BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 24 (VAT) of 2019

(Arising out of order of the learned Joint Commissioner CT&GST(Appeal) Sundargarh Territorial Range, Rourkela, in Appeal No. AAV 25/2014-15, disposed of on 28.09.2018)

Present: **Shri G.C. Behera, Chairman**

M/s. Maruti Steels,
Plot No. V3/18, Civil Township,
Rourkela ... Appellant

-Versus-

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

For the Appellant : Sri S.C. Agarwal, Advocate
For the Respondent : Sri S.K. Pradhan, Addl. SC (CT)

Date of hearing : 06.06.2023 *** Date of order : 19.06.2023

O R D E R

Dealer assails the order dated 28.09.2018 of the Joint Commissioner CT & GST(Appeal), Sundargarh Territorial Range, Rourkela, (hereinafter called as 'First Appellate Authority') in F.A. No. AA V 25/2014-15 reducing the demand raised in the assessment order of the Sales Tax Officer, Rourkela-I Circle, Uditnagar (in short, 'Assessing Authority').

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

M/s. Maruti Steels trades in iron and steel, plastic goods, HDPE bags as well as manufactures stone chips, stone powder and stone meal by utilizing boulder, limestone, dolomite, granite etc. The assessment period

relates to 01.04.2007 to 31.12.2012. The Assessing Authority raised tax and penalty of ₹5,14,602.00 u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') on the basis of Audit Visit Report (AVR).

The 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 ₹4,43,622.00 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 supporting the order of the First Appellate Authority to be just and proper.

3. Learned Counsel for the Dealer submits that the dealer should not suffer for the latches of the selling dealer. He further submits that the decision of Hon'ble Apex Court in case of the ***State of Karnataka v. M/s. Ecom Gill Cofee Trading Private Limited*** (**Civil Appeal No. 230 of 2023 decided on 13.03.2023**) is not applicable to the present facts and circumstances of the case as there is no *pari materia* provisions under the OVAT Act with that of Section 70 of the Karnataka VAT Act. He further submits that imposition of penalty u/s. 42(5) of the OVAT Act is mechanical and non-application of judicial mind since there was no tax due. So, he submits that the order of the First Appellate Authority suffers from illegality and otherwise bad in law, which requires interference in appeal. He relies on the decision of the Hon'ble Apex Court in the case of ***Commissioner of Trade & Taxes, Delhi and others v. Arise India Limited and others***, **[TS-2-SC-2018-VAT]** and decision of this Tribunal in ***S.A. No. 31 (VAT) of 2019*** dated 11.05.2023 in the case of ***M/s. Auro Agencies v. State of Odisha.***

4. On the contrary, the learned Addl. Standing Counsel (CT) for the State submits that the decisions in the case of ***Commissioner of Trade & Taxes, Delhi and others v. Arise India Limited and others***, **[TS-2-SC-**

2018-VAT] and decision of this Tribunal in ***S.A. No. 31 (VAT) of 2019*** in the case of ***M/s. Auro Agencies v. State of Odisha*** are not applicable to the present facts and circumstances of the case. The burden of proof lies on the dealer to show that the RC was valid and other information like actual physical movement and delivery and receipt of goods transported through carriers, which the Dealer has not discharged. So, he submits that the second appeal has no merit and is liable to be dismissed in limine. He relies on the decision of the Hon'ble Apex Court in the case ***State of Karnataka v. M/s. Ecom Gill Cofee Trading Private Limited*** (**Civil Appeal No. 230 of 2023 decided on 13.03.2023**).

5. Heard the rival submissions of the parties, gone through the orders of the First Appellate Authority and the Assessing Authority vis-a-vis the materials on record. The assessment order reveals that the Assessing Authority found that the Dealer has wrongly availed ITC of ₹1,47,313.00. The Assessing Authority determined the GTO and TTO. The Dealer admitted ITC of ₹97,30,548.00 as per returns. The Dealer has availed wrongful ITC of ₹1,47,313.00. Accordingly, the Assessing Authority computed the tax liability including penalty and interest at ₹5,14,602.00. The First Appellate Authority upheld the disallowance of ITC and penalty, but deleted the interest levied, which resulted in reduction of tax demand.

6. The Dealer assails disallowance of ITC of ₹91,250.00 in respect of purchase from M/s. Jena Steels, Rourkela on the ground that the dealer was in existence on the date of issue of invoice and the same was cancelled only on 04.11.2011. Likewise, the Dealer also assails disallowance of ITC of ₹55,793.00 in respect of purchase from M/s. Midas Trading Co., Rourkela on the same ground.

Learned Counsel for the Dealer relied on the judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Trade & Taxes,***

Delhi. cited supra and submits that the purchasing dealer should not suffer for the latches of the selling dealer for not disclosing the facts and figures in the returns.

Learned Standing Counsel (CT) for the State relied on the judgment of the Hon'ble Apex Court in the case of ***M/s. Ecom Gill Coffee Trading Pvt. Ltd.*** cited supra and submits that the burden proof lies on the purchasing dealer to disclose all the facts in order to avail the claim of ITC.

Relying the case of ***On Quest Merchandising India Pvt. Ltd. v Government of NCT of Delhi (Writ Petition (Civil) No. 6093/2017 decided on 26.10.2017***, Hon'ble Apex Court have categorically observed in the case of ***M/s. Ecom Gill Coffee Trading Pvt. Ltd.*** as follows :-

> "The burden of proof as per Section 70 of the KVAT Act, 2003 was not an issue before the Delhi High Court. How and when the burden of proof can be said to have been discharged to prove the genuineness of the transactions was not the issue before the Delhi High Court. As observed hereinabove, while claiming ITC as per section 70 of the KVAT Act, 2003, the purchasing dealer has to prove the genuineness of the transaction and as per section 70 of the KVAT Act, 2003, the burden is upon the purchasing dealer to prove the same while claiming ITC."

In the cited case of ***M/s. Ecom Gill Coffee Trading Pvt. Ltd.,*** the Dealer has not furnished any cogent materials like furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoice and payment particulars and the actual movement of the goods.

In the case at hand, the Assessing Authority disallowed the ITC claim of ₹91,520.00 on the ground of mismatch of the address of the selling dealer, i.e. M/s. Jena Steels and the VATIS data shows cancellation of RC. Though the selling dealer had filed the return, but no sale transaction was shown for the whole year.

Likewise, the claim of ITC of ₹55,793.00 was disallowed on the ground that the RC of the selling dealer, i.e. M/s. Midas Trading Co. was cancelled and the selling dealer has not filed the returns.

7. In view of the principles laid down by the Hon'ble Apex Court in case of ***M/s. Ecom Gill Coffee Trading Pvt. Ltd.*** cited supra, for availing the ITC, the burden lies on the Dealer to show specifically that the RC was valid on the date of transaction and details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods and actual physical movement of the goods by producing cogent materials. The Dealer seeks relief of ITC must prove that the facts to get the relief.

The Dealer has filed the tax invoice No. 16, 17 and 18 dated 02.10.2009 and 03.10.2009 in respect of M/s. Jena Steels. But, the same do not disclose specifically about actual physical movement of goods or acknowledgment of receipt or taking delivery of goods or payment of freight charges or details of the vehicles transporting the goods. The Dealer has not shown any document whether the RC was suspended or cancelled prior to such transactions. The Dealer has also not filed any invoice in respect of M/s. Midas Trading Co. The Dealer has not discharged the burden of proof, so he is not entitled to any relief as claimed for in view of Section 101 of the Evidence Act.

As regards imposition of penalty, Section 42(5) of the OVAT Act mandates penalty automatic. The Dealer has relied on the decisions of this Tribunal dated 11.05.2023 in ***S.A. No. 31 (VAT) of 2019 in the case of M/s. Auro Agencies v. State of Odisha***. The facts and circumstances of cited decisions are different from the facts and circumstances of the present case. In the cited case, the RC was valid and the transaction was in dispute, but the same was not available in VATIS data. But, in the instant case, the RC is

not valid and the Dealer fails to produce any cogent materials regarding delivery and acknowledgment of receipt of goods along with other information.

8. On the foregoing discussions, the Dealer fails to discharge burden of proof by producing cogent materials regarding details of transaction, valid RC and actual physical movement of goods, therefore, the second appeal must fail. Hence, it is ordered.

9. Resultantly, the appeal stands dismissed and the impugned order of the learned First Appellate Authority is hereby confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G.C. Behera)
Chairman

Sd/-
(G.C. Behera)
Chairman