**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK**

**S.A. No. 92(VAT) of 2021**

(Arising out of order of the learned JCST (Appeal), Sundargarh Territorial Range, Rourkela in Appeal No. AAV – 83/ 2017-18, disposed of on 30.03.2021)

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

M/s. Satguru Metals & Power Pvt. Ltd.,
Gariamal, Bargaon,
Dist. Sundargar ... 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 D. Behura, S.C. (CT)
Sri S.K. Pradhan, Addl. SC (CT)

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Date of hearing : 02.05.2023 *** Date of order : 13.05.2023

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**O R D E R**

Dealer is in appeal against the order dated 30.03.2021 of the Joint Commissioner of Sales Tax (Appeal), Sundargarh Territorial Range, Rourkela (hereinafter called as 'First Appellate Authority') in F A No. AAV – 83/ 2017-18 confirming the assessment order of the Sales Tax Officer, Rourkela II Circle, Panposh (in short, 'Assessing Authority').

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

M/s. Satguru Metals & Power Pvt. Ltd. carries on business in manufacture and sale of MS ingot. The assessment period relates to 02.07.2015 to 06.11.2015. The Assessing Authority raised tax and penalty of ₹62,35,845.00 u/s. 43 of the Odisha Value Added Tax Act, 2004 (in

short, ‘OVAT Act’) in *ex parte* assessment on the basis of Tax Evasion Report (TER).

The dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the tax demand and dismissed the appeal. 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 impugned order of the First Appellate Authority confirming the assessment order of Assessing Authority to be just and proper.

3. Learned Counsel for the Dealer files additional grounds of appeal and submits that the Assessing Authority was not justified in assessing the Dealer u/s. 43 of the OVAT Act for the period 02.07.2015 to 30.09.2015 without completing the assessment u/s. 39, 40, 42 or 44 of the OVAT Act. He further submits that the acceptance of self-assessment was not communicated to the Dealer and as such, reopening the proceeding u/s. 43 of the OVAT Act for that period on receipt of TER is not sustainable in law. He also submits that as the assessment order was passed *ex parte* and entries were not verified, the matter should be remanded to the Assessing Authority for assessment of tax including penalty afresh for the period 01.10.2015 to 06.11.2015 keeping in view the post-amendment of Section 43 of the OVAT Act and after allowing reasonable opportunity of being heard to the Dealer. He relies on the decision of the Hon’ble Court in case of ***Keshab Automobiles v. State of Odisha***, reported in **[2023] 111 GSTR 317 (Orissa)**. So, he submits that the orders of the Assessing Authority and the First Appellate Authority are liable to be set aside in the ends of justice.

4. On the other hand, the learned Standing Counsel (CT) for the State submits that the Dealer did not raise the issue regarding acceptance of self-assessment return either at the time of assessment or before the First

Appellate Authority. He further submits that if the Dealer did not raise the issue in the earliest opportunity, he is precluded to take such ground before the second appellate authority for the first time by way of additional grounds of appeal. He further submits that communication/acknowledgement of the order of acceptance of self-assessed return is a matter of fact and the same cannot be objected at this belated stage before this forum. He further submits that the assessment periods include the position of both pre-amendment and post-amendment periods. So, he submits that the whole proceeding cannot be quashed in the aid of the decision of the case cited supra. So, he submits that the order of the First Appellate Authority requires interference in appeal to that extent only.

5. Having heard the rival submissions of the parties and on going through the orders of the both the Assessing Authority and the First Appellate Authority vis-a-vis the materials on record, it transpires that the assessment period relates to 02.07.2015 to 06.11.2015, which includes the pre-amendment period, i.e. 02.07.2015 to 30.09.2015, and post-amendment period, i.e. 01.10.2015 to 06.11.2015.

As regards the assessment for pre-amendment period, i.e. 02.07.2015 to 30.09.2015, it is no more *res integra* that it pre-supposes that there has to be an initial assessment which should have been accepted for the period in question, i.e. before 1st October, 2015, before the Department could form an opinion regarding escaped assessment or under assessment or the Dealer taking the benefit of a lower rate or being wrongly allowed deduction from his turnover or ITC to which is not eligible. On such circumstances, in the case of ***Keshab Automobiles*** cited supra, Hon'ble Court have been pleased to observe 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 1st October, 2015 are not 'accepted' either by a formal communication or an acknowledgment 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 provisions as it stood prior to 1st October, 2015."

The Department fails to produce any material regarding acceptance/acknowledgment of self-assessed return u/s. 39 of the OVAT Act or any assessment of the Dealer u/s. 40, 42 or 44 of the said Act prior to 1st October, 2015.

In view of the above principles of law, I am of the considered view that the assessment prior to 1st October, 2015 (02.07.2015 to 30.09.2015) u/s. 43 of the OVAT Act is not maintainable in law and as such, the same is liable to be quashed.

6. As regards the assessment relating to the post-amendment period, i.e. 01.10.2015 to 06.11.2015, Hon'ble Court in the above cited case have been pleased to observe categorically as follows :-

> "14. However, under Section 43(1) of the OVAT Act, after its amendment with effect from 1st October, 2015 the Assessing Authority can form an opinion about the whole or part of the turnover of the dealer escaping assessment or being under assessed "on the basis of any information in his possession". In other words, it is not necessary after 1st October, 2015 for the Assessee's initial return having to be 'accepted' before Section 43(1) could be invoked."

In view of the ratio laid down above by the Hon'ble Court, I am of the considered opinion that the assessment relating to the post-amendment period, i.e. 01.10.2015 to 06.11.2015, the escaped assessment u/s. 43(1) of the OVAT Act can be invoked and the same cannot be said to be invalid as claimed by the Dealer.

7. Now coming to the dispute relating to the assessment for the post-amendment period, it is settled law that the same requires segregation and assessment afresh. At this stage, I feel it proper to remit the matter to the Assessing Authority for segregation of the assessment for the post amendment period and compute the tax liability in accordance with law without expressing my opinion on its merit. The Dealer is at liberty to raise

all the material evidence in support of its defence before the Assessing Authority. Hence, it is ordered.

8. Resultantly, the appeal stands allowed and the impugned order of the First Appellate Authority is hereby set aside. The assessment for the period 02.07.2015 to 30.09.2015 is hereby quashed. But, the assessment for the post amendment period, i.e. 01.10.2015 to 06.11.2015, is hereby remitted to the Assessing Authority for disposal afresh as per law keeping in view the observations made supra. The reassessment should be completed within three months from the date of this order. Cross-objection is disposed of accordingly.

**Dictated & Corrected by me**

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

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