

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

S.A. No. 22 (VAT) of 2019

(Arising out of order of the learned Addl. CST (Appeal), Central Zone,
Odisha, Cuttack, in Appeal No. AA- 106101610000152/2016-17,
disposed of on 29.11.2018)

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

M/s. Sundar Das D' Hunsraj,
College Square, Cuttack ... Appellant

-Versus-

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

For the Appellant : Sri D. K. Hazra, Advocate
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl. SC (CT)

Date of hearing : 03.05.2023 *** Date of order : 02.06.2023

ORDER

Dealer is in appeal against the order dated 29.11.2018 of the Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack, (hereinafter called as 'First Appellate Authority') in F.A. No. AA-106101610000152/2016-17 confirming the demand raised in the assessment order of the Joint Commissioner of Sales Tax, Cuttack-I Range, Cuttack (in short, 'Assessing Authority').

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

M/s. Sundar Das D' Hunsraj deals in hardware goods, electrical items, rubber belt, tube well parts and accessories, spare parts and accessories of pump sets including hand pumps, drilling machine, welding

machine accessories, PVC pipes etc. The assessment period relates to 01.04.2013 to 31.03.2015. The Assessing Authority raised tax and penalty of ₹8,21,612.00 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 confirmed the assessment and dismissed the appeal *ex parte*. 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 orders of the First Appellate Authority and Assessing Authority to be just and proper.

3. Learned Counsel for the Dealer submits that he could not produce relevant documents for some unavoidable circumstances and the Dealer was set *ex parte* before the First Appellate Authority. He submits that the Dealer should be given an opportunity to place the material documents towards its claim. In support of contention, learned Counsel for the Dealer files copy of documents and required certificate before this forum. So, he submits that the relevant documents now filed before this forum should be considered in the ends of justice.

4. Per contra, the learned Standing Counsel (CT) for the State vehemently opposes the contention of the learned Counsel for the Dealer and submits that the Dealer is trying to linger the case for a long period without any cogent ground. So, he submits that the order of the First Appellate Authority confirming the order of the Assessing Authority suffers from no infirmity and requires no interference in appeal.

5. Heard the submissions of both parties and gone through the orders of the First Appellate Authority and the Assessing Authority vis-a-vis the materials on record. The Dealer has raised dispute of mismatch of ITC to the tune of ₹70,999.00, disallowance of ITC of ₹1,12,972.00, disallowance of

sales effected to EOU at ₹7,60,249.00 and further raised dispute that the Dealer has not given sufficient opportunity of being heard and the First Appellate Authority did not consider the grounds raised before him. He also took the ground that the Dealer was prevented with sufficient cause for non-filing of the Form VAT-616 to the tune of ₹7,60,249.00.

The assessment order reveals that the Assessing Authority did not accept the mismatch of ITC of ₹70,999.000 as the Dealer fails to produce any material evidence to that effect. The Assessing Authority also disallowed the reverse ITC of ₹1,12,972.00.

The order of the First Appellate Authority shows that the Dealer could not produce any material evidence against him claim of ITC of ₹70,999.00. The First Appellate Authority further found from the AVR that the Dealer has reduced the TTO on purchases due to purchase return under 5% tax group. So, the First Appellate Authority also upheld the reversal ITC of ₹1,12,972.00. The First Appellate Authority further observed that the Dealer failed to file the supporting certificate in Form VAT-616 for ₹7,60,249.00, which has been sold to export oriented units (EOU) in the year 2014-15. The First Appellate Authority further observed that inspite of notice and intimation, the Dealer did not appear before him and submitted any documentary evidence to substantiate its claim.

6. As regards mismatch of ITC of ₹70,999.00, the impugned order of the First Appellate Authority reveals that the Dealer was set *ex parte* due to non-appearance. The Dealer has filed confirmation letters of the sellers along with other documents in support of its claim, which it could not produce before the First Appellate Authority, so, I feel it proper to give an opportunity to the Dealer to produce the same before the Assessing Authority to substantiate the claim.

As regards the reversal of ITC of ₹1,12,972.00, the Dealer claims that the Dealer had returned the defective goods to the sellers and in turn,

the seller has issued credit notes to that effect and the Dealer has not availed ITC on such purchases. The Dealer has filed copy of the return credit notes before this forum. So, I feel it expedient that the matter requires further consideration at the end of the Assessing Authority.

As regards disallowance of ₹7,60,249.00 towards sales by export oriented units (EOU), the claim was disallowed by the First Appellate Authority for non-submission of required certificate in Form VAT-616. The Dealer submitted the said certificate issued by the TATA Steel Ltd., Sukinda Chromite Mines along with other documents. So, I feel it proper to give an opportunity to the Dealer to place the documents before the Assessing Authority for due consideration as per law.

7. For the foregoing discussions, as the Dealer has filed the relevant documents before this forum in course of hearing of appeal and I feel it proper to allow an opportunity to the Dealer to place the same before the Assessing Authority for consideration its claim in the interest of justice, so, it requires further consideration at the end of the Assessing Authority on remand. The Assessing Authority shall consider the material documents to be produced by the Dealer as per law. Hence, it is ordered.

8. Resultantly, the appeal stands allowed and the impugned order of the First Appellate Authority is hereby set aside. The matter is remanded to the Assessing Authority for assessment afresh as per law keeping in view the observations made above within a period of three months from the date of receipt 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**