

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

S.A. No. 224 (VAT) of 2017-18

(Arising out of order of the learned JCST, Sambalpur Range,
Sambalpur, in Appeal No. AA-65/SAI/VAT/2016-17,
disposed of on 21.07.2017)

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

M/s. Singh Marketing,
Shivlok Complex, G.T. Road,
Sambalpur-768001 ... Appellant

-Versus-

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

For the Appellant : Sri D.K. Das, Advocate
For the Respondent : Sri N.K. Rout, Addl. SC (CT)

Date of hearing : 08.11.2023 *** Date of order : 28.11.2023

ORDER

Dealer is in appeal against the order dated 21.07.2017 of the Joint Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter called as 'First Appellate Authority') in F.A. No. AA-65/SAI/VAT/2016-17 setting aside the assessment order of the Sales Tax Officer, Sambalpur I Circle, Sambalpur (in short, 'Assessing Authority').

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

M/s. Singh Marketing deals in mobile phone & its accessories and effects purchase of goods both from inside as well as outside the State and sells inside the State only. The assessment relates to the period 01.04.2010 to 31.03.2012. The Assessing Authority raised tax and penalty of

₹58,68,657.00 u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') basing on Fraud Case Report (FCR) in *ex parte* assessment.

The dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority set aside the assessment for reassessment with certain observations. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection.

3. Learned Counsel for the Dealer submits that the order of assessment passed by the Assessing Authority u/s. 43 of the OVAT Act is without jurisdiction in absence of any 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 is not sustainable in law. He further contends that the preliminary issue should be addressed first before going to the merit of the case. He also argues that the set aside order of the First Appellate Authority is illegal and uncalled for as the very initiation of assessment u/s. 43 of the OVAT Act by the Assessing Authority is beyond jurisdiction, so, the said order is liable to be quashed.

He relies on the decision of the Hon'ble Court in case of *M/s. Keshab Automobiles v. State of Odisha* (STREV No. 64 of 2016, decided on 01.12.2021). 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. Per contra, the learned Addl. Standing Counsel (CT) for the State submits that the Dealer had already self-assessed u/s. 39 of the OVAT Act for the period under appeal. He did not raise the issue in the earliest opportunity, i.e. Assessing Authority, but only took such ground of maintainability before the First Appellate Authority. He submits that the Dealer failed to respond to the statutory notice issued in Form VAT-307 and

subsequent intimations before initiation of proceeding u/s. 43 of the OVAT Act. 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.

5. Heard the rival submissions and gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. The Dealer raised the preliminary issue of maintainability of proceeding u/s. 43 of the OVAT Act in absence of any assessment u/s. 39, 40, 42 or 44 of the said Act.

It is not in dispute that the First Appellate Authority while addressing the issue has already observed that the order of the Assessing Authority is silent regarding any previous assessment and even no whisper of acceptance of the return u/s. 39 of the OVAT Act. On such finding, the First Appellate Authority has already set aside the order of assessment. The set aside order is itself illegal as the same ought to have been quashed by the First Appellate Authority on the ground that the Assessing Authority lacks jurisdiction in absence of any assessment u/s. 39, 40, 42 or 44 of the OVAT Act and communication thereof.

Moreover, the law is well settled when the same has been decided by the Hon'ble High Court of Orissa and affirmed by the Hon'ble Apex Court.

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 1st 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 1st 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-assessment u/s. 39 of the OVAT Act. 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. Thus, the First Appellate Authority went wrong in setting aside the assessment for reassessment instead of quashing of it. As the proceeding u/s. 43 of the OVAT Act is not maintainable on the point of jurisdiction and the same has been decided as preliminary issue, so, it is not required to deal with other issues of the Dealer on merit.

6. In view of the decision of the Hon'ble Court in case of *M/s. Keshab Automobiles* cited supra, the assessment proceeding u/s. 43 of the OVAT Act is without jurisdiction in absence of any assessment u/s. 39, 40, 42 or 44 of the said Act. So, the orders of the Assessing Authority and the First Appellate Authority under the OVAT Act are not sustainable in the eyes of law as the same are without jurisdiction. Hence, it is ordered.

7. Resultantly, the appeal stands allowed and the impugned order of the First Appellate Authority is hereby set aside. The order of the Assessing Authority is quashed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

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

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