhubanewar
(iv) M/s. Valvolin Cummins Ltd.

After due examination learned JCST disallowed the claim and did not accept the E1 form. So it is very evident that he has duly acted upon the order of this Tribunal.

5. In the second journey to the Tribunal, the learned Counsel has also pressed for verification in respect of the above four dealers which has already been done. So, in our considered opinion the action of the learned JCST is appropriate and legal and at this point we do not find any justifiable reason to interfere with the order of learned JCST. As such the impugned order is found to be lawful."

9. In the present Tax Revision Petition, the petitioner has raised the following questions of law:

A. Whether on the facts and in the circumstances of the case, the order of the Tribunal is perverse and not maintainable in the eye of law?

B. Whether the Tribunal is justified in upholding the levy of Entry Tax on the scheduled goods purchased inside the "local area" of Cuttack Municipal Corporation particularly when there was no "entry

of goods" in terms of clause (d) of Section 2 of the OET Act ?

C. Whether the Tribunal is justified in confirming the levy of entry tax on the purchase of lubricants by the petitioner from the registered dealers belonging to Cuttack Municipal Corporation, particularly when lubricants were never brought from outside the "local area" into the "local area"

D. Whether the Tribunal is justified in fixing the entry tax liability on the petitioner presuming that the entry tax had not suffered earlier in the hands of the sellers particularly when as per the provisions of Section 3 of the OET Act the liability to pay entry tax in the present facts and circumstances of the case rests with the sellers who had bought the scheduled goods into the "local area" inside the State of Odisha for consumption, use or sale therein?

E. Whether further levy of entry tax by the forums below is maintainable in the eye of law, particularly when entry tax has already suffered in the hands of the first seller inside the State of Odisha is apparent, inasmuch as when under Rule 93 I of OST Rules, lubricants are declared to be taxed at the point when the first of such sales is effected by a dealer?

F. Whether on the fact and in the circumstances of the case, the charging section, i.e., Section 3 of the OET Act had any application in respect of the purchases made inside the State of Odisha, more particularly, inside the "local area" as defined under the said Act ?

G. Whether the order of assessment is *ab initio* void as no statutory notice was ever issued or served on the dealer for the purpose of assessment?

H. Whether the impugned levy of entry tax is without jurisdiction and without any authority of law in respect of the scheduled goods purchased within the "local area" of Cuttack Municipal Corporation from the sellers of the goods who are registered under the sales tax Circle, where the petitioner is registered?

According to us, the above questions would not be proper questions of law to be adjudicated in the case at hand.

10. The real questions of law which need to be answered in view of various contentions taken before us are as follows:

(i) Whether entry tax can be levied on scheduled goods purchased inside the local area from another registered dealer of the same local area who brought the scheduled goods into the local area ?

(ii) Whether under law it is obligatory on the part of a dealer to furnish Form E-1 in respect of the goods purchased by it from another registered dealers of the same local area who brought the scheduled goods in question into the local area ?

(iii) Whether to get the benefit from payment of entry tax in respect of the scheduled goods purchased by a dealer from another registered dealer(s) of the same local area, who brought the said goods into the local area, the dealer has to prove that its seller(s) have in fact paid the entry tax ?

(iv) Whether furnishing of complete/defect free Form E-1 as prescribed under sub-rule (5) of Rule 3 along with returns under sub-rule (1) of Rule 10 is mandatory for

a dealer who brings the scheduled goods into the local area to prove that the goods purchased by it have already been subjected to entry tax or that the entry tax has already been paid under the Act for such goods?

(v) Whether non-furnishing of Form E-1, as prescribed under sub-rule (5) of Rule 3 along with return under sub-rule (1) of Rule 10, makes the dealer, who brings the scheduled goods into the local area, liable to pay the entry tax on scheduled goods purchased from outside the local area ?

(vi) Whether a dealer who brought the scheduled goods into the local area and has filed a defective Form E-1 can call upon the Department to summon or call for the records of the selling dealer or any other person or to conduct any inquiry to test the correctness of its claim that the goods purchased by him has suffered tax at the hands of any purported selling dealer of outside the local area ?

11. To deal with question No.(i), it is necessary to know what is contemplated in the charging section under the Entry Tax Act. Section 3 of the Entry Tax Act is the charging section, the relevant portions of which are reproduced below:

> "3. Levy of Tax.—
>
> (1) There shall be levied and collected a tax on entry of the scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding twelve percentum of the purchase value of such goods from such date as may be specified by the State Government on different dates and different rates may be specified for different goods and local areas subject to such conditions as may be prescribed."

xx xx xx

> (2) The tax leviable under this Act shall be paid by every dealer in scheduled goods or any other person who brings or cause to be brought into a local area such scheduled goods whether on his own account or on account of his principal or customer or takes delivery or is entitled to take delivery of such goods on such entry:
>
> ***Provided that*** no tax shall be levied under this Act on the entry of scheduled goods into a local area, if it is proved to the satisfaction of the assessing authority that such goods have already been subjected to entry tax or that the entry tax has been paid by any other person or dealer under this Act."

12. Bare reading of the above provisions of Section 3 envisages that there is a declaration of liability. It provides that there shall be levied and collected tax on entry of scheduled goods into the local area for consumption, use or sale therein. It further provides that the tax leviable under the Entry Tax Act shall be paid by a dealer in scheduled goods or any other person, who brings or causes to be brought into the local area such scheduled goods whether on his own account or on account of his principal or customer or takes delivery or is entitled to take delivery of such goods on such entry.

The proviso says that no tax shall be levied under this Act on the entry of scheduled goods into the local area, if it is proved to the satisfaction of the assessing authority that such goods have already been subjected to entry tax or that the entry tax has been paid by any other person or dealer under this Act.

Further "entry of goods" as defined in Section 2(d) means entry of goods into local area from any place outside that local area or any place outside the State for consumption, use or sale therein.

13. The above statutory provisions make it clear that the incidence of taxation is on entry of goods into the local area for use, consumption or sale therein. The core of taxing statute is in the charging section and liability to tax arises by virtue of charging section.

The rule of construction of charging section is that before taxing any person, it must be shown that he falls within the ambit of charging section by clear words used in the Section. No one can be taxed by implication. Charging section has to be construed strictly. If a person has not been brought within the ambit of charging section by clear words, he cannot be taxed at all. (See *Commissioner of Wealth Tax, Gujarat-III Ahmedabad vs. Ellis Bridge Gymkhana, AIR 1998 SC 120].*

14. Thus, while interpreting charging section of a taxing statute utmost care should be taken to give proper meaning to the words of the statute and the same should be construed strictly. Its construction cannot be extended beyond the language used in the charging section.

15. In view of the above, we are of the considered opinion that no entry tax can be levied on scheduled goods purchased inside the local area from another registered dealer of the same local area who brought the scheduled goods into the local area.

16. Question No.(ii) is whether under law it is obligatory on the part of a dealer to furnish Form E-1 in respect of the goods purchased by it from

another registered dealer of the same local area who brought the scheduled goods in question into the local area.

17. Let us first see, who is liable to furnish Form E-1 as prescribed under Rule 3(5) along with return under Rule 10(1) of the OET Rules. Rule 10(1) envisages that the return under sub-section (1) of Section 7 of the OET Act shall be furnished in Form E3. In Form E3, a dealer has to furnish/declare various information under different heads. Column 8 of the return Form E3 requires a dealer to declare the *"purchase value of scheduled goods brought into the local area in respect of which entry tax has been levied at earlier stage (details to be furnished in Form E1)*".

The information required to be declared under column 8 is in consonance with the proviso to sub-section (2) of Section 3 which provides that no tax shall be levied under the Entry Tax Act on the entry of scheduled goods into a local area, if it is proved to the satisfaction of the assessing authority that such goods have already been subjected to entry tax or that the entry tax has been paid by any other person or dealer under the Act. Thus, Form E1 has to be furnished by a dealer who brings the scheduled goods into the local area and claims that in respect of such goods entry tax has been levied earlier.

18. In view of the above, we are of the considered opinion that under law it is not obligatory on the part of a dealer to furnish Form E-1 in respect of the goods purchased by it from another registered dealer of the same local area who brought the scheduled goods in question into the local area.

19. Question No.(iii) is whether to get the benefit from payment of entry tax in respect of the scheduled goods purchased by a dealer from another registered dealer of the same local area, who brought the said goods into the local area, the dealer has to prove that its seller has in fact paid the tax.

20. The incidence of taxation is on entry of the scheduled goods into the local area for use, consumption or sale. Nobody is competent/authorized to shift the point of taxation.

21. In view of the above, we are of the considered opinion that to get benefit from payment of entry tax in respect of the scheduled goods purchased by a dealer from another dealer/registered dealer of that locality, who has brought the goods into the local area, the dealer need not prove that its seller has in fact paid the entry tax. It will be enough for the dealer to show that its seller is identifiable and has in fact made entry of the scheduled goods into the local area and the tax is payable by its sellers.

22. Since question Nos.(iv) and (v) are interlinked, they are dealt with together.

23. It is admitted by the petitioner that he has purchased scheduled goods worth Rs.69,485/- from M/s. Lubrico, Bhubaneswar (RC No.BHI 895). He claims exemption from payment of entry tax on such purchase on the ground that the said goods have suffered entry tax earlier. In support of his contention, he has furnished Form E1 as prescribed under Rule 3(5) of the OET Rules. The above claim of the petitioner was rejected by the authorities below on the ground that it has not furnished complete/defect free Form E-I

as prescribed under sub-rule (5) of Rule 3 along with return under sub-rule (1) of Rule 10 of the OET Rules.

24. Now, we have to examine whether it is mandatory for the dealer-petitioner registered under Cuttack-I Central Circle, Cuttack to furnish Form E1 along with return under Rule 10(1) of the OET Rules in respect of the goods purchased by it from a dealer registered in Bhubaneswar-1 Circle, Bhubaneswar and non-furnishing of Form E1 makes the dealer-petitioner liable to pay entry tax.

25. At this juncture, it is necessary to quote the relevant portion of sub-rule (5) of Rule 3 of the OET Rules:

> **Rule 3. Rate of Tax.-**
>
> xx xx xx
>
> "(5) Notwithstanding anything contained in this rule, no tax shall be levied under these rules in respect of such goods purchased by a dealer for which the details are furnished in Form E1 along with the return under sub-rule (1) of Rule 10 to prove that such goods have already been subjected to entry tax or that the entry tax has already been paid under the Act for such goods"

26. A conjoint reading of sub-rule (5) of Rule 3 and proviso to Section 3(2) and column 8 of Return Form E3 makes it clear that it is obligatory on the part of the dealer, who brings the scheduled goods into the local area, to furnish Form E-1 along with return to prove that the scheduled goods purchased by it from another dealer have already been subjected to entry tax or that the entry tax has already been paid under the Entry Tax Act for such goods. Thus, sub-rule (5) of Rule 3 of the OET Rules is mandatory in nature.

27. Perusal of Form E-1 reveals that a dealer in order to prove that the goods purchased by him have already been subjected to entry tax or that the entry tax has already been paid under the OET Act for such goods, he has to furnish details in Form E-1 about (i) registration number and name of the dealer from whom purchased, (ii) name of the scheduled goods purchased, (iii) bill/invoice number and date, (iv) quantity, (v) purchase value of the goods as per invoice, (vi) entry tax paid as per invoice, (vii) remarks.

As it appears, Rule 3 (5) has been prescribed to seal/plug leakage/evasion of entry tax and ensure payment of entry tax leviable and payable on purchase of scheduled goods.

28. Law is well-settled that when the statute requires to do certain thing in certain way, the thing must be done in that way or not at all. Other methods or modes of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim *"Expressio unius est exclusion alteris",* meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible. (See ***Taylor v. Taylor, (1876) 1 Ch.D.426; Nazir Ahmed v. King Emperor, AIR 1936 PC 253; Ram Phal Kundu v. Kamal Sharma, (2004) 2 SCC 759; and Indian Bank's Association v. Devkala Consultancy Service, AIR 2004 SC 2615***).

29. In view of the above, we are of the considered opinion that furnishing of Form E-1 as prescribed under sub-rule (5) of Rule 3 along with

returns under sub-rule (1) of Rule 10 is mandatory on the part of a dealer who brings the scheduled goods into the local area to prove that the goods purchased by it have already been subjected to entry tax or that the entry tax has already been paid under the Act for such goods and that non-furnishing of Form E-1 as prescribed under sub-rule (5) of Rule 3 along with return under sub-rule (1) of Rule 10 makes the dealer, who brings the scheduled goods into the local area, liable to pay the entry tax on scheduled goods purchased from outside the local area.

30. Question No.(vi) is whether a dealer who has brought the scheduled goods into the local area and has filed a defective Form E-1 can call upon the Department to summon or call for the records of the selling dealer or any other person or to conduct any inquiry to test the correctness of its claim that the goods purchased by it has suffered tax at the hands of any purported selling dealer.

31. There is a conceptual difference between production of alternative materials to avail benefit of tax (for example, Section 6(2) of the CST Act, 1956 and production of Form-F) and mandatory requirement to produce declaration form (for example, Form-C under the CST Act, 1956 and Form-D under the OST Act, 1947) to avail tax concession/benefit. In other words, wherever, alternatives are provided, it is specifically provided. But in the instant case, a bare reading of Rule 5(3) of the OET Rules quoted above makes the position clear that the dealer who claims that no tax is payable on entry of scheduled goods into the local area has to file requisite Form E-1 along with return as prescribed under the Statute.

32. Admittedly, in the instant case, Form E-1 which has been filed in respect of the scheduled goods purchased from M/s. Lubrico, Bhubaneswar (RC No.BH I 895) is incomplete/defective and therefore, does not meet the requirement in order to prove that the dealer-petitioner is not liable to pay entry tax. The burden is on the dealer to file complete and defect free Form E-1. It is not open to contend that to test correctness of its claim the Department has to summon or call for the records of selling dealers or of any other person or to conduct any inquiry. The burden lies squarely on the dealer to substantiate its claim and if it is not done the consequence is that it is liable to pay tax.

33. In view of the above, we are of the considered opinion that a dealer who has brought the scheduled goods into the local area and has filed defective Form E1 cannot call upon the Department to summon or call for the records of the selling dealer or any other person or to conduct inquiry to test the correctness of its claim that the goods purchased by it has suffered tax at the hands of any purported selling dealer.

34. After analysis of the legal position, the factual scenario has to be examined. From perusal of the assessment order, first appeal order and second appeal order, it is clear that the petitioner has nowhere canvassed the points which are presently urged before us in respect of purchase of scheduled goods claimed to have been made from three local dealers registered in Cuttack-1 Central Circle, Cuttack.

On contrary, petitioner's stand related to the acceptability of the Form E1, purchase invoices and prayer for direction to the tax authority to

summon or call for the records of selling dealer or to conduct any inquiry to substantiate petitioner's stand.

Assessment order does not reveal that the petitioner took any of the contentions raised now before the taxing authority or any appellate authority.

Before the 1st appellate authority, the petitioner contended that it being a dealer in lubricants, which is scheduled goods under the OET Act, he purchased the scheduled goods from the registered dealers of Orissa on payment of entry tax and hence is not liable to pay entry tax again. In support of its above contention, the petitioner produced purchase invoices issued by the selling dealer. On examination of those purchase invoices, the 1st appellate authority observed that there is no mention on the invoices issued by the selling dealers that entry tax has been collected from the dealer-petitioner by the sellers of goods. The 1st appellate authority has also not accepted the Form E1 produced by the petitioner as the same were incomplete/defective. For the aforesaid reasons, the 1st appellate authority has confirmed the assessment.

Before the learned Tribunal, the petitioner filed Xerox copy of the statement of purchase and prayed for verification of the same by the lower forum. The contention of Revenue was that the petitioner dealer failed to substantiate its claim under Rule 3(5) of the OET Rules by submitting the complete/defect free Form E1. The learned Tribunal dismissed the appeal on the ground that the action of the 1st appellate authority is just, appropriate and legal.

35. The issue relating to production of Form E1 as well as to call upon the Department to summon or call for the records of the selling dealer (s) or conduct any inquiry to test correctness of the petitioner's claim that the goods purchased by it has suffered tax at the hands of its selling dealer (s) has been elaborately discussed above. So far the present stands in respect of purchase of scheduled goods claimed to have been made from the dealers of same local area and under the law, the petitioner is not liable to pay entry tax are concerned, the same having not been taken before the authorities below, they have not dealt with the factual background vis-à-vis the position of law. It would be, therefore, appropriate that the Tribunal shall deal with this aspect after giving adequate and appropriate liberty to the Revenue to counter the said stands and adduce rebuttal materials.

36. In view of the above, the matter is remitted back to the Tribunal for fresh adjudication in the light of our observations made above.

37. The STREV is disposed of accordingly.

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B.N. Mahapatra, J.

I. Mahanty, J. I agree.

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I. Mahanty, J.

Orissa High Court, Cuttack
Dated 31ST March, 2014/ss/skj