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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.22449 of 2024

In the matter of an Application under Articles 226 and 227 of the Constitution of India, 1950

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M/s. Paradeep Phosphates Ltd.
(A Company registered under
the Companies Act, 1956)
Having its Registered Office
At "Bayan Bhawan"
Pandit Jawaharlal Nehru Marg
Bhubaneshwar, District: Khordha
Represented by its
General Manager (F&A)
Shri Anshuman Mishra. ... Petitioner

-*VERSUS*-

1. The Commissioner of Sales Tax, Odisha
Commissionerate of Commercial Tax and
Goods and Services Tax, Odisha
Banijyakar Bhawan, Cantonment Road
Cuttack – 753 001.

2. The Joint Commissioner of Sales Tax
Commercial Tax and
Goods and Services Tax Circle
Paradeep, District: Jagatsinghpur. ... Opposite parties

Counsel appeared for the parties:

For the Petitioner : Mr. Bibekananda Mohanti,
Senior Advocate
Assisted by
M/s. Mark Wright,
Adhiraj Mohanty,
Ashish Kumar Samal
Sahil Sovan Swain and
Sayed Shahzeb Ali, Advocates

For the Opposite parties : Mr. Sunil Mishra,
Standing Counsel,
Commercial Tax and
Goods and Services Tax
Organisation

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 21.01.2026 :: Date of Judgment : 08.04.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

Propriety, legal sanctity, authority and jurisdiction in framing assessment under Section 10 of the Odisha Entry Tax Act, 1999 (for brevity, "OET Act") *vide* Order dated 12.07.2024 in Form E-7 (Rule 16 of the Odisha Entry Tax Rules, 1999, for short "OET Rules") by the Joint Commissioner of Commercial Tax and Goods and Services Tax Circle, Paradeep (Annexure-9) for the tax periods from 01.04.2005 to 28.02.2006 in connection

with Notice dated 08.09.2023 in Form E-32 [Rule 15D(1) of the OET Rules] *vide* Annexure-8 being questioned by way of the instant writ petition, the petitioner craves for grant of following relief(s) showing indulgence of this Court by exercise of power under Articles 226 and 227 of the Constitution of India:

"That in view of the aforementioned facts and circumstances it is most humbly prayed that this Hon'ble Court may be pleased to issue writ(s):

(i) Quashing the assessment order and demand notice dated 12.07.2024 in Annexure-9 (Series) as being illegal and devoid of merit and bereft of correct procedure.

(ii) Quashing the Notice dated 08.09.2023 in Annexure-8 as being without application of mind and settled law.

(iii) Quashing the Revision Order dated 21.08.2023 (issued on 23.08.2023) in Revision Case No.JSP-21/E/2023-24 in Annexure 7 as being passed without proper application of mind.

(iv) Quashing the communication dated 31.03.2023 in Annexure-4 as being afterthought and without application of mind.

(v) Quashing the notice dated 24.04.2023 in Form E-32 at Annexure 6 as being illegal.

And pass such other order(s) as trite in the interest of law and justice;

For which acts of kindness, the petitioner as in duty bound, shall ever pray."

Case of the petitioner:

2. The profile of the petitioner and the narration of factual matrix as adumbrated in the writ petition, so far as relevant for the purpose of adjudication of issue raised are given hereunder.

2.1. The petitioner, a limited company registered under the Company Act, 1956, having its manufacturing unit located at Paradeep, is engaged in the manufacturing of different types of chemical fertilizers including DAP, MOP, MPK and effects sale of its end products both inside and outside the State of Odisha.

2.2. For the tax periods from 01.04.2005 to 28.02.2006, it filed its self-assessment [1] returns as required under Section 9 of the OET Act read with Rule 15 of the OET Rules. Though no communication was made with respect to acceptance of such self-assessment returns, pursuant to submission of a report bearing No.96 dated 29.03.2006 prepared by the Sales Tax Officer, Intelligence Range, Cuttack, proceeding for Audit

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[1] Meaning of the term *"self-assessment"* can be construed by referring to clause (q) of Section 2 of the OET Act— *"Words and Expressions used herein and not defined in this Act, but defined in the VAT Act shall have the meaning respectively assigned to them in that Act"*— read with clause (47) of Section 2 of the Odisha Value Added Tax Act, 2004 defining the term *"self-assessment"* to mean *"a true and correct determination of net tax liability by a dealer in relation to any tax period"*.

Assessment under Section 9C was initiated by service of a Notice in Form E-30 as required under Rule 15B of the OET Rules construing said "Intelligence Report" as if it were an "Audit Visit Report" submitted under Section 9B of the OET Act read with Rule 11 of the OET Rules. The petitioner participated in the said Audit Assessment proceeding. Upon consideration of objections contained in such report that the liability of entry tax was not appropriately discharged by including customs duty paid on the "imported goods" brought into the local area for consumption, use or sale therein while computing "purchase value" in tune with the definition given at clause (j) of Section 2, and hearing the advocate for the petitioner-company by confronting the Intelligence Report *vis-a-vis* the self-assessment returns, the Assistant Commissioner of Sales Tax (LTU), Cuttack-II Range, Cuttack passed Audit Assessment Order dated 02.08.2006 under Section 9C of the OET Act raising demand to the tune of Rs.84,92,548/-.

2.3. Against the aforementioned Audit Assessment under Section 9C of the OET Act so framed by Order dated 02.08.2006, an appeal under Section 16 of the OET Act being preferred, the Additional Commissioner of Sales Tax (Appeal), Commissionerate of Commercial Tax and Goods and Services Tax, Odisha at Cuttack, on detailed

examination of fact and appreciation of law was pleased to pass following order on 16.07.2019:

"In the instant case, the appellant has neither been selected by the Commissioner for Tax Audit [2] duly approved by him nor been conducted by Audit Team constituted by the Commissioner for the purpose of Audit. It is also been held by Hon'ble Orissa High Court in case of Bhusan Power and Steel Ltd. Vrs. State of Odisha and Others, reported in (2012) 47 VST 466 (Ori) that utilisation of materials other than Audit Report is not permissible while making Audit Assessment. The Adverse materials supplied by the Intelligence Range Cuttack can only be utilized as escaped turnover to make Assessment under Section 10 of the OET act instead of resorting to Section 9C of the OET Act to make Audit Assessment. When the provisions of the statute categorically and clearly distinguish between Audit Assessment as contemplated in Section 9C and Assessment under Section 10, the

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[2] Section 9B of the OET Act specifies modalities of tax audit which stood as follows:

"9B. Identification of taxpayer.—

(1) The Commissioner may select such individual dealers or class of dealers for tax audit on random basis or on the basis of risk analysis or on the basis of any other objective criteria, at such intervals or in such audit cycle, as may be prescribed.

(2) After identification of individual dealers or class of dealers for tax audit under sub-section (1), the Commissioner shall direct that tax audit in respect of such individual dealers or class of dealers be conducted and for the purpose of conduct of such tax audit under this section, the provisions contained in Section 41 of VAT Act shall mutatis mutandis apply:
Provided that the Commissioner may direct tax audit in respect of any individual dealer or class of dealers on out of turn basis or for more than once in an audit cycle to prevent evasion of tax and ensure proper tax compliance.

(3) Tax audit shall ordinarily be conducted in the prescribed manner in the business premises or office or godown or warehouse or any other place, where the business is normally carried on by the dealer or stock in trade or books of account of the business are kept or lodged temporarily or otherwise."

See Rule 11 of the OET Rules, which prescribes detailed Audit process.

statutory officer who is the creation of the statute cannot transgress such provisions contained in the statute.

With the above facts and circumstances of the case and without delving further into factual disputes involved, this forum set aside the impugned Assessment Order passed by the learned Assessing Officer for the material period with a direction to initiate proper proceedings strictly in accordance with the provisions of the OET act and Rules made thereunder.

The case is disposed off accordingly."

2.4. Be it noted here that till 19.07.2019 when the aforementioned Appellate Order was passed no communication was received by the petitioner about the fate of its self-assessment returns with respect to the tax periods from 01.04.2005 to 28.02.2006. Nevertheless, on 09.12.2019 the Deputy Commissioner of Sales Tax, Commercial Tax and Goods and Services Tax Circle, Paradeep (for brevity, "DCST") issued a Letter dated 09.12.2019 with the caption heading *"production of books of account for the period 01.04.2005 to 28.02.2006 (set-aside) under the Entry Tax Act, 1999"* directing the petitioner to appear before the Deputy Commissioner of Sales Tax on 06.01.2020 and produce books of account *"for the purpose of reassessment for the tax periods 01.04.2005 to 28.02.2006 under the Entry Tax Act, 1999"*. In obeisance, the petitioner appeared and filed a *Hazira-cum*-written submission stating therein that there was no completion/conclusion of self-assessment

in tune with Section 9(2) of the OET Act. Furthermore, there is absence of Audit Visit Report contemplated under Section 9B read with Rule 11. The Appellate Authority Order set aside the Audit Assessment under Section 9C for want of jurisdiction. *Ergo*, as time period of five years (prior to amendment) had already been elapsed, no proceeding for reassessment under Section 10(1) was permissible. The petitioner again appeared on 06.02.2023 to state by furnishing written submission that Section 10[3] dealing with *"Reassessment in certain*

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[3] Section 10 of the OET Act stood thus:

"10. Reassessment in certain cases.—

(1) Where for any reason all or any of the scheduled goods brought by a dealer has escaped assessment of tax, or where value of all or any of the scheduled goods has been under-assessed, or any deduction has been allowed wrongly, the assessing authority, on the basis of information in his possession, may, [a][within a period of seven years] from the end of the year to which the tax period relates, serve a notice on the dealer in such form and in such manner as may be prescribed and after making such enquiry as he considers necessary and after giving the dealer a reasonable opportunity of being heard, proceed to assess the dealer accordingly.

(2) If the assessing authority is satisfied that the escapement [a][or under assessment of tax on account of any reason(s) mentioned in sub-section (1) above] is without any reasonable cause, he may direct the dealer to pay in addition to the tax assessed under sub-section (1), by way of penalty, a sum equal to twice the amount of tax additionally assessed under this section.

(3) Where any order passed by the assessing authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interest of revenue consequent to, or in the light of, any judgment or order of any Court or Tribunal, which has become final and binding, then, notwithstanding anything contained in this Act, the assessing authority may proceed to reassess the tax payable by the dealer in accordance with such judgment or order, at any time within a period of three years from the date of the judgment or order."

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a. Substituted "within a period of five years" by the Odisha Entry Tax (Amendment) Act, 2011 (Odisha Act 2 of 2012), assented to by the Governor on 10.02.2012, vide Law Department Notification No. 1742-Legis.-7/11/L, dt.15.02.2012, published in Orissa Gezette Extraordinary No. 257, dt. 16.02.2012. This Amendment Act came into force w.e.f. 01.07.2012, vide Finance Department Notification No. 23154-FIN-CT1-

cases" does not cover reassessment on remand by the Appellate Authority who set aside the Audit Assessment under Section 9C [4]. A ground of demur relying on decisions of this Court, namely *ECMAS Resins Pvt. Ltd.*

TAX-0022/2012/F. (SRO No.312/2012), dt. 18.06.2012, published in Orissa Gazette Extraordinary No. 1183, dt. 18.06.2012.

[4] Section 9C of the OET Act stood thus:

"9C. Audit assessment.—

(1) Where the tax audit conducted under Section 9B results in the detection of suppression of purchases or sales, or both, erroneous claims of deductions, evasion of tax or contravention of any provisions of this Act affecting the tax liability of the dealer, the assessing authority notwithstanding the fact that the dealer may have been assessed under Section 9 or 9A, serve on such dealer a notice in the form and manner prescribed along with a copy of the Audit Visit Report, requiring him to appear in person or through his authorised representative on a date and place specified therein and produce or cause to be produced such books of account and documents relying on which he intends to rebut the findings and estimated loss of revenue in respect of any tax period or periods as determined on such audit and incorporated in the Audit Visit Report.

(2) Where a notice is issued to a dealer under sub-section (1), he shall be allowed time for a period of not less than thirty days for production of relevant books of account and documents.

(3) Where the dealer to whom a notice is issued under sub-section (1) produces the books of account and other documents, the assessing authority may, after examining all the materials as available with him in the record and those produced by the dealer and after causing such other enquiry as he deems necessary, assess the tax due from that dealer accordingly.

(4) If the dealer fails to appear or cause appearance, or fails to produce or cause production of the books of account and documents as required under sub-section (1), the assessing authority may proceed to complete the assessment to the best of his judgment basing on the materials available in the Audit Visit Report and such other materials as may be available, and after causing such enquiry as he deems necessary.

(5) Without prejudice to any penalty or interest that may have been levied under any provision of this Act, an amount equal to twice the amount of tax assessed under sub-section (3) or (4) shall be imposed by way of penalty in respect of any assessment completed under the said sub-sections.

(6) Notwithstanding anything contained to the contrary in any provision under this Act, an assessment under this section shall be completed within a period of six months from the date of service of notice issued under sub-section (1) along with the Audit Visit Report:

Provided that if, for any reason, the assessment is not completed within the time specified in this sub-section, the Commissioner may, on the merit of each such case, allow such further time not exceeding six months for completion of the assessment proceeding.

(7) No order of assessment shall be made under sub-section (3) or (4) after expiry of one year from the date of receipt of the Audit Visit Report."

Vrs. State of Odisha, 2022 (II) ILR–CUT 817 (Full Bench)[5] and *Shayam Metallics and Energy Limited Vrs. Commissioner of Commercial Tax, W.P.(C) No. 7458 of 2015 vide Order dated 05.08.2022* was taken. It is contended that unless self-assessment returns are accepted in consonance with provisions of sub-section (1) and sub-section (2) of Section 9 of the OET Act, reassessment under Section 10 cannot be said to have triggered.

2.5. Nevertheless, a Letter dated 31.03.2023 was issued by the Joint Commissioner of Sales Tax under the caption heading *"Regarding initiation of set aside proceedings for the period 01.04.2005 to 28.02.2006 under the OET Act, 1999"* with reference to "Reply dated 06.02.2023" filed by the petitioner. Mentioning the dates of filing of returns for the tax periods from 01.04.2005 to 28.02.2006, it is stated in the said letter that *"In view of the above, you have self-assessed under Section 9(1) and (2) of the OET Act which is accepted"*. Flagging impermissibility of initiation of proceeding for reassessment under Section 10, a written objection was filed by the petitioner *vide* Letter of Reply dated 20.04.2023, wherein it is highlighted as follows:

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[5] The judgment of Full Bench of this Court being carried to the Hon'ble Supreme Court of India in *State of Odisha Vrs. ECMAS Resins Pvt. Ltd., S.L.P.(C) No.5285 of 2023,* the following Order dated 17.03.2023 was passed::
"Delay condoned. The Special Leave Petition stands dismissed. Pending application stands disposed of."

"Now we have received the aforesaid communication, where your good office in order to overcome the Judgement of Orissa High Court in the matter of ECMAS Resins Pvt Ltd. Vrs. State of Odisha has accepted the returns on 31.03.2023. ***In this regard, we would like to inform you that, during pendency of proceeding under Section of the OET Act a further proceeding under Section 9(1) and (2) cannot be initiated and therefore your aforesaid notice/communication is legally not tenable****.*

In view of above facts and submission, your Honour is requested to drop the reassessment proceedings. The above information may please be kept on record and the letter may please be acknowledged."

2.6. Nonetheless, the Joint Commissioner of Sales Tax issued Notice dated 24.04.2023 in Form E-32 prescribed under Rule 15D contemplating proceeding under Section 10 of the OET Act which was carried in revision under Section 18 of the OET Act, wherein the Commissioner of Commercial Tax and Services Tax, Odisha *vide* Order dated 21.08.2023 having noted the result in the appeal against assessment under Section 9C and acceptance of self-assessment returns under Section 9 observed as follows:

"Gone through the grounds of petition filed by the petitioner and the statutory remedies available. Since any order is yet to be passed by the assessing authority and the revision petition is filed against an intimation, the revision petition itself stands devoid of merit. Since, the above communication does not bear any characteristic or

testimony of an order, the instant petition itself does not fall under the purview of Section 18(3) of the OET Act 1999 and as such the merit of the same cannot be tested in revision. Resultantly, the petition filed under Section 18(3) of the OET Act 1999 is rejected being devoid of merit."

2.7. After disposal of the revision, the Joint Commissioner of Sales Tax issued a fresh Notice dated 08.09.2023 in Form E-32 *"for assessment on tax in case of escaped turnover or under assessment"* omitting the reason for reassessment contained in the earlier Notice dated 24.04.2023 in Form E-32. Admitting the fact that the decision in *ECMAS Resins Pvt. Ltd. (supra)* has attained finality, the Joint Commissioner of Sales Tax proceeded to finalise the assessment apparently under sub-section (1) and sub-section (2), but not under sub-section (3), of Section 10 *vide* Order dated 12.07.2024 by overturning objection as to said assessment being barred by limitation with the following observation:

"Furthermore, since no final order of assessment under Section 10 of the OET Act had been passed and only a communication of acceptance of self-assessed returns for the impugned period had been done on dated 31.03.2023, action of the dealer-company in preferring revision against the communication dated 31.03.2023 was found to be premature, For the said reason, the revision petition filed to that effect was rejected by the Commissioner of Sales Tax In order dated 23.08.2023.

Thus, the objection raised on the Issue of limitation and maintainability does not hold ground."

2.8. Assailing the legality, rationality and tenability of the Reassessment Order dated 12.07.2024 (Annexure-9) passed by the Assessing Authority invoking power under Section 10 of the OET Act, the present writ petition has been filed.

Hearing:

3. Counter affidavit dated 30.06.2025 has been filed being sworn to by the Deputy Commissioner of Commercial Tax and Goods and Services Tax (Law) clearly stating that the assessment impugned in the writ petition has been undertaken by not taking recourse to power conferred under sub-section (3) of Section 10 (*vide* paragraph 7 of the counter affidavit). Emphasising that the case would fall within the ken of Rule 34 of the OET Rules read with Section 49(2) of the OVAT Act, it is stated that there cannot be imputation of flaw in exercising jurisdiction by the JCST by communicating acceptance of self-assessment returns though after disposal of appeal challenging the Order in Audit Assessment under Section 9C of the OET Act.

3.1. A rejoinder affidavit in reply to the contention(s) of the Revenue in the counter affidavit has been filed by the petitioner.

3.2. Heard Sri Bibekananda Mohanti, learned Senior Advocate assisted by Sri Sayed Shahzeb Ali, learned Advocate for the petitioner and Sri Sunil Mishra, learned Standing Counsel representing the opposite parties.

3.3. Hearing being concluded, the matter stood reserved for preparation and pronouncement of Judgment/Order.

Arguments and submissions:

4. Sri Bibekananda Mohanti, learned Senior Advocate being assisted by Sri Sayed Shahzeb Ali, learned Advocate submitted that by way of counter affidavit the Revenue having sought to read provisions of Section 10(3) of the OET Act into Section 49(2) of the OVAT Tax Act, 2004 taking shelter of Rule 34 is inexplicable. Given the factual position obtained on record would unequivocally indicate that the assessment framed under Section 10 of the OET Act *vide* Order dated 12.07.2024 is hit by limitation.

4.1. It is vociferously argued that in the light of decision/ order of the Appellate Authority, proceeding under Section 10(3) of the OET Act is incompetent in view of *Indian Oil Adani Ventures Limited Vrs. State of Odisha, 2025 SCC OnLine Ori 4024*.

4.2. It is submitted that as the self-assessment returns got merged with the Audit Assessment under Section 9C of

the OET Act, though the same got set aside by the Appellate Authority, in view of *ECMAS Resins Pvt. Ltd. Vrs. State of Odisha, 2022 (II) ILR–CUT 817 (Full Bench)* in the absence of communication of acceptance of return(s) filed under sub-section (1) read with sub-section (2) of Section 9 the OET Act by way of formal communication to the petitioner prior to initiation of proceeding *vide* Notice dated 24.04.2023 in Form E-32, the demand by way of reassessment under Section 10 of the OET Act shall not survive. The subsequent Notice dated 08.09.2023 in Form E-32 abandoning the earlier one and discarding reason stated in the earlier notice cannot be held to be validly made.

5. Sri Sunil Mishra, learned Standing Counsel though did not dispute the facts as unfurled in the writ petition, submitted that the assessment under Section 9C of the OET Act based on Intelligence Report being not in consonance with the procedure established in the statute, the Appellate Authority having directed the Assessing Authority to do the assessment by adhering to correct procedure, no fault can be attributed in passing the Assessment Order dated 12.07.2024. The Assessing Authority having accepted the self-assessment returns by following the interpretation of this Court in *ECMAS Resins Pvt. Ltd. Vrs. State of Odisha, 2022 (II) ILR–CUT 817 (Full Bench)* proceeded to assess the tax liability

under Section 10(1). Thus, no infirmity can be imputed against such action of the Assessing Authority in adopting correct procedure in order to appropriately determine the tax liability.

5.1. Referring to the stand taken by the Revenue in the counter affidavit and the scope of proceeding with Section 10(1) of the OET Act in view of *Bhusan Power and Steel Ltd. Vrs. State of Odisha and Others, reported in (2012) 47 VST 466 (Ori),* the learned Standing Counsel has sought to support the action of the Authority concerned.

Consideration of arguments and submissions:

6. It does emanate from Order dated 31.03.2023 of the JCST (Annexure-4) that self-assessment returns with respect to tax periods from 01.04.2005 to 28.02.2006 are stated to have been filed as follows:

Sl. No.	*Month*	*Date of filing of return*
01	*April, 2005*	*26.05.2005*
02	*May, 2005*	*25.06.2005*
03	*June, 2005*	*25.07.2005*
04	*July, 2005*	*25.08.2005*
05	*August, 2005*	*26.09.2005*
06	*September, 2005*	*26.10.2005*
07	*October, 2005*	*28.11.2005*
08	*November, 2005*	*26.12.2005*
09	*December, 2005*	*25.01.2006*
10	*January, 2006*	*24.02.2006*
11	*February, 2006*	*27.03.2006*

6.1. The Sales Tax Officer, Intelligence submitted a Report bearing No.96, dated 29.03.2006. Assessment Order dated 02.08.2006 passed by the Assistant Commissioner of Sales Tax (LTU) reveals that *"On receipt of Audit Visit Report, Notice in Form E-30 was issued to the dealer fixing date to 10.07.2006"*. Section 9B of the OET Act speaks of "tax audit", which was to be undertaken as provided under Section 41 of the Odisha Value Added Tax Act, 2004 ("OVAT Act", for short) read with Rule 41 of the Odisha Value Added Tax Rules, 2005 ("OVAT Rules", for brevity). Assessment under Section 9C is supposed to be undertaken *"where the tax audit conducted under Section 9B results in the detection of suppression of purchases or sales, or both, erroneous claims of deductions, evasion of tax, or contravention of any provisions of this Act affecting the tax liability of the dealer*". Notwithstanding the fact that the dealer may have been assessed under Section 9 (Self-Assessment) or Section 9A (Provisional Assessment), the assessing authority was required to serve on such dealer a notice in the Form E-30 along with copy of Audit Visit Report and proceed with the assessment in the manner prescribed, *viz.,* Rule 15B of the OET Rules. Said Notice must contain instruction to the dealer *"to appear in person or through his authorised representative on a date and place specified therein and produce or cause to be produced such books of account and documents relying*

on which he (the Assessing Authority) intends to rebut the findings and estimated loss of revenue in respect of any tax period or periods as determined on such audit and incorporated in the Audit Visit Report". Though Report submitted by the Sales Tax Officer, Intelligence was not in consonance with the modalities provided in Section 9B of the OET Act read with Section 41 of the OVAT Act and the Rules framed thereunder, treating it to be "Audit Visit Report", the Assessing Authority proceeded with the Audit Assessment under Section 9C. The jurisdiction and authority of such assessment being assailed in the statutory appeal under Section 16, stemming on ratio laid down in *Bhusan Power and Steel Limited Vrs. State of Odisha, (2012) 47 VST 466 (Ori)* the Additional Commissioner of Sales Tax (Appeal) set aside the Assessment Order dated 02.08.2006 passed under Section 9C of the OET Act with further direction *"to initiate proper proceedings strictly in accordance with the provisions of OET Act and Rules made thereunder"*.

6.2. As if the Appellate Order is an order of remit, and the same proceeding under Section 9C revived, the Deputy Commissioner of Sales Tax *vide* Letter dated 09.12.2019 directed the petitioner to produce books of account and other documents relating to the tax periods from 01.04.2005 to 28.02.2006. Opposing such action, the petitioner cited that Section 10 of the OET Act

contemplates reassessment under certain cases which does not engulf within itself set aside/remand cases. Having perused Section 10 this Court finds force in such objection put forth by the petitioner.

6.3. What must be highlighted from the Appellate Order referred to above is to "*initiate proper proceedings strictly in accordance with the provisions of OET Act and Rules made thereunder*". Section 10 of the OET Act empowers the Assessing Authority to initiate proceeding where for any reason all or any of the scheduled goods brought by a dealer has escaped assessment of tax, or where value of all or any of the scheduled goods has been under-assessed, or any deduction has been allowed wrongly, the Assessing Authority, on the basis of information in his possession, may, within a period of seven years [five years, pre-amended position] from the end of the year[6] to which the tax period[7] relates, serve a notice on the dealer in such form and in such manner as may be "prescribed"[8] [*i.e.,* in Form E-32 in terms of Rule 15D of the OET Rules] and after making such enquiry as he considers necessary and after giving the dealer a reasonable opportunity of being heard, proceed to assess the dealer accordingly.

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6 As per Section 2(p) of the OET Act, "Year" means "the Financial Year".

7 As per Section 2(oo) of the OET Act, "Tax period" means "such period for which return is required to be furnished by or under this Act".

8 "Prescribed" has been defined in Section 2(i) in the OET Act to mean "prescribed by Rules".

6.4. Having noticed the statutory provisions of the OET Act and relevant Rules framed thereunder and taking note of principles that the Court is not supposed to supply the gaps in the statute, this Court in *ECMAS Resins Pvt. Ltd. Vrs. State of Odisha, Vrs. State of Odisha, 2022 (II) ILR–CUT 817 (Full Bench)* held as follows:

> *"43. The sum total of the above discussion is that as far as a return filed by way of self assessment under Section 9(1) read with Section 9(2) of the OET Act is concerned, unless it is 'accepted' by the Department by a formal communication to the dealer, it cannot be said to be an assessment that has been accepted and without such acceptance, it cannot trigger a notice for reassessment under Section 10(1) of the OET Act read with 15B of the OET Rules. This answers the question posed to the Court.*
>
> *44. As far as the individual writ petition is concerned, it is ordered as under:*
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> *(i) In W.P.(C) No.7458 of 2015 filed by ERPL, the impugned re-assessment order dated 19th February 2015 and the consequential demand, if any, raised are hereby quashed.*
>
> *(ii) In W.P.(C) No. 7296 of 2013 filed by SMEL, the impugned reassessment order dated 23rd February 2013 and the consequential demand notice (Annexure-3) are hereby quashed."*

6.5. After such an authoritative enunciation of law, it seems wisdom dawned and the Assessing Authority taking advantage of Appellate Order dated 16.07.2019 setting

aside the Assessment Order passed under Section 9C, undertook exercise of "acceptance" of self-assessment returns which were furnished at the relevant point of time, *i.e.,* during 2005-06. Since tax periods under assessment are covered within 01.04.2005 to 28.02.2006, end of the year would be 31.03.2006. "Five years from the end of the year to which the tax period relates" as it existed prior to 01.07.2012, *i.e.,* prior to date of effect of the OET (Amendment) Act, 2012, would lapse on 31.03.2011. By the date the amendment came into force on 01.07.2012, the five years period from 31.03.2006 had already expired. Therefore, even for the purpose of reassessment, jurisdiction to initiate proceeding under sub-section (1) of Section 10 of the OET Act lapsed by the date the Appellate Order set aside the Audit Assessment Order under Section 9C. Admittedly on the said date of Appellate Order self-assessment returns were not scrutinised and/or accepted and no communication thereof had ever been made by that date.

6.6. Be that be, it emanates from Letter dated 31.03.2023 of the Joint Commissioner of Sales Tax that:

"In view of above, you have accepted the order and raised no issue on non-communication of Order under Section 9 of the OET Act before the appropriate forum. Further, issue of time limitation is covered under Section 49(2) of the OVAT Act read with Rule 34 of the OET Act. Hence,

*you are not entitled to raise that issue at this point of time. Besides that, you have filed returns for the period 01.04.2005 to 28.02.2006 under OET Act is as follows: *** Accordingly, as per the above, you have self-assessed under Section 9(1) and (2) of the OET Act which is accepted."*

6.7. It is discernible that notwithstanding that the Intelligence Report pointing out suppression/ escapement of turnover was submitted in the year 2006, (such Report being the foundation for initiation of proceeding for Audit Assessment under Section 9C), in the year 2023 the JCST communicated the factum of acceptance of such self-assessment returns. Such mechanical application of mind is incoherent with the statutory requirement inasmuch as the "acceptance" of self-assessment returns is made *vide* Letter dated 31.03.2023 *ex facie* speaks volumes. Only to cover up latent deficiency and lacunae, such exercise was made in order to proceed with the reassessment under Section 10 of the OET Act, even though the Assessing Authority lacked jurisdiction as the period has become time-barred.

6.8. Acknowledgment of "acceptance" of self-assessment returns filed during the year 2005-06 by stating that *"Accordingly, as per the above, you have self-assessed under Section 9(1) and (2) of the OET Act which is accepted"* by way of Letter dated 31.03.2023 runs

contrary and incongruous to what is reflected in the statutory Form E-32 dated 24.04.2023, which depicts date of self-assessment being made at paragraph 4 (Annexure-6):

"You have been assessed under Section 9C of the Odisha Entry Tax Act, 1999 for the tax period(s) 01.04.2005 to 28.02.2006 on 02.08.2006."

There is no record to substantiate such fact of acceptance and communication thereof at the relevant point of time. Being fully aware of the fact that self-assessment returns pales into insignificance on the Audit Assessment being undertaken, the same JCST issued fresh Notice in Form E-32 on 08.09.2023 (Annexure-8), which depicts the following:

"You have been assessed under Section 9 of the Orisha Entry Tax Act 1999 for the tax period(s) 01.04.2005 to 28.02.2006 on _____ and communicated to that effect have been made on 31.03.2023."

It is, thus, emerged that abandoning the reason ascribed for initiation of the proceeding by issue of earlier Notice in Form E-32, dated 24.04.2023 (Annexure-6), the above fresh Notice in Form E-32, dated 08.09.2023 was issued citing a different reason. The aforesaid factual position as obtained in record manifests that the self-assessment returns were never accepted. There has been change of opinion and/or manipulation of record to camouflage

that the initiation for reassessment under Section 10 has been made after acceptance of returns in tune with mandate of sub-section (1) and sub-section (2) of Section 9.

6.9. Minute scrutiny of both the Notices in Form E-32, *viz.*, Notice dated 24.04.2023 (Annexure-6) and Notice dated 08.09.2023 (Annexure-8), would show that whereas the former notice purported to have been issued on the premise of Appellate Order being passed so as to engulf within it the initiation of proceeding was made under sub-section (3) of Section 10, the latter notice issued based on acceptance of self-assessment returns which would appear to have been issued under sub-section (1) of Section 10. It is admitted by the opposite parties at paragraph 7 of the counter affidavit that the instant reassessment was not initiated invoking provisions of sub-section (3) of Section 10 of the OET Act.

6.10. This Court would now analyse both the notices.

6.11. The Assessing Authority is competent to initiate proceeding for reassessment *"within a period of seven years from the end of the year to which the tax period relates"* by serving *"a notice on the dealer in such form [Form E-32] and in such manner as may be prescribed [Rule 15D]"* as provided under sub-section (1) of Section 10. Notice in Form E-32 (Annexure-6) for the tax periods

from 01.04.2005 to 28.02.2006 being issued on 24.04.2023 and Notice in Form E-32 (Annexure-8) for the self-same tax periods being issued on 08.09.2023 they are barred by limitation as provided under sub-section (1) of Section 10.

6.12. As admitted in the counter affidavit that the present case does not fall within the scope of Section 10(3) of the OET Act, obviously it would be comprehended within the ambit of sub-sections (1) and (2) of Section 10. The computation of period of limitation as envisaged under Section 10(1) of the OET Act can be couched by referring to the following decisions of this Court.

6.13. In this regard following observations of this Court in the case of *Shree Jagadamba Coal Centre Vrs. Joint Commissioner of Sales Tax, W.P.(C) No. 28030 of 2013, vide Order dated 23.07.2015* may fruitfully be referred to:

"In view of the submission made and the provision of law as noted hereinabove, this writ application is allowed and the Order of Assessment dated 30.01.2013 passed by the Deputy Commissioner of Sales Tax, Cuttack-II Circle, Cuttack is quashed on the ground of limitation for the period prior to 1st April, 2008, in other words, the Order of Assessment is barred by limitation for the period from 01.07.2005 to 31.03.2008 and remit the matter back to the Assessing Officer to pass fresh Assessment Order for the balance period i.e. from 01.04.2008 to 31.03.2010 within a period of three months from the date of receipt of

the certified copy of this order. For such purposc, the petitioner shall appear before the Assessing Officer on 10.08.2015."

6.14. In *B.D. Patnaik Vrs. Deputy Commissioner of Sales Tax, W.P.(C) No.8802 of 2014 this Court vide Order dated 13.05.2014*, it has been held as follows:

"The only submission which has been pressed on behalf of the petitioner is that the impugned order of assessment relates to the period beyond the statutory limitation of seven years from the end of the tax period. The impugned Order dated 21.03.2014 could not thus cover any period prior to 1st March, 2007, while in the present case the impugned Order has covered the period from 01.04.2006 to 31.08.2009, and to the extent the impugned order covers period in respect of which assessment has become time barred, it is liable to be set aside.

The above legal position is not disputed by the learned counsel for the Revenue in view of the provision of Section 43 of the OVAT Act, 2004.

Accordingly, we quash the impugned order of assessment relating to the tax period prior to 1st March, 2007 with liberty to the Assessing Authority to pass a fresh order in accordance with law."

6.15. Taking cue from such view expressed by this Court, when the instant matter is examined it could be discerned that the tax periods involved in the present matter is from 01.04.2005 to 28.02.2006. If end of the year to which tax periods from 01.04.2005 to 28.02.2006 relates is considered, Notice in Form E-32 in

terms of Rule 15D of the OET Rules read with sub-section (1) of Section 10 of the OET Act, as amended with effect from 01.07.2012, was required to be served "within seven years from the end of such tax period". In the case at hand the Notices in Annexure-6 and Annexure-8 were served on the petitioner in the year 2023.

6.16. It may also be noticed that the words "within a period of seven years" has been substituted for "within a period of five years" by way of the Odisha Entry Tax (Amendment) Act, 2012, with effect from 01.07.2012 by virtue of Finance Department Notification dated 18.06.2012.

6.17. Notice can be taken of legal perspective of the word "substitution". It is relevant for the purpose of considering whether aforesaid substitution *qua* limitation for the purpose of assessment under Section 10(1) would take retrospective effect.

6.18. In *Commissioner of Income Tax Vrs. Goslino Mario, (2000) 241 ITR 314 (Gau)* it has been observed as follows:

> *"11. As to this Shri Joshi has submitted that the Explanation is not only procedural but it has affected the substantive right of the assessees. Learned counsel referred to a large number of decisions to satisfy us that if vested rights are affected the statute has to be regarded as only prospective and not retrospective. For the purpose of*

the present case, we do not express our opinion on this aspect of the matter inasmuch as according to us even if the Explanation is given effect from April 1, 1979, which is the date mentioned in this connection, the cases of the assessees being relatable to the assessment year 1976–77, their cases could not have been governed by the Explanation inasmuch as ***it is settled law that assessment has to be made with reference to the law which is in existence at the relevant time.*** *The mere fact that the assessments in question has somehow remained pending on April 1, 1979, cannot be cogent reason to make the Explanation applicable to the cases of the present assessees. This fortuitous circumstance cannot take away the vested rights of the assessees at hand. We are therefore of the view that the Tribunal erred in law in placing reliance on the Explanation to hold that the salaries earned by the assessees would be taxable in India."*

6.19. In *Reliance Industries Ltd. Vrs. Commissioner of Sales Tax, AIR 2020 Ori 55*, it has been held by this Court that:

"9. The case law of the Constitutional Bench, which is sought to be relied upon by the learned counsel for the petitioner in the case of Zile Singh Vrs. State of Haryana reported in (2004) 8 SCC 1 to interpret the effect of the word 'substituted' was to be given effect to retrospectively, failing which it would take away the fundamental right which was conferred.

10. But in our considered opinion, in a tax statute, the word 'substitute' is to be interpreted strictly as per

the legislative intention. ***It cannot be given the retrospective effect unless expressly provided or intention to that effect is manifest from a bare reading of the provision.*** *If an ordinary interpretation is made as per the case law relied by the petitioner, then if any tax is increased, it cannot be realized retrospectively, which can never be the intention of such 'substitution'.* ***Therefore, amending provision will have prospective effect****.*

11. In that view of the matter, every word in a tax statute should be interpreted strictly as it stood on the date the taxing event exists or it occurs. Thus, the argument canvassed by the learned counsel for the petitioner is devoid of any merit, is required to be rejected and is rejected."

6.20. To fortify that the amendment to the OET Act as referred to above operates prospectively a reference to *Bansapani Iron Ltd. Vrs. State of Odisha, 2016 (I) ILR-CUT 50* would suffice. In the said case it has been succinctly held as follows:

*"11. *** In the present case, the facts of the present case is distinct, inasmuch as, the Orissa Value Added Tax (Amendment) Act, 2007 did not itself declare the date from which the statute came into operation and left it to the Government to issue the appointed date through notification.* ***The notification was issued thereafter indicating 1st day of June, 2008 as the appointed date****.*

We are of the considered view that, the same cannot be any clearer indication of legislative

intent other than the notification notifying the appointed date, from which the Act would come into operation. *Apart from the above, we are also of the view that in the judgment cited at the Bar by the petitioner in the case of Punjab Traders, AIR 1990 SC 2300, honourable the Supreme Court clearly came to a conclusion that 'the said amendment was clarificatory, since it was always well understood in trade that khandsari sugar was also sugar'. In the present case, prior to 2008 amendment to the OVAT Act, spare parts were dealt separately other than capital goods. It is only on and from the date, on which spare parts became covered under the term 'capital goods' with the 2008 amendment came into force, that the situation stood otherwise and this amounted to a substantiate change insofar as taxability of a transaction is concerned."*

6.21. Having regard to such unambiguous enunciation of law, the Odisha Entry Tax (Amendment) Act, 2012, having substituted the words "within a period of seven years" with effect from 01.07.2012 by appointing the date of effect of said amendment Act, with respect to period in question, the service of Notice in Form E-32 was required to be served on the dealer "within five years" from the end of the year to which the tax period relates. As the end of the year relatable to the tax periods from 01.04.2005 to 28.02.2006 is 31.03.2006, the notice ought to have been served on the petitioner on or before 31.03.2011. Since the subject-Notice in Form E-32 is

served in the year 2023, the reassessment under sub-section (1) and sub-section (2) of Section 10 *vide* Order dated 12.07.2024 is barred by limitation.

6.22. From the aforesaid discussions looking from any angle, taking into account either pre-amendment or post amendment, it is quite obvious that on the date of initiation of proceeding for reassessment under sub-section (1) of Section 10 by issue of Notice in Form E-32, dated 08.09.2023 has been rendered time-barred.

7. In view of the analysis made in the foregoing paragraphs, having thus perceived that the reassessment framed pursuant to the Notices *vide* Annexures-6 and 7 does not fall within the purview of Section 10(1)/(2), being hit by limitation enshrined therein, the scrutiny of such notices take this Court to ponder upon another facet.

7.1. A cursory glance at provisions contained in sub-section (1), sub-section (2) and sub-section (3) of Section 10 of the OET Act would indicate that while sub-sections (1) and (2) are intertwined leading to indicate one contingency, sub-section (3) thereof comprehends different circumstance. Whereas sub-section (1) and sub-section (2) spell out that notice for reassessment shall be triggered where all or any of the scheduled goods brought by a dealer has escaped assessment of tax, or where value of all or any of the scheduled goods

has been under-assessed, or any deduction has been allowed wrongly, the Assessing Authority, may within a period of seven (five, pre-amendment) years from the end of the year to which the tax period relates, serve a notice on the dealer in Form E-32 in terms of Rule 15D of the OET Rules and on determination of tax liability under such circumstance enumerated in sub-section (1), in addition to raising demand of tax, the dealer may be imposed with the penalty as specified thereon. However, on careful reading of sub-section (3) of Section 10, it would show that it is not dependent neither on sub-section (1) or sub-section (2). Looking at Notice in Form E-32, dated 24.04.2023 (Annexure-6), it is apparent that the Assessing Authority cited reason for exercise of jurisdiction for reassessment as:

"the order passed earlier is found to be erroneous or prejudicial to the interest of revenue consequent to, or in the light of following judgment(s) of the Hon'ble Orissa High Court in case of Bhusan Power and Steel Ltd. Vrs. State of Orissa and others reported in (2012) 47 VST 466 and First Appeal Order No.CUII-AA-15/2006-07 dated 16.07.2019 passed by the Additional Commissioner of Sales Tax (Appeal), Commissionerate of CT and GST, Odisha, at Cuttack."

7.2. However, as contended in paragraph 7 of the counter affidavit, the opposite parties clearly accepted that the case does not fall within scope of sub-section (3) of Section 10, as such the said reason has been given a go-

bye by issue of subsequent Notice in Form E-32, dated 08.09.2023 (Annexure-8).

7.3. The Order of Assessment dated 12.07.2024 (Annexure-9) contains the following:

*"*** The dealer-company has not paid the tax due to Government on Custom Duty amounting to Rs.61,20,55,171.00. Further, the dealer-company has paid Entry Tax @ 0.5% on furnace oil instead of @ 1% on an amount of Rs.3,89,16,072.00. The tax component of both these items works out to Rs.32,54,856.21.* ***As the dealer-company has not paid the tax due which is required to be paid under Law, the dealer-company Is visited with penalty of Rs.65,09,712.42 as per provisions of sub-section (2) of Section 10 of the OET Act.*** *Tax together with penalty works out to Rs.7,71,31,963.31. The dealer-company has already paid an amount of Rs.6,55,79,139.00 along with the returns filed. Further the dealer has paid Rs.3,96,567.00 vide PGR No.30 dated 30.10.2006. Balance tax and penalty payable Rs.1,11,56,257.00 which was adjusted against the refund for the period 1992-93 under GST Act vide refund adjustment order No.l393/CT dt.28.03.2007. Further due to less payment of Entry Tax during the filing of returns, interest under Section 7(5) of the OET Act has been levied to the tune of Rs.12,14,133.00 which the dealer is now required to pay. Hence, the interest of Rs.12,14,133.00 is payable by the dealer-company for the period 01.04.2005 to 28.02.2005 under Entry Tax Act, 1999 as per the terms and conditions of the demand notice enclosed."*

7.4. Imposition of penalty under sub-section (2) of Section 10 of the OET Act in the impugned Assessment Order would unequivocally leads to this Court to construe that the Assessing Authority has exercised power under sub-section (1) of Section 10; obviously not under sub-section (3).

7.5. The above concluding paragraphs contained in the impugned order of assessment clearly demonstrates that the JCST got confused and failed to act according to the authority conferred under the statute. This Court is reminded of dicta of the Hon'ble Supreme Court of India reiterated quite often. In *Babu Verghese Vrs. Bar Council of Kerala, (1999) 3 SCC 422* it is stated that:

> *"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor Vrs. Taylor, (1875) 1 Ch D 426 = 45 LJCh 373 which was followed by Lord Roche in Nazir Ahmad Vrs. King Emperor, (1936) 63 IA 372 = AIR 1936 PC 253 who stated as under:*
>
> *'[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.'*
>
> *32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh Vrs. State of A.P., AIR 1954 SC 322 = 1954 SCR 1098 and again in Deep Chand Vrs. State of Rajasthan, AIR 1961 SC 1527 = (1962)*

1 SCR 662. These cases were considered by a three-Judge Bench of this Court in State of U.P. Vrs. Singhara Singh, AIR 1964 SC 358 = (1964) 1 SCWR 57 and the rule laid down in Nazir Ahmad case, (1936) 63 IA 372 = AIR 1936 PC 253 was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law."

7.6. While first notice in Annexure-6 indicates that the exercise of power to proceed with reassessment was made after the petitioner has been *"assessed under Section 9C of the Odisha Entry Tax Act, 1999 for the tax periods 01.04.2005 to 28.02.2006 on 02.08.2006"*, the subsequent notice in Annexure-8 would indicate that the power was exercise by stating that *"You have been assessed under Section 9 of the Odisha Entry Tax Act, 1999, for the tax periods 01.04.2005 to 28.02.2006 on ..... (left blank; no date is given) and communicated to that effect have been made on 31.03.2023"*. The Assessing Authority is unsure of particular date(s) when the self-assessment returns furnished in terms of Section 9 read with Section 7 and Rule 10 were accepted. Even assuming that a communication is made indicating acceptance of self-assessment returns on 31.03.2023 (Annexure-4), nothing is evinced from the record much less the counter affidavit assigning the reason as to why there was such inordinate delay in communicating the

result of self-assessment returns filed way back during the year 2005-06, particularly so when the Audit Assessment Order dated 02.08.2006 (Annexure-1) got set aside in the Appeal filed at the behest of the petitioner *vide* Appellate Order dated 16.07.2019 (Annexure-2).

7.7. This Court in *L.D. Modern Rice Mills Vrs. Commissioner of Commercial Taxes, Government of Odisha & Others, STREV No.10 of 2020, vide Order dated 09.01.2023* clarified the effect of non-communication of order of acceptance of self-assessment in the following manner:

> *"1. Admit.*
>
> *2. The following question of law is framed:*
>
> *'(a) Whether exercise of power under Section 43 of the OVAT Act without resorting to the statutory provision of Section 39, 40, 42 and 44 in terms of Rule 50 of the OVAT Rules, 2005 is justified?*
>
> *(b) Whether the learned Tribunal was justified in interfering with the order of Appellate Authority?;*
>
> *(c) Whether the learned Tribunal was justified in passing an order in so far as penalty under Section 43(2) is concerned?"*
>
> *3. As far as the above questions are concerned, the factual position is not in dispute that the original assessment was only a self-assessment without that being any communication of the acceptance of*

such self-assessment by the Department to the Assessee.

4. *In that view of the matter, following the judgment of this Court dated 1st December, 2021 in STREV No.64 of 2016 (M/s. Keshab Automobiles Vrs. State of Odisha)*[9]*, as been affirmed by the Supreme Court of India in its order dated 13th July, 2022 in SLP (Civil) No.9912 of 2022 (Deputy Commissioner of Sales Tax Vrs. Rathi Steel and Power Ltd., the questions of law framed are answered in the negative i.e. in favour of the Assessee and against the Department. The impugned order of the Odisha Sales Tax Tribunal, and the corresponding orders of the First Appellate Authority and the Assessing Officer are, accordingly, set aside.*

5. *The STREV is disposed of in the above terms."*

7.8. This Court in yet another case being *Vishnu Chemicals Ltd. Vrs. State of Odisha, 2024 ILR-CUT-ONLINE 3096* made the following pertinent observation with respect to requirement of communication of acceptance of self-assessment returns and effect of non-communication thereof:

"6. We admit the revision petition on the question of law formulated as below. For self-assessment made and filed prior to 1st October, 2015, which did not receive formal communication or acknowledgement from the

[9] The interpretation of legal perspective in *Keshab Automobiles Vrs. State of Odisha, 2021 SCC OnLine Ori 2471* rendered in the context of the Odisha Value Added Tax Act, 2004, has been applied in *ECMAS Resins Pvt. Ltd. Vrs. State of Odisha, 2022 (II) ILR–CUT 817,* which is a case under the Odisha Entry Tax Act, 1999.

department as accepted and there was reopening and reassessment under Section 43(1), can the self-assessment be said to have been accepted?

***

9. *It appears to us there cannot be deemed acceptance of self-assessment prior to 1st October, 2015 per view taken in M/s. Keshab Automobiles (supra) [2021 SCC OnLine Ori 2471]. On query made Mr. Rath submits, revenue preferred special leave petition to the Supreme Court. By Order dated 13th July, 2022 the Supreme Court, in Special Leave to Appeal (C) No. 9912 of 2022* [10] *and several applications made therein, recorded complete agreement with the view. Reproduced below is text of order dated 13th July, 2022 (supra).*

   'We have gone through the impugned order(s) passed by the High Court. The High Court has passed the impugned order(s) on the interpretation of relevant provisions, more particularly Section 43(1) of the Odisha Value Added Tax Act, 2004, which was prevailing prior to the amendment. We are in complete agreement with the view taken by the High Court. No interference of this Court is called for in exercise of powers under Article 136 of the Constitution of India. Hence, the Special Leave Petitions stands dismissed.

   Pending application(s) shall stand disposed of.'

10. *We are clear our mind, view taken by coordinate Bench received confirmation from the Supreme Court. The view was, prior to 1st October, 2015*

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[10] *Deputy Commissioner of Sales Tax Vrs. Rathi Steel and Popwer Ltd., Special Leave to Appeal (C) No. 9912 of 2022, vide Order dated 13.07.2022.*

there had to be formal communication or an acknowledgment by the department that the self-assessment stood 'accepted' for there to be reopening under Section 43(1). In this case there is no dispute that such acceptance was neither communicated nor made known as acknowledged by the Department."

7.9. Stemming on such exposition of law, having glance at the Notice in Form E-32, dated 24.04.2023 it would reveal that at the time exercise of power to reassess the petitioner under Section 10, the acceptance of self-assessment returns furnished during 2005-06 was not communicated. The purported communication of such fact of acceptance by Letter dated 31.03.2023 of the JCST is inappropriate exercise of authority/power conferred under the statute. Had the communication of such fact been made prior to exercise of power under Section 10, the same ought to have found place explicitly in the Notice in Annexure-6. The counter affidavit is silent about the reason for such a delay in communication. The subsequent Notice dated 08.09.2023 (Annexure-8) depicting communication being made is an attempt to masquerade so as to bring the petitioner into the clutches of reassessment, despite the fact that by the date the Appellate Authority held that the very exercise of power to assess under Section 9C is vitiated for want of jurisdiction.

7.10. A significant variation is perceived between the two notices. Statutory Notice dated 24.04.2023 was issued with reason that the "order passed earlier is found to be erroneous or prejudicial to the interest of revenue consequent to or in the light of following judgment(s) of the Hon'ble Orissa High Court in case of *Bhusan Power and Steel Ltd. Vrs. State of Odisha and others reported in (2012) 47 VST 466* and First Appeal Order No.CU-II-AA15/2006-07, dated 16.07.2019 passed by the Additional Commissioner of Sales Tax (Appeal), Commissioner of CT and GST, Odisha at Cuttack".

7.11. Both the cases are referred to in the said Notice in Annexure-6 for initiation of proceeding for reassessment are purported to have exercised jurisdiction under sub-section (3) of Section 10. In the first place the ratio of *Bhusan Power and Steel Ltd. Vrs. State of Odisha and others reported in (2012) 47 VST 466* is not applicable to the present case. Distinctive feature of this case is that while making Audit Assessment based on Audit Visit Report, the Assessing Authority could not have utilised any material against the assessee other than the materials available in the Audit Visit Report. In *Bhusan Power and Steel Ltd. (supra)* the Assessing Authority while making Audit Assessment utilised the material regarding escaped turnover. Therefore, under such premise, as the Assessing Authority had already issued

notice for Audit Assessment and also separately for Reassessment within the periods specified under the statute, this Court directed as follows:

> *"21. In view of the above legal position and our observations made hereinabove supra, we set aside the impugned order of assessment dated September 22, 2011 passed for the period from July 6, 2006 to March 31, 2009 with a direction to the assessing authority to pass the audit assessment order afresh exclusively on the basis of audit visit report within a period of four weeks from the date of appearance of the petitioner-dealer before him for this purpose which is fixed to December 20, 2011. If the petitioner-dealer is aggrieved of the audit assessment order it may prefer statutory appeal. On the date of appearance of the petitioner on December 20, 2011, the assessing authority shall serve notice on the petitioner-dealer in the prescribed form for the purpose of making assessment under Rule 12(4) of the CST (O) Rules [i.e., Reassessment]. Needless to mention that the assessing authority shall complete the assessment under Rule 12(4) of the CST (O) Rules after affording reasonable opportunity of hearing to the petitioner- dealer and shall examine the petitioner's claim of branch transfer keeping in mind the judgment of the honourable Supreme Court in Tata Engineering and Locomotive Co. Ltd. [1970] 26 STC 354 (SC)."*

In the present case, the Appellate Authority set aside the Order of Audit Assessment, which was founded solely on Intelligence Report but not Audit Visit Report, for lack of jurisdiction. The Assessing Authority thereafter sought

to initiate proceeding for reassessment invoking power under Section 10(3) of the OET Act. This Court having held in *Indian Oil Adani Ventures Limited Vrs. State of Odisha, 2025 SCC OnLine Ori 4024* that Order of the Appellate Authority cannot be comprehended within the meaning of "Order of any Court or Tribunal", the reason stated in Notice in Form E-32, dated 24.04.2023 (Annexure-6) cannot be held to be valid. Nonetheless, it is made clear by the opposite parties in the counter affidavit that the impugned reassessment is not under Section 10(3). Therefore, the issue of such notice dated 24.04.2023 (Annexure-6) by the Assessing Authority assuming jurisdiction to proceed with the assessment under sub-section (3) of Section 10 can be faulted with.

7.12. For another reason the Notice in Annexure-6 cannot clothe the Assessing Authority with power to proceed with the Assessment under Section 10. The Assessing Authority on 08.09.2023 issued another Notice in Form E-32 (Annexure-8). In said subsequent Notice there is no mention about *Bhusan Power and Steel Ltd. Vrs. State of Odisha and others reported in (2012) 47 VST 466* and First Appeal Order No.CU-II-AA15/2006-07, dated 16.07.2019 passed by the Additional Commissioner of Sales Tax (Appeal), Commissioner of CT and GST, Odisha at Cuttack. Paragraph No.4(iv) of said notice in Annexure-8 is left blank; however, a new fact that *"You*

have been assessed under Section 9 of the Orissa Entry Tax Act, 1999 for the tax period(s) 01.04.2005 to 28.02.2006 on _____ (left blank) and communicated to that effect have been made on 31.03.2023" has been incorporated. As both the statutory notices cannot co-exist for reassessment on the same subject-matter, it is unambiguous that the proceeding initiated under sub-section (3) of Section 10 in pursuance of earlier Notice in Form E-32, dated 24.04.2023 (Annexure-6) was abandoned, and in its place a fresh Notice in Form E-32, dated 08.09.2023 (Annexure-8) was issued. The tenor of Paragraph No.4 in said Notice at Annexure-8 would demonstrate that after acceptance of self-assessment returns the reassessment proceeding under Section 10(1) was instituted. As has already been discussed in the foregoing paragraphs that the Notice dated 08.09.2023 *ex facie* issued beyond period of limitation prescribed under sub-section (1) of Section 10, the Assessing Authority had no jurisdiction to proceed with such reassessment and therefore, the Order of Assessment dated 12.07.2024 is liable to be quashed.

7.13. When the Notices issued under Section 10 for the purpose of reassessment are found to be without any sanction of law, the consequential orders thereof cannot be countenanced. Further, the Appellate Authority while allowing the appeal filed at the behest of the petitioner

directed for initiation of "proper proceedings strictly in accordance with the provisions of the OET Act and Rules framed thereunder". The Notices under Annexures-6 and 8 are found not to be in consonance with the provisions contained in the OET Act or the OET Rules.

7.14. It is trite that once the basis of a proceeding is gone, all the consequential acts, actions and orders would fall to the ground automatically. This principle is not only applicable to the judicial proceedings, but also to the *quasi* judicial proceedings and equally to the administrative orders too. [See, *Badrinath Vrs. State of Tamil Nadu, (2000) 8 SCC 395; Kalabharati Advertising Vrs. Hemant Vimalnath Narichania, (2010) 10 SCR 971*].

8. A fallacious ground of the opposite parties diagonally contrary than what has been contained in the statutory Notice in Form E-32 deserves discussion.

8.1. In the counter affidavit a stand is taken in paragraph 7 as follows:

"That it is humbly submitted that in this context, Section 49(2) of the OVAT Act becomes relevant and applicable as it specifically deals with the situation where any Court or Tribunal passes an order in appeal or revision to the effect that any tax assessed should have been assessed under the provision of a law other than that under which it was assessed. The present reassessment squarely falls within the ambit of this provision and, therefore, the period of limitation applicable to the present reassessment

proceeding is not the one under Section 10(3) of the OET Act but the one under Section 49(2) of the OVAT Act read with Rule 34[11] of the OET Rules."

8.2. Taking a new stance than what is reflected in the Notice indicating exercise of jurisdiction to initiate proceeding under Section 10 of the OET Act, by way of filing counter affidavit the case of the opposite parties cannot be improved. In *Mohinder Singh Gill Vrs. Election Commissioner, (1978) 1 SCC 405* it has been succinctly held,

> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.* ***Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.*** *We may here draw attention to the observations of Bose, J. in Commr. of Police, Bombay Vrs. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16:*
>
> *'Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders*

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11 Rule 34 of the OET Rules stood thus:
"34. Implementation.—
For any other matters specified under these rules but required for the carrying out the purposes of the Act and these Rules, the provision under VAT Act and Rules made thereunder shall, mutatis mutandis, apply."

made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.'

Orders are not like old wine becoming better as they grow older."

8.3. It can aptly be stated that the opponent cannot be taken by surprise by way of setting up pleading for the first time which was never the context before the Authority concerned while exercising power to proceed with reassessment. In this connection the following observations in *Shiv Prasad Sahu Vrs. State of Orissa, (2009) 19 VST 417 (Ori)* may be pertinent to be taken note of:

"27. To deal with the third question it is necessary to refer the grounds of appeal filed before the learned Tribunal by the Revenue. The ground of appeal which has been annexed to the petition as annexure 4 does not reveal that any specific ground has been taken with regard to addition of 10 per cent towards driage and wastage made by the assessing officer and deleted by the first appellate authority. By a cryptic order the Tribunal has restored the order of assessment. The order does not reveal whether any argument has been advanced by the Revenue against deletion of addition 10 per cent of purchased quantity of mohua flowers by the first appellate authority. Needless to say that the Tribunal is under a duty to decide all the questions of facts and law

raised in the appeal before it. ***However, Tribunal on its own cannot make out a new case particularly when no such point was taken in ground of appeal and argued before it. It is not possible for the court, to decide an issue, not raised/agitated by the authority for the reason that other party did not have opportunity to meet it and such a course would violate the principles of natural justice.*** *(Vide New Delhi Municipal Committee Vrs. State of Punjab AIR 1997 SC 2847). Similarly, in V. K. Majotra Vrs. Union of India, (2003) 8 SCC 40, the apex court held as under:*

*'*** The writ courts would be well advised to decide the petitions on the points raised in the petition and if in a rare case, keeping in view the facts and circumstances of the case, any additional points are to be raised then the concerned and affected parties should be put to notice on the additional points to satisfy the principles of natural justice. Parties cannot be taken by surprise. ***'*

28. As no such ground was taken by the Revenue before the Tribunal, the question of deciding the issues could not arise. Therefore, findings on the issue cannot be sustained in the eyes of law."

8.4. It is well established that any order if passed beyond the terms of show-cause notice is bad in law and untenable. In *Kalpataru Power Transmission Ltd. Vrs. State of Maharashtra, (2023) 119 GSTR 147 (Bom)* it has been stated thus:

"10. *** The Supreme Court in case of Commissioner of Customs, Mumbai Vrs. Toyo Engineering India Ltd., (2006) 7 SCC 592 noted that **the Department cannot be allowed travel beyond the show-cause notice.** The Supreme Court further observed that it would be against the principles of natural justice that a person who has not been confronted with any ground is saddled with liability thereof and since the issue did not form the basis of the show-cause notice and was not even confronted to the order passed beyond show-cause notice is to be quashed.

11. The Supreme Court in case of Commissioner of Central Excise, Nagpur Vrs. Ballarpur Industries Ltd., (2007) 8 SCC 89 observed that **if Rule 7 of the Central Excise (Valuation) Rules, 1975 have not been invoked in the show-cause notice, it would not be open to the Commissioner to invoke the said rule in the remand proceedings.** The view expressed by the Supreme Court in cases of Commissioner of Customs, Mumbai Vrs. Toyo Engineering India Ltd. (supra) and Commissioner of Central Excise, Nagpur Vrs. Ballarpur Industries Ltd. (supra) was applied in subsequent decisions of the Supreme Court in case of Commissioner of Central Excise, Bhubaneswar-1 Vrs. Champdany Industries Ltd., (2009) 9 SCC 466 and also in the case of Commissioner of Central Excise Vrs. Gas Authority of India Limited, (2007) 15 SCC 91. Therefore, in our view, applying the ratio of the Supreme Court referred to hereinabove, the impugned order disallowing all the deductions under Rule 58(1)(a) to (h) without giving any show-cause

notice to the petitioner would be rendered bad in law."

8.5. With such lucid legal exposition, for the reasons mentioned in the foregoing paragraphs, the stand taken by the opposite parties deserves to be repelled.

8.6. This apart, Rule 34 of the OET Rules is inapplicable in the present context inasmuch as specific provision for reassessment has been spelt out under Section 10 of the OET Act read with Rule 15D of the OET Rules. Rule 34 of the OET Rules makes it abundantly clear that for any other matters not specified under the OET Rules but required for the carrying out the purposes of the Act and the Rules, the provisions of the OVAT Act and the Rules made thereunder shall *mutatis mutandis* apply.

8.7. The expression *"for carrying out the purpose of the Act"* has been explained in *Global Energy Ltd. Vrs. CERC, (2009) 15 SCC 570* as follows:

> *"25. It is now a well-settled principle of law that the rule-making power "for carrying out the purpose of the Act" is a general delegation. Such a general delegation may not be held to be laying down any guidelines. Thus, by reason of such a provision alone, the regulation-making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the said Act.*

26. We may, in this connection refer to a decision of this Court in Kunj Behari Lal Butail Vrs. State of H.P., (2000) 3 SCC 40 wherein a three-Judge Bench of this Court held as under:

> *'14.* ***We are also of the opinion that a delegated power to legislate by making rules 'for carrying out the purposes of the Act' is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.****'*
>
> *[See also State of Kerala Vrs. Unni, (2007) 2 SCC 365 (SCC paras 32 to 37) and A.P. Electricity Regulatory Commission Vrs. R.V.K. Energy (P) Ltd., (2008) 17 SCC 769].*

27. The power of the regulation-making authority, thus, must be interpreted keeping in view the provisions of the Act. The Act is silent as regards conditions for grant of licence. It does not lay down any pre-qualifications therefor. Provisions for imposition of general conditions of licence or conditions laying down the pre-qualifications therefor and/or the conditions/qualifications for grant or revocation of licence, in absence of such a clear provision may be held to be laying down guidelines by necessary implication providing for conditions/qualifications for grant of licence also."

8.8. The expression "*mutatis mutandis*" used in Rule 34 is of significance. In *Rajasthan State Industrial Development*

and Investment Corporation Vrs. Diamond & Gem Development Corporation Limited, (2013) 5 SCC 470 the meaning of *mutatis mutandis* has been given as under:

"17. In Ashok Service Centre Vrs. State of Odisha, AIR 1983 SC 394 = (1983) 2 SCC 82, this court held as under (SCC p.93, paragraph 17):

*'17. *** Earl Jowitt's The Dictionary of English Law 1959) defines 'mutatis mutandis' as 'with the necessary changes in points of detail'. Black's Law Dictionary (Revised 4th Edn. 1968) defines 'mutatis mutandis' as 'with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like' *** Extension of an earlier Act mutatis mutandis to a later Act, brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the things changed, subject of course to express provisions made in the later Act *** In the circumstances the conclusion reached by the High Court that the two Acts were independent of each other was wrong. We are of the view that, it is necessary to read and to construe the two Acts together as if the two Acts are one, and while doing so to give effect to the provisions of the Act which is a later one in preference to the provisions of the Principal Act wherever the Act has manifested an intention to modify the Principal Act.'*

Similarly, in Prahlad Sharma Vrs. State of U.P., (2004) 4 SCC 113, the phrase 'mutatis mutandis' has been explained as under:

> *'11. The expression 'mutatis mutandis' itself implies applicability of any provision with necessary changes in points of detail'.*
>
> *[See also: Mariyappa Vrs. State of Karnataka, AIR 1998 SC 1334 = (1998) 3 SCC 276; and Janba Vrs. Gopikabai, AIR 2000 SC 1771 = (2000) 4 SCC 1].*

18. Thus, the phrase 'mutatis mutandis' implies that a provision contained in other part of the statute or other statutes would have application as it is with certain changes in points of detail."

8.9. In *Corporation of Calcutta Vrs. Sirajuddin, AIR 1957 Cal 399*, the expression '*mutatis mutandis*' has been explained as follows:

> *"When a law directs that a provision made for a certain type of case shall apply mutatis mutandis in another type of case, it means that it shall apply with such changes as may be necessary, but not that even if no change be necessary, some change shall nevertheless be made."*

8.10. In *Vasudev Anant Kulkarni Vrs. Executive Engineer, Maharashtra State Electricity Board, Rural Division, Ahmednagar, 1994 SCC OnLine Bom 12*, the term "*mutatis mutandis*' has been explained as follows:

> *"The meaning attached to expression 'mutatis mutandis' is, 'when a law directs that a provision made for a certain type of case shall apply mutatis mutandis in another type*

of case, it means that it shall apply with such changes as may be necessary but not that even if no change be necessary, some change shall nevertheless be made…' It is an established principle that the same words or phrases, when used in Acts dealing with the same subject matter often bear the same meaning. So also, where a word has been constructed judicially in a certain legal area, it is we think, right to give it the same meaning if it occurs in a statute, dealing with the same general subject matter unless that the word must have a different construction."

8.11. The expression *'mutatis mutandis'*, an adverbial phrase qualifying the verb "shall … apply" would suggest "those changes being made which must be made". This can mean only that the changes to be made must have reference to the proceedings to which the provision has to be applied and not to the particular clause under which the particular proceeding may be instituted.

8.12. It is also of importance to notice the words "for any other matters not specified" employed in Rule 34 of the OET Rules. Such expression read juxtaposed with "*mutatis mutandis*" can only mean that in case the provisions of the OET Rules are silent about "any other matters" than what are specifically found mentioned, in such event the provisions of the OVAT Act and the Rules framed thereunder could be made applicable. Stemming on the principle laid down by the Hon'ble Supreme Court referred to *supra* that a delegated power to legislate by

making Rules 'for carrying out the purposes of the Act' is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself, looking at the present matter in the said perspective, it can be stated that when specific substantive provisions are available for the Assessing Authority to undertake reassessment under Section 10 of the OET Act and corresponding Rules, particularly Rule 15D of the OET Rules, laid down the procedure to exercise such power conferred under Section 10, there is no scope or occasion for the Authority to invoke Rule 34 of the OET Rules.

8.13. In the present case, the provisions of Rule 34 of the OET Rules read with Section 49(2) of the OVAT Act cannot be imported inasmuch as the circumstances for which reassessment can be made under the OET Act has been specifically laid down and such provisions being jurisdictional fact and substantive in nature, the scope of adhering to Section 49(2) of the OVAT Act for the purpose of reassessment under Section 10 of the OET Act is inapplicable. Therefore, importing provision like Section 49(2) of the OVAT Act for the purpose of reassessment under Section 10 of the OET Act is inappropriate and irrational approach. The suggestion

made by way of counter affidavit by the Revenue is liable to be repelled.

8.14. It is candidly admitted by the Revenue in paragraph 7 of the counter affidavit that the present case is not covered under Section 10(3) of the OET Act. Bare reading of Section 10 reveals two situations, *viz.,* one under sub-section (1) and another is sub-section (3). Since in the subsequent Notice in Form E-32 dated 08.09.2023 (Annexure-8) the reason that the initiation of reassessment was on account of *Bhusan Power and Steel Ltd. (2012) 47 VST 466 (Ori)* and for Appellate Order having set aside the Audit Assessment under Section 9C as contained in Notice in Form E-32 dated 24.04.2023 (Annexure-6) is conspicuously absent and consciously omitted, it is obvious that the reassessment is made for the circumstances contained in sub-section (1) of Section 10 of the OET Act.

8.15. It is firm stand of the Revenue that the case falls within the ambit of Section 49(2) of the OVAT Act, but not Section 10(3) of the OET Act. When specific substantive provision for reassessment is provided under sub-section (3) of Section 10 of the OET Act, Section 49(2)[12]

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12 Section 49(2) of the OVAT Act stood thus:

"(2) Where any Court or Tribunal passes an order in appeal or revision to the effect that any tax assessed under this Act or the Central Sales Tax Act, 1956 (74 of 1956) should have been assessed under the provision of a law other than that under which it was assessed, then, in consequence of such order or to give effect to the finding or direction contained in such

of the OVAT Act cannot be made applicable to the present context. It is held in *Indian Oil Adani Ventures Limited Vrs. State of Odisha, 2025 SCC OnLine Ori 4024* that the purport of sub-section (2) of Section 49 of the OVAT Act is that if the transactions of inter-State nature (attracting purview of the Central Sales Tax Act, 1956) are taxed as intra-State transactions amenable to be taxed under the OVAT Act, but subsequently such transactions were found to be inter-State transactions in the view of the final-fact finding by the authority, *i.e.*, Sales Tax Tribunal in appeal under Section 78 of the OVAT Act or interpretation on legal issue answered by the High Court in revision under Section 80 of the OVAT Act, the same can be corrected invoking provisions of sub-section (2) of Section 49 of the OVAT Act by exercising same or identical power conferred under the Central Sales Tax Act, 1956 and the converse can also be true. However, such is not true for the purpose of OET Act.

8.16. It has already been held in the foregoing paragraphs that issue of subsequent fresh Notice in Form E-32, dated 08.09.2023 (Annexure-8) by omitting the circumstances for which sub-section (3) of Section 10 of the OET Act

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order, the turnover or any part thereof as relates to such assessment may be assessed or reassessed, as the case may be, to tax at any time within five years from the date of such order, notwithstanding the applicability of any period of limitation to such assessment or reassessment under this Act."

envisaged makes it abundantly manifest that the Assessing Authority consciously abandoned the proceeding for reassessment under sub-section (3) of Section 10 initiated by dint of Notice in Form E-32, dated 24.04.2023 (Annexure-6).

8.17. For the reasons ascribed hereinabove, the contention of the Revenue is illogical, irrational and without any substance.

Conclusion:

9. It emerges from the above discussions that:

i. The Intelligence Report being utilised in the course of Audit Assessment under Section 9C treating the said report to be Audit Visit Report is contrary to what is laid down in *Bhusan Power and Steel Ltd. Vrs. State of Odisha and Others, reported in (2012) 47 VST 466 (Ori).*

ii. The Appellate Authority having set aside the Audit Assessment in the light of said judgment in *Bhusan Power and Steel Ltd. Vrs. State of Odisha and Others, reported in (2012) 47 VST 466 (Ori)* directed for taking out appropriate proceeding in accordance with law, which obviously would mean reassessment under Section 10 of the OET Act.

iii. The imposition of penalty invoking sub-section (2) of Section 10 of the OET Act in the Assessment dated 12.07.2024 would suggest that the Assessing Authority had exercised power under Section 10(1), but not under sub-section (3) thereto. This aspect is made clear by the stance taken by the opposite parties in their counter affidavit. As by the date the Notice in Form E-32 prescribed under Rule 15D for the purpose of reassessment under Section 10 (Annexure-6) was issued on 24.04.2023 five years, or seven years as amended, from the end of the year to the tax period(s) expired, the provisions of Section 10(1) could not have been invoked.

iv. In view of *Indian Oil Adani Ventures Limited Vrs. State of Odisha, 2025 SCC OnLine Ori 4024* since Appellate Order cannot be comprehended within the meaning of Section 10(3) of the OET Act, the Assessing Authority rightly abandoned the Notice dated 24.04.2023.

v. The fresh Notice dated 08.09.2023 in Form E-32 for the purpose of reassessment under Section 10(1) (Annexure-8) is also time-barred and it could not be issued on change of opinion as the reason assigned in Annexure-6 has been substituted/reviewed. Having shown communication of acceptance of self-assessment returns for the tax periods 01.04.2005

to 28.02.2006 by Letter dated 31.03.2023, no reason is placed on record to indicate as to why it took such a long period for communication since 2006, which clearly demonstrates that such fact of acceptance of self-assessment returns did not exist at all.

vi. Relying on Rule 34 of the OET Rules to exercise power under Section 10(3) by adhering to provisions of Section 49(2) of the OVAT Act is untenable inasmuch as substantive provisions are available in the OET Act and the Rules framed thereunder. In present context does not fall within the ken of expression "for any other matters not specified under these Rules" contained in Rule 34.

vii. Though not relevant in the present context in view of the discussions made above, it may be analysed that the Appellate Order being passed on 16.07.2019, the statutory Notices in Annexures-6 and 8 being issued in the year 2023, *i.e.,* 24.04.2023 and 08.09.2023, the same are barred by period stipulated in Section 10(3) of the OET Act. Section 10(3) of the OET Act having specified "three years" for invoking jurisdiction to reassess in the light of judgment or order which attained finality, there is no scope to import period of "five years" specified in Section 49(2). However, the

stance taken by the opposite parties is repelled in view of *Indian Oil Adani Ventures Limited Vrs. State of Odisha, 2025 SCC OnLine Ori 4024* and discussions made *supra* on inapplicability of Rule 34 to the instant case.

10. With the aforesaid factual matrix, given legal perspective and reasons mentioned hitherto, the Notice in Form E-32, dated 24.04.2023 (Annexure-6) and the Notice in Form E-32, dated 08.09.2023 (Annexure-8) are quashed and consequential Assessment Order dated 12.07.2024 (Annexure-9) is hereby set aside.

11. In the wake of the above analysis and discussions, the writ petition stands allowed and pending Interlocutory Application(s), if any, is also disposed of, but in the circumstances there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE