

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

S.A. No. 192 (VAT) of 2014-15

(Arising out of order of the learned Addl.CST (Appeal), South Zone,
Berhampur in First Appeal No. AA (VAT)- 42/2013-14,
disposed of on 30.05.2014)

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

M/s. Utkal Automobiles Ltd.,
S-3/61, IE, Mancheswar, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri S.K. Mohapatra, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 30.09.2022 *** Date of order : 27.10.2022

ORDER

The Dealer is in appeal against the order dated 30.05.2014 of the Addl. Commissioner of Sales Tax (Appeal), South Zone, Bhubaneswar (hereinafter called as 'First Appellate Authority') in Appeal No. AA - (VAT)- 42/2013-14 confirming the assessment order of the Deputy Commissioner of Sales Tax, Bhubaneswar III Circle, Bhubaneswar (in short, 'Assessing Authority').

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

M/s. Utkal Automobiles Ltd. is a Limited Company and engaged in trading of two wheelers, four wheelers and its spare parts and accessories. The assessment period relates to 01.10.2010 to 31.10.2012. The Assessing

Authority raised tax and penalty of ₹65,58,747.00 u/s. 42(4) of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') basing on the Audit Visit Report (AVR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the assessment order of the Assessing Authority. Being further aggrieved with the order of the First Appellate Authority, the Dealer prefers the appeal. Hence, this appeal.

3. During pendency of the appeal, the Dealer also took additional ground of appeal on the ground of limitation u/s. 42(6) of the OVAT Act.

4. The State files cross-objection supporting the orders of the fora below. The State also files cross-objection against the additional grounds of appeal under the OVAT Act regarding filing of additional grounds of appeal after elapse of time only to delay the payment of tax liability.

5. The learned Counsel for the Dealer submits that the assessment order is barred by limitation. He further submits that the Dealer had already deposited the tax amount of ₹20.00 lakh under the OVAT Act in online and the amount was deducted from its Bank A/c. He further submits that unfortunately the amount of ₹20.00 lakh deposited under the OVAT Act was not accepted on technical ground and the deposited money was reversed to its A/c. He further submits that the matter was detected by the Audit Team and the Dealer deposited the same on 06.08.2013, i.e. before the date of assessment. He further submits that the Dealer has no latches, rather the Dealer has discharged its liability by depositing the tax amount immediately after its detection by its internal Audit Team. He further submits that the Audit Team specifically endorsed in the AVR regarding no discrepancy except charging of interest for late payment of admitted tax. He further submits that the dealer is not disputing and claims that he has already deposited the interest amount. He also submits that the Dealer is only liable

to pay simple interest on such amount @ 2% per month w.e.f. such default till the payment of the amount. He further submits that the orders of the Assessing Authority and the First Appellate Authority are erroneous and contrary to the provisions of law and fact involved and the same require interference in appeal. He further submits that the appeal should be allowed by adopting the principle of best judgment.

6. On the other hand, the learned Standing Counsel (CT) for the State vehemently objects to the contentions of the Dealer. He submits that the Dealer did not deposit the amount of tax intentionally. So, he submits that the learned Assessing Authority and the First Appellate Authority have rightly passed the orders and the same require no interference in appeal.

7. Having heard the rival submissions and the materials available on record, we formulate the following questions for determination in appeal :-

- (i) Whether in the facts and circumstances of the case the order of the Assessing Authority under the OVAT Act is barred by limitation?
- (ii) Whether in the facts and circumstances of the case the orders of the Assessing Authority and the First Appellate Authority imposing penalty under the OVAT Act are justified as per law?

8. As the Dealer challenges the order of Assessing Authority on the point of barred by limitation and it is a preliminary issue, so the same is taken up at the outset for adjudication in appeal.

On careful scrutiny of the materials available on record, the Dealer has raised the point of maintainability of assessment under the OVAT Act as barred by limitation. The relevant provision u/s. 42(6) is quoted hereunder for better appreciation :-

“42. Audit assessment –

(1) xx xx xx
 (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 :”*

The AVR bears no date to show its completion and its submission to the Assessing Authority. The record shows that the Assessing Authority received the same on 09.01.2013. The notice was served on the Dealer on 13.02.2013 and the assessment order was passed on 08.08.2013. So, the order of assessment was made in conformity with the provisions of Section 42(6) of the OVAT Act, i.e. within six months from the date of receipt of the notice by the Dealer. So, the submission of learned Counsel for the Dealer on this score fails. Therefore, question No. (i) is answered in favour of the State and against the Dealer.

9. We shall examine question No. (ii) regarding justification of penalty on delayed payment of tax.

He also raised that the Assessing Authority can only impose the interest amount as per Section 50(6) for default payment as per Section 50(4) and (5) of the OVAT Act.

The relevant provisions are reproduced herein below for better appreciation:-

“33. Periodical returns and payment of tax –

- (1) xx xx xx
- (5) *If any dealer, after furnishing a return under sub-section (1) or sub-section (2), discovers that a higher amount of tax was due than the amount of tax admitted by him in the original return for any reason, he may voluntarily disclose the same by filing a revised return for the purpose and pay the higher amount of tax as due at any time, in the manner provided under Section 50 :*

Provided that no such voluntary disclosure shall be accepted where the disclosure is made or intended to be made after receipt of the notice for tax audit under this Act, or as a result of such audit.”

“42. Audit assessment –

- (1) xx

- (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 sub-section (4) shall be imposed by way of penalty in respect of any assessment completed under the said sub-sections.*”

“50. Payment and recovery of tax, interest and penalty –

- (1) xx xx xx
- (4) *The amount of –*
- (a) *tax due where returns have been filed without full payment of tax due; or*
- (b) *tax assessed under Sections 39, 40, 42, 43, 44, or 45 less the sum already paid in respect of any tax period, together with interest required to be paid and the penalty, if any, imposed under Section 42, 43 or Section 44; or*
- (c) *penalty imposed under any provision of this Act not covered by clause (b); or*
- (d) *any other dues under this Act,*

shall be paid by the dealer in the manner provided under sub-section (2) within thirty days from the date of service of the notice issued by the assessing authority for the purpose.

- (5) *Where a dealer fails to make payment of the tax assessed, interest payable or penalty imposed or any other amount due from him under this Act within thirty days of the date of service of the notice of demand, the assessing authority shall, after giving the dealer a reasonable opportunity of being heard, direct that such dealer shall pay, in addition to the amount due for payment, by way of penalty, a sum equal to two per centum of such amount of tax, interest, penalty or any other amount due, for every month for which payment has been delayed by him after the date on which such amount was due to be paid:*

Provided that where any appeal under Section 77 or 78 or revision under Section 79 has been filed, -

- (i) *such penalty shall be payable from the date so specified on the amount ultimately found due from the dealer; and*
- (ii) *if the tax or penalty, if any, is enhanced in such appeal or revision, such penalty on the excess amount shall be payable from the date by which the dealer is required to pay such excess amount.*
- (6) *When a dealer is in default in making the payment of any amount payable by him under sub-sections (4) and (5) he shall be liable to pay simple interest on such amount at the rate of two per centum per month with effect from the date of such default till the payment of the amount.”*

10. On perusal of the AVR, it shows that the Audit Team has specifically found no discrepancy in the books of account except charging of interest for late payment of admitted tax. The finding of the AVR is reproduced herein below for better appreciation :-

“Findings –

1. Total output tax payable	- ₹97,49,11,445.14
Total input -	- ₹55,01,91,447.03
Total VAT due	- ₹42,47,19,968.11
VAT claimed to have paid	- ₹42,47,40,793.00
VAT to be paid	- Nil
Discrepancy noticed	
Grand total interest	- ₹7,09,764.88
	Or - ₹7,09,765.00
Interest paid	- ₹3,61,876.00
Balance interest payable	- ₹3,47,889.00

The assessment order shows that the Assessing Authority does not dispute the total VAT due, i.e. ₹42,47,19,968.11 and payment of ₹42,27,40,793.00. The Assessing Authority also does not dispute the payment of ₹20.00 lakh made on 06.08.2013, but recorded a finding that the said payment relates to M.E. 3/2013 and the Dealer filed the revised return for the M.E. 3/2013. The revised return filed by the Dealer on 07.08.2013 shows in Sl. No. 56 (ii) that the Dealer has deposited various amounts by way of e-payment including e-payment under Challan No. CK32019659/C dated 06.08.2013 for an amount of ₹36,62,634.00 and there is an excess payment of ₹20,00,541.00 remaining unadjusted for adjustment in the next tax periods to be taken to column 56(i)((g)).

11. The Dealer claims that he had paid ₹20.00 lakh under e-Challan No. CK18114663 dated 22.06.2012 for the period 01.05.2012 to 31.05.2012. Admittedly, the Dealer did not pay the full tax due and defaulted in payment of ₹20.00 lakh on 22.06.2012. The Dealer claims that he has paid ₹20.00 lakh on 06.08.2013, which relates to the tax for the month of May, 2012. The revised return shows that it relates to the tax period 01.03.2013 to 31.03.2013 and discloses excess payment of tax of ₹20,00,541.00. The Dealer has not filed any return relating to payment of ₹20.00 lakh dated 06.08.2013 relates to May, 2012. It is also not in dispute that the Dealer has already received the notice for audit assessment on 13.02.2013. The Dealer

did not take any steps to verify the payment till 13.02.2013 nor immediately after receipt of the notice on 13.02.2013. He paid the amount only on 06.08.2013 after a lapse of about six months of receipt of notice. So, in view of Section 42(5) of the OVAT Act, the penalty u/s. 42(5) is automatic.

12. Hon'ble Court in the case of *State of Odisha Vs. M/s. Chandrakanta Jayantilal, Cuttack and another* (STREV No. 69 of 2012, decided on 05.07.2012) have been pleased to observe that once an assessment is completed u/s. 42(4) of the OVAT Act, the penalty leviable u/s. 42(5) automatically follows.

So, in view of the principles laid down by the Hon'ble Court in the case cited supra, the Assessing Authority has rightly imposed penalty for default payment and the First Appellate Authority has rightly confirmed the penalty imposed. Accordingly, question No. (ii) is decided against the Dealer and in favour of the State. Hence, it is ordered.

13. In the result, the appeal is dismissed and the orders of the First Appellate Authority and the Assessing Authority are hereby confirmed. 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**