

**BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL:  
CUTTACK.**

**S.A. No.235(VAT) of 2013-14**

**S.A. No.217(VAT) of 2013-14**

**S.A. No.149(ET) of 2013-14**

**&**

**S.A. No.159(ET) of 2013-14**

(Arising out of the orders of the learned CTT, Odisha,  
Cuttack, in First Appeal case Nos.AA/186/11-12(OVAT) & AA.185/11-  
12/OET disposed of on dt. 23.08.2013 & 24.08.2013 respectively)

**P r e s e n t: Shri G.C.Behera, Sri. S.K.Rout & Shri M.Harichandan,  
Chairman. Judicial Member-II Accounts Member-I.**

**S.A. No.235(VAT) of 2013-14**

**S.A. No.149(ET) of 2013-14**

M/s.Swastik Ingot Pvt. Ltd.,  
Gopapali, Vedvyas, Rourkela.

... Dealer.

**- V e r s u s -**

State of Odisha, represented by the  
Commissioner of Sales Tax, Odisha,  
Cuttack.

... State.

**S.A. No.217(VAT) of 2013-14**

**S.A. No.159(ET) of 2013-14**

State of Odisha, represented by the  
Commissioner of Sales Tax, Odisha,  
Cuttack.

... State.

**- V e r s u s -**

M/s.Swastik Ingot Pvt. Ltd.,  
Gopapali, Vedvyas, Rourkela.

... Dealer.

For the Dealer

... None.

For the State

... Mr.D.Behura, SC(CT)

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Date of hearing: **07.12.2022**

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Date of Order: **12.12.2022**  
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**O R D E R**

These appeals are disposed of by this composite order  
as all are the outcome of the same issue being involved the similar  
question of facts and laws.

S.A.No.235(V) of 2013-14 and S.A.No.149(ET) of 2013-14 are preferred by the dealer whereas S.A.No.217(V) of 2013-14 and S.A.No.159(ET) of 2013-14 are preferred by the State.

**S.A.No.235(V) of 2013-14**

Dealer has filed this appeal assailing the order dated 23.08.2013 passed by the learned Addl. Commissioner of Sales Tax, North Zone ( in short, FAA) in first appeal case No.AA.186/11-12(under OVAT Act) thereby allowing the appeal in part and reducing the tax and penalty to Rs.2,32,60,875.00 from Rs.2,77,73,691.00 raised by the learned Deputy Commissioner of Sales Tax, Rourkela I Circle, Udit Nagar under section 43 of the OVAT Act, 2004 for the tax period from 01.04.2006 to 31.12.2009.

**S.A.No.217(V) of 2013-14**

The State has challenged the same order as above.

**S.A.No.149(ET) of 2013-14**

The dealer has filed this appeal assailing the order dated 24.08.2013 passed by the learned Addl. Commissioner of Sales Tax, North Zone, ( in short, FAA) in first appeal case No.AA.185/11-12 (under OET Act) thereby allowing the appeal in part and reducing the demand to Rs.58,59,390.00 from Rs.70,32,720.00 raised by the learned Deputy Commissioner of Sales Tax, Rourkela I Circle, under OET Act for the tax period from 01.04.2006 to 31.12.2009 under Section 10 of the OET Act.

**S.A.No.159(ET) of 2013-14**

The State has challenged the same order as above.

2. The appellant in this case carries on business in manufacture and sale of M.S. Ingot and also carries on purchase and sale of iron and steel goods. The industry was inspected by the Special Investigation Team (SIT) constituted in pursuance with orders of Hon'ble

High Court of Odisha. The team composed of officers of enforcement of Commercial Tax department, officers of Vigilance department and also officials of mining department under the supervision of Additional Commissioner of Vigilance. The team submitted a tax evasion report bearing case no.13/CT/31.05.2010 alleging evasion of tax. In the assessment, the learned DCST confronted the report to the assessee and came to a conclusion that the turnover of Rs.7,44,14,172.00 was suppressed and accordingly levied tax @4% quantifying the tax payable at Rs.29,76,567.00. Further, the learned DCST also observed that input tax credit claimed by the appellant for Rs.62,81,330.00 on trading of goods are not proper and also included in the demand of tax. In toto an amount of Rs.92,57,897.00 was made out and raised as tax demand by adding such penalty twice the tax which arrived at Rs.1,85,15,794.00. Thus, total demand of Rs.2,77,73,691.00 was raised.

**S.A.No.149(ET) of 2013-14**

Pursuant to the tax evasion report (TER) submitted by the SIT, assessment was taken up both under OVAT Act and under OET Act. The learned DCST confronted the report to the assessee and came to a conclusion that the turnover of Rs.7,44,14,172.00 was suppressed. So the learned DCST levied VAT @4%. After arriving the value of suppressed amount added 4% VAT and on such value entry tax @1% was levied under ET Act. Apart from levy of tax on sale, the learned DCST also levied ET on purchase. It was alleged that the purchases of scheduled goods were shown from registered dealer although they were not in existence. Entry tax on purchase was determined at Rs.15,70,333.00. The total tax demand on purchase and sale in together was determined at Rs.23,44,240.00. In addition to tax, penalty twice the tax due was also levied.

3. Being aggrieved with such demands, both the dealer and the State preferred these appeals as per the grounds stated in their grounds of appeals.

4. Cross objection are filed in all the cases by both the parties being the respondents.

5. Heard the contentions and submissions of revenue as in spite of due service of notice on dealer, he neither appeared nor engaged any one to remain present during the hearing. So, the case is disposed of on merit on exparte basis. The sole contention of the dealer appellant as per his grounds of appeals are that the proceeding under Section 43 of the OVAT Act was initiated and assessment was completed without complying with the mandatory principles stipulated therein. The assessment under Section 39,40,42 or 44 should have been completed before initiation of proceeding under Section 43 of the OVAT Act. Per contra, learned Standing Counsel for the State supported the order passed by the learned assessing officer and submitted to quash the order of the learned Addl. CST (Appeal).

6. First it is to be adjudicated upon whether the initiation of proceeding under Section 43 of the OVAT Act was just and proper without complying the mandatory provisions? First have a glance to the verdict of the Hon'ble High Court of Odisha decided in the case of Keshav Automobiles Vrs. State of Odisha (STREV No.64 of 2016 decided on 01.12.2021). After a careful scrutiny of the provisions contained under Section 43 of the OVAT Act, one thing becomes clear that only after assessment of dealer under Section 39,40,42 or 44 for any tax period, the assessing authority, on the basis of any information in his possession, is of the opinion that the whole or any part of the turnover of the dealer in respect of such tax period or tax periods has escaped assessment, or been under assessed, or been assessed at a rate lower than the rate at which it is assessable, then giving the dealer a reasonable opportunity of hearing and after making such enquiry, assess the dealer to the best of his judgment. Similar issue also came up before the Hon'ble High Court in case of M/s.Keshab Automobiles (supra) wherein the Hon'ble Court interpreting the provisions contained under Section 43 of the OVAT Act, in paras 13 to 16 of the judgment observed

that “ the dealer is to be assessed under Sections 39,40,42 and 44 for any tax period. The words “ where after a dealer is assessed’ at the beginning of Section 43(1) prior to 1<sup>st</sup>. October, 2015 pre-supposes that there has to be an initial assessment which should have been formally accepted for the periods in question i.e. before 1<sup>st</sup>. Oct, 2015 before the Department could form an opinion regarding escaped assessment or under assessment.....”

So, the position prior to 1<sup>st</sup>. Oct. 2015 is clear. Unless there was an assessment of the dealer under Section 39,40,42 or 44 for any tax period, the question of reopening the assessment under Section 43(1) of the OVAT Act did not arise. The Hon’ble Court in para-22 of the judgment has categorically observed that if the self assessments under Section 39 of the OVAT Act for the tax periods prior to 01.10.2015 are not accepted either by a formal communication or an acknowledgment by the Department, then such assessment cannot be sought to be reopened under Section 43(1) of the OVAT Act. In the instant case, the impugned tax relates to pre-amended provisions of Section 43 of the OVAT Act i.e. prior to 01.10.2015. This apart, the returns filed by the appellant were also not accepted either by a formal communication or an acknowledgment issued by the Department. The similar matter has also been decided by the Full Bench of OSTT in various cases such as M/s.Swati Marbles Vrs. State of Odisha, in S.A.No.209(V) of 2013-14 ( Full Bench) dated 06.06.2022, State of Odisha Vrs. M/s.Jaiswal Plastic Tubes Ltd. S.A.No.90(V) of 2010-11, ( Full Bench) dated 06.06.2022, M/s.Jalaram Tobacco Industry Vrs. State of Odisha S.A. NO.35(V) of 2015-16 Full Bench, dated 16.08.2022, M/s.Eastern Foods Pvt. Ltd. Vrs. State of Odisha S.A.No.396 (VAT) of 2015-16, Full Bench dtd.23.08.2022 etc.

So in view of the above discussion, we arrive at a conclusion that the order of assessing authority and the first appellate authority are not sustainable in the eyes of law and the same warrant interference in these appeals. Hence order.

7. The appeals filed by the dealer assessee are allowed and the impugned orders of the forums below are hereby quashed. As a corollary, the cross appeals preferred by the State are hereby being devoid of merit stand dismissed. The cross objections are disposed of accordingly.

Dictated and Corrected by me,

Sd/-

**(Shri S.K.Rout)**  
**Judicial Member-II**

Sd/-

**(Shri S.K.Rout)**  
**Judicial Member-II**

**I agree,**

Sd/-

**(Shri G.C.Behera)**  
**Chairman**

**I agree,**

Sd/-

**(Shri M.Harichandan)**  
**Accounts Member-I**