

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

**S.A. No. 83 (C) of 2014-15**

(Arising out of order of the learned JCST, Puri Range,  
Puri in Appeal No. AA/43/CST/JATNI/2010-11,  
disposed of on 30.09.2013)

Present: **Shri G.C. Behera, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member &**  
**Shri S.R. Mishra, Accounts Member-II**

M/s. Shri Karshni Alloys Pvt. Ltd.,  
A-13, Sarua Industrial Estate, Khurda ... Appellant

-Versus-

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

For the Appellant : Sri N.K. Dash, Advocate &  
Sri K.R. Mohapatra, Advocate  
For the Respondent : Sri D. Behura, S.C. (CT) &  
Sri S.K. Pradhan, Addl.SC (CT)

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Date of hearing : 13.09.2023 \*\*\* Date of order : 12.10.2023  
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**ORDER**

Dealer is in appeal against the order dated 30.09.2013 of the Joint Commissioner of Sales Tax, Puri Range, Puri (hereinafter called as 'First Appellate Authority') in F A No. AA/43/CST/JATNI/2010-11 reducing the demand raised in assessment order of the Asst. Commissioner of Sales Tax, Jatni Circle, Jatni (in short, 'Assessing Authority').

2. The facts of the case, in brief, are that –

M/s. Shri Karshni Alloys Pvt. Ltd. is engaged in manufacturing and sale of silico manganese. The assessment period relates to 01.04.2008 to

31.03.2009. The Assessing Authority raised tax and penalty of ₹48,50,109.00 u/r. 12(4) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') on the basis of Tax Evasion Report (TER) in *ex parte* assessment.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹2,15,073.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection and additional cross-objection.

3. The learned Counsel for the Dealer as per additional grounds of appeal submits that the proceeding u/r. 12(4) of the CST (O) Rules is not maintainable unless any proceeding u/r. 12 (1), (2) or (3) of the CST (O) Rules is completed. He further submits that the Assessing Authority has not applied his independent mind, but mechanically initiated the 12(4) proceeding in the guise of escapement assessment. So, he submits that the order of the Assessing Authority is vitiated in the eyes of law and requires interference in appeal.

He relies on the decisions of the Hon'ble Court in the case of *M/s. Keshab Automobiles v. State of Odisha* in **STREV No. 64 of 2016** decided on 01.12.2021 and confirmed by the Hon'ble Apex Court in *SLP (C) No. 9823-9824/2022* dated 13.07.2022; Hon'ble Apex Court in case of *Ashok Leyland v. State of Tamil Nadu, (2004) 3 SCC 1*; decision of Hon'ble High Court of Kerala in case of *C.A.K. Trading Co., Cochin v. Addl. Sales Tax Officer & another, [1990] 76 STC 211 (Ker.)*; and decisions of this Tribunal in *S.A. No. 82 (C) of 2005-06* dated 07.10.2010 (**State of Odisha v. M/s. Jaiswal Plastic Tubes Ltd.**) and *S.A. No. 123 (C) of 2006-07* dated 14.08.2019 (**M/s. O.C.L. India Limited v. State of Odisha**).

4. Per contra, the learned Standing Counsel (CT) for the State submits that order of the First Appellate Authority has passed a reasoned order and proceeding u/r. 12(4) of the CST (O) Rules cannot be said to be vitiated as urged on behalf of the Dealer. He further submits that the Assessing Authority has rightly completed the 12(4) proceeding and the same requires no interference in appeal. He further submits that the Dealer is precluded to raise new ground on facts in absence of the same before the authorities below. So, he submits that the grounds raised before this forum merit no consideration. He relies on the decision of the Hon'ble Apex Court in case of *State of Orissa v. Lakhoo Varjang*, [1961] 12 STC 162 (SC).

5. Heard rival submissions of the parties, gone through the orders of the First Appellate Authority and Assessing Authority vis-a-vis the materials on record. It transpires from the assessment order that after completion of assessment u/r. 12(1) of the CST (O) Rules, proceeding u/r. 12(4) of the said Rules was initiated basing on Vigilance Fraud Case Report bearing No. 17 dated 08.04.2009.

The STO (Vigilance) detected that the sales made by the Dealer by way of consignment sales during the period under report was not in conformity with the provisions of Section 6A of the CST Act. During inspection, they detected one delivery chalan issued by the Dealer to M/s. Meenakshi Enterprises in which the Dealer had collected CST @ 2% from the consignment agent. The STO (Vigilance) further found that the Dealer was effecting inter-State sale in the guise of consignment sale and thereby evading payment of CST. Therefore, the sale claimed by the Dealer as consignment sale during the period under report was rejected and the same was treated as inter-State sale.

On verification of return, it is found that the Dealer has made total inter-State transactions of ₹6,14,76,999.00 during the period under assessment. The Dealer claims to have made inter-State sales against 'C'

declaration form and consignment sales against 'F' form amounting to ₹2,10,36,990.00 and ₹4,04,39,976.00 respectively. So, the consignment sales made by the Dealer during the period under assessment were rejected and were treated as inter-State sales subject to CST @ 4%. The Dealer fails to produce 'C' form of ₹8,92,523.00. Therefore, tax was levied on the same @ 4%. The Assessing Authority completed the assessment on best judgment principles and raised tax and penalty together at ₹48,50,109.00.

The First Appellate Authority reduced the tax and penalty to ₹2,15,073.00 and allowed the appeal in part. The Dealer though took several grounds in the grounds of appeal, but during the course of hearing, he only pressed the following grounds for adjudication :-

- (i) The Assessing Authority did not apply independent mind and accepted the Vigilance FCR without verifying the material document and without allowing reasonable opportunity of being heard to the Dealer.
- (ii) The Assessing Authority disallowed the consignment sales of ₹22,60,940.00 even though 'F' forms were issued by the respective State Tax authorities.

Besides the above grounds, the Dealer has also taken additional ground regarding maintainability of the proceeding u/r. 12(4) of the CST (O) Rules without completion of assessment under sub-rule (1), (2) or (3) of the said Rules.

As the Dealer has taken the maintainability as preliminary ground as it touches the root of the case, this forum feels it proper to adjudicate the issue at the outset. Rule 12(4) of the CST (O) Rules provides that the proceeding can be initiated if the Dealer is assessed under sub-rule (1), (2) or (3) for any period on the basis of any information in his possession and he is of the opinion that the whole or any part of the turnover of the Dealer in

respect of any period has escaped assessment or has been under assessed or has been assessed at a lower rate...

Bare reading of the provisions u/r. 12(1) of the CST (O) Rules, as it stood then, prior to the amendment, i.e. 01.08.2009, when the registered dealer furnishes return ..., the said return shall be accepted as self-assessed. After amendment, it was incorporated as follows :-

*“the said returns shall be accepted as self-assessed without any further communication to the dealer filing such returns.”*

On such proposition of law, the State is required to furnish materials to the effect that the self-assessed return filed by the Dealer has been accepted and such acceptance has been communicated to it. In the instant case, the Assessing Authority only observes that the assessment was completed u/r. 12(1) of the CST (O) Rules. The State fails to produce any material regarding any communication of acceptance of the self-assessed return filed by the Dealer. The State also fails to place any material as to when the proceeding u/r. 12(1) of the CST (O) Rules was completed, i.e. prior to the receipt of FCR. Perusal of assessment record, it transpires that though the Assessing Authority has recorded the reasons for initiation of proceeding of escaped assessment as per the FCR after completion of Rule 12(1) proceeding. But, the fact remains that the said order sheet bears no signature of the Assessing Authority till 30.11.2009, which speaks a lot contrary to the stand of the Revenue.

The assessment order reveals that the Dealer claims to have made inter-State sales against ‘C’ form and consignment sales against ‘F’ form amounting to ₹2,10,36,990.00 and ₹4,04,39,976.00 respectively as per the returns submitted by it. Even if the fact of acceptance shall be believed to be true, the escaped assessment can be initiated only on limited ground as the same has already been verified and accepted the self-assessed return by the State on the self-same material.

Provision of Rule 12(4) of the CST (O) Rules is akin to the provision of Section 43 of the OVAT Act. Hon'ble Court in the case of *M/s. Keshab Automobiles* cited supra have been pleased to observe in para-22 as follows :-

“22. From the above discussion, the picture that emerges is that if the self-assessment under Section 39 of the OVAT Act for tax periods prior to 1<sup>st</sup> October, 2015 are not ‘accepted’ either by a formal communication or an acknowledgement by the Department, then such assessment cannot be sought to be re-opened under Section 43(1) of the OVAT Act and further subject to the fulfilment of other requirements of that provision as it stood prior to 1<sup>st</sup> October, 2015.”

In view of the ratio laid down by the Hon'ble Court, the Department is required to communicate a formal communication or acknowledgment regarding the acceptance of the self-assessed return. In this case, the State has not filed any materials to show that the acceptance of the self-assessment has been communicated to the Dealer.

6. In view of the decision of the Hon'ble Court in *M/s. Keshaba Automobiles v. State of Odisha* cited supra, the assessment proceeding u/r. 12(4) of the CST (O) Rules is without jurisdiction. So, the orders of the Assessing Authority and the First Appellate Authority are not sustainable in the eyes of law as the same are without jurisdiction. As the preliminary issue relating to maintainability of the 12(4) proceeding has already decided in favour of the Dealer and against the State, other grounds are redundant. Hence, it is ordered.

*However, this forum would like to observe that the finding of this Tribunal relating to 12(4) proceeding will only confine to the escapement assessment. Validity of statutory forms ‘C’ & ‘F’ with respect to admitted returns shall be guided as per law.*

7. Resultantly, the appeal is allowed and the impugned order of the First Appellate Authority is hereby set aside. As a necessary corollary

thereof, the order of the Assessing Authority u/r. 12(4) of the CST (O) Rules is quashed. Cross-objection and additional Cross-objection are disposed of accordingly.

*However, this forum would like to observe that the finding of this Tribunal relating to 12(4) proceeding will only confine to the escapement assessment. Validity of statutory forms 'C' & 'F' with respect to admitted returns shall be guided as per law.*

**Dictated & Corrected by me**

**Sd/-  
(G.C. Behera)  
Chairman**

**Sd/-  
(G.C. Behera)  
Chairman**

**I agree,**

**Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member**

**I agree,**

**Sd/-  
(S.R. Mishra)  
Accounts Member-II**