

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

S.A. No. 334 (VAT) of 2015-16

(Arising out of order of the learned Addl.CST (Appeal), South Zone,
Berhampur in First Appeal No. AA (VAT)- 75/2014-15,
disposed of on 30.09.2015)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri M. Harichandan, Accounts Member-I

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

... Appellant

-Versus-

M/s. Shree Mahadevi Dal & Oil Mill,
At- Ramchandrapur Bazar, Jatni, Khurda

... Respondent

For the Appellant : Sri D. Behura, S.C. (CT)
For the Respondent : Sri B.N. Joshi, Advocate

Date of hearing : 12.10.2022 *** Date of order : 27.10.2022

ORDER

The Dealer assails the order dated 30.09.2015 of the Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (hereinafter called as 'First Appellate Authority') in F A No. AA - (VAT)- 75/2014-15 reducing the assessment order of the Deputy Commissioner of Sales Tax, Jatni Circle, Jatni (in short, 'Assessing Authority').

2. The case of the Dealer, in short, is that –

M/s. Shree Mahadevi Dal & Oil Mill is engaged in manufacturing/ processing of different dals after procuring pulses both from inside and outside the State. The Dealer also trades in dal and rice on wholesale basis. The assessment period relates to 01.04.2013 to 31.03.2014. The Assessing

Authority raised tax and penalty of ₹11,13,825.00 u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') basing on the Fraud Case Report (FCR) submitted by the STO, Vigilance Wing, Cuttack Division, Cuttack.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority allowed the appeal in part and reduced the tax demand to ₹2,22,765.00. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files cross-objection. Dealer supports deletion of enhancement by the First Appellate Authority, but challenges the order of confirmation regarding suppression of ₹14,85,100.00 established by the Assessing Authority on the basis of the FCR.

3. The sole contention of learned Standing Counsel (CT) for the State is that the Assessing Authority has raised the demand basing on the suppression of ₹14,85,100.00 detected by the Vigilance Wing for which he has enhanced five times of the suppression, whereas the First Appellate Authority has deleted the enhancement though agreed with the suppression detected. So, he submits that the order of the First Appellate Authority is liable to be set aside being unjust and improper and the order of the Assessing Authority to be restored. Learned Standing Counsel (CT) for the State objects the written submission of the learned Counsel for the Dealer on the ground that a point cannot be adjudicated in absence of any specific ground taken in the cross-objection.

4. On the other hand, learned Counsel for the Dealer supports the finding of the order of the First Appellate Authority regarding deletion of enhancement whereas challenges the suppression established basing on the FCR submitted by the STO (Vigilance). He further submits that the proceeding u/s. 43 of the OVT Act is not maintainable in the absence of

acceptance of its return by way of self-assessment. He relies on the judgment of the Hon'ble High Court of Orissa in case of *M/s. Keshab Automobiles v. State of Odisha in STREV No. 64 of 2016 decided on 01.12.2021*, which has been confirmed by the Hon'ble Apex Court, and the order dated 22.08.2022 of this Tribunal passed in **S.A. No. 96 (VAT) of 2014-15 and S.A. No. 168 (VAT) of 2014-15**. He also relies on the decision of the Hon'ble Apex Court in the case of *Steel Authority of India Ltd. v. Sales Tax Officer, Rourkela-I Circle and others, reported in [2008] 16 VST 181 (SC)*; decision of the Hon'ble Orissa High Court in case of *Bherodhan Jethmal (Private) Ltd. v. State of Orissa, reported in [1970] 26 STC 536*; and the decision of the Hon'ble Kerala High Court in the case of *Roy Jacob v. State of Kerala, reported in [2002] 128 STC 256*. Thus, he submits to set aside/annul the orders of the forums below.

5. Having heard the rival submission and on careful scrutiny of the materials on record, it is not in dispute that the Assessing Authority assessed the tax liability of the Dealer on the ground of suppression basing on the FCR. It is also not in dispute that the Dealer has not taken any ground regarding maintainability of the proceeding u/s. 43 of the OVAT Act in absence of any proceeding u/s. 39, 40, 42 or 44 of the OVAT Act. He only raised the contention and submitted written submission on the ground of maintainability of the proceeding u/s. 43 of the OVAT Act in absence of any proceeding u/s. 39, 40, 42 or 44 of the OVAT Act. It is also not in dispute that the State has not filed any document regarding acknowledgement of acceptance of the self-assessed return of the Dealer. It is a point of law which has been settled by the Hon'ble Court in *M/s. Keshab Automobiles'* case (supra) that proceeding u/s. 43 is not maintainable in absence of acceptance of acknowledgment of self-assessed return or any proceeding u/s. 39, 40, 42 or 44 of the OVAT Act.

6. As the State is not able to provide information regarding communication of written acknowledgment of the self-assessed return of the Dealer or any proceeding u/s. 39, 40, 42 or 44 of the OVAT Act, the proceeding u/s. 43 is not maintainable as decided by the Ho'ble Court in the case cited supra. The Dealer has raised the maintainability on the written submission and challenged the proceeding u/s. 43 of the OVAT Act on the ground of non-communication of acceptance or acknowledgment of acceptance of self-assessed return of the Dealer, the State is required to produce any document showing communication of the acceptance of such return and the same is question of law, the same can be taken up on the basis of the written submission of the Dealer. So, the proceeding u/s. 43 of the OVAT Act is not maintainable. As such, the orders of the Assessing Authority and the First Appellate Authority require interference. Hence, it is ordered.

7. In the result, the appeal is dismissed. The orders of the Assessing Authority and the First Appellate Authority are hereby set aside. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

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

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

I agree,

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

I agree,

**Sd/
(M. Harichandan)
Accounts Member-I**