BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 156 (VAT) of 2018

(Arising out of order of the learned JCST, Angul Range,
Angul in Appeal No. 106211821000003,
disposed of on 29.03.2018)

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

M/s. Radharani Flour Mill,
Station Bazar, Dhenkanal ... Appellant

-Versus-

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

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

Date of hearing : 11.04.2023 *** Date of order : 26.04.2023

O R D E R

Dealer assails the order dated 29.03.2018 of the Joint Commissioner of Sales Tax, Angul Range, Angul (hereinafter called as 'First Appellate Authority') in F A No. 106211821000003 setting aside the assessment order of the Deputy Commissioner of Sales Tax, Dhenkanal Circle, Dhenkanal (in short, 'Assessing Authority').

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

M/s. Radharani Flour Mill deals in wheat, atta, maida, suji, besan, dal and pulses, biscuits, waffles & referrs, namkins, edible oil, agarbati, bulbs & tubes, light fittings, other mixture of spices & spices. The Dealer also runs a rolling flour mill for grinding wheat to flour for trading purpose,

but without mentioned in the RC. The assessment relates to the periods 01.04.2014 to 30.09.2015 and 01.10.2015 to 30.09.2016. The Assessing Authority raised tax and penalty of ₹2,68,163.00 in assessment proceeding u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') basing on the Tax Evasion Report (TER).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority set aside the order of assessment to examine the books of account afresh as per the observations made therein. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers the appeal. Hence, the appeal.

The State files cross-objection supporting the impugned order of the First Appellate Authority setting aside the order of assessment to be just and proper in the facts and circumstances of the case.

3. The learned Counsel for the Dealer submits that the orders passed by the First Appellate Authority and the Assessing Authority are otherwise illegal in law and facts involved. He further submits that without completing an assessment u/s. 39, 40, 42 or 44 of the OVAT Act for the period 01.04.2014 to 30.09.2015, initiation of proceeding directly u/s. 43 of the said Act is not sustainable in law. He submits that the order of the Assessing Authority regarding stock discrepancy basing on profit margin is not justified when no discrepancy was found from the purchase and sale account. He also submits that the initiation of the proceeding, rejection of books of account and the estimation of stock discrepancy on a guess work are illegal. The order of remand for further assessment by the First Appellate Authority is also unjustified. Therefore, he submits that the orders of the First Appellate Authority and the Assessing Authority under the OVAT Act are liable to be set aside in the ends of justice. He relies on the decision of

the Hon'ble Court in case of ***M/s. Keshab Automobiles v. State of Odisha*** in **STREV No. 64 of 2016** decided on 01.12.2021.

4. Per contra, the learned Standing Counsel (CT) for the State submits that the self-assessment of the Dealer has already been accepted u/s. 39(2) of the OVAT Act. He further submits that the impugned proceeding has been initiated basing on the stock discrepancy detected. So, he submits that the order of the First Appellate Authority suffers from no infirmity and the same requires no interference.

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 challenges the maintainability of the proceeding u/s. 43 of the OVAT Act in absence of acceptance of self-assessed return for the pre-amended period. The record transpires that the assessment periods relate to 01.04.2014 to 30.09.2015 and 01.10.2015 to 30.09.2016.

6. It is apparent that reassessment u/s. 43 of the OVAT Act can only be made after the assessment is completed u/s. 39, 40, 42 or 44 of the said Act.

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.

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 for the pre-amended period 01.04.2014 to 30.09.2015 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 on that score are not sustainable in the eyes of law as the same are without jurisdiction.

7. So far as assessment for the post-amendment period 01.10.2015 to 30.09.2016 is concerned, the proceeding u/s. 43 of the OVAT Act is maintainable in view of the amended provision of the OVAT Act as well as the decision of the Hon'ble Court cited supra. So, the contention of the learned Counsel for the Dealer that the whole proceeding is not maintainable does not merit for consideration.

8. As regards the issue of stock discrepancy, the Assessing Authority verified the TER, seized documents (seven), books of account and the VATIS data. During assessment, the Assessing Authority noticed that the Investigating Official has not verified the matter in detail, but he found some bills in record. So, he considered the sale and purchase figures for the above periods and determined the discrepancies by considering the actual physical stock of the Dealer. He found the purchase and sale amount upto the date of visit, i.e. 23.09.2016, stood at ₹4,98,43,889.00 and ₹4,85,86,324.00 respectively. The Assessing Authority further found that the physical stock was detected at the place of business and godown stood at ₹25,79,000.00. The Dealer claims that the profit margin was 2 to 4% basing on the type of goods. Accordingly, the Assessing Authority considered 3% profit margin. He computed the stock as follows :-

Opening stock as on 01.04.2014	- ₹ 9,76,958.00
Purchase upto 23.09.2016	- ₹4,98,43,889.00
Total stock amount	- ₹5,08,20,847.00
Purchase value of the sale of goods	- ₹4,71,71,188.00
Stock of goods taken by STO on 23.09.2016	- ₹ 25,79,000.00
Actual stock required to be found	- ₹ 36,49,659.00
Stock discrepancy arrived at - (₹36,49,659.00 – ₹25,79,000.00)	- ₹ 10,70,659.00

The Assessing Authority further found that the Dealer deals in 5%, 13.5% / 14.5%, tax free and MRP goods. He ascertained the percentage of the said goods at 55 : 40 respectively. As such, the stock discrepancy of 5% taxable goods calculated at ₹4,28,264.00 (40% of ₹10,70,659.00), 13.5 / 14.5 % taxable goods at ₹5,88,862.00 (55% of ₹10,70,659.00). He further found the sales turnover of ₹2,38,65,848.00 and ₹2,47,20,476.00 for the periods 01.04.2014 to 30.09.2015 and 01.10.2015 to 30.09.2016 respectively. Accordingly, he computed the tax liability of the Dealer for the aforesaid periods.

9. The First Appellate Authority in the impugned order observed that seven documents were seized by the STO, Investigation Unit, Angul from the place of business. The Dealer failed to produce the books of account of the business. The First Appellate Authority further observed that the Assessing Authority has not taken into account the discrepancies detected by the STO (Investigation) over and above the transactions disclosed by the Dealer in its periodical return. He further observed that the Assessing Authority opined the purchase and sale figures which are four times more than the values noted from the seized documents. So, the First Appellate Authority set aside the assessment order and remanded the matter for fresh determination of tax liability of the Dealer with the following observations :-

> (i) Complete books of account including purchase and sale invoices, purchase register and sale register are not verified in detail with reference to the seized documents.

(ii) It has not been verified properly whether the transactions reflected in the seized documents are accounted for or not.
(iii) The dealer appellant does not maintain stock account and/or manufacturing account. As there is no scope for verification of the stock discrepancy reported by the Investigating officials, the same is to remain in-tact.
(iv) The suppression reported by the Investigating officials are over and above the sale disclosed by the dealer appellant in the filed returns. Proper verification and determination of the suppression with reference to the books of account is required.
(v) Inspite of taking profit margin flatly @ 3%, the profit margin in each and every item is to be considered separately in order to derive at the actual amount of suppression.

10. The observations of the First Appellate Authority at Sl. Nos. (iii) and (iv) appear to be contradictory to each other. It reveals from the record that the Dealer is running a rolling flour mill for grinding of wheat to flour for trading, but the same is not mentioned in the RC. The Assessing Authority clearly spelt out in the assessment order that he examined the seven seized documents along with the books of account produced including the VATIS data and found some bills in the record. This reveals that the Assessing Authority meticulously examined all the facts and figures available before him including the seized documents. Moreover, the Assessing Authority considered the profit margin at 3% keeping in view the disclosed profit margin of the Dealer at 2 to 4% for different goods, which is not unreasonable. So, I do not find any merit in the order of the First Appellate Authority to remand the assessment for recomputation of tax liability. Furthermore, the Dealer fails to produce any material evidence in support of its contention before this Tribunal to refute the observations of the Assessing Authority.

11. I have already observed herein above that the assessment periods relate to pre-amended period and post-amended period. I have also observed that the assessment for the pre-amended period is not maintainable in view

of the decision of the Hon'ble Court cited supra. But, the assessment for the post-amendment period is maintainable and the Assessing Authority has already segregated the assessment for both the periods under dispute.

12. In view of the foregoing discussions, the order of the Assessing Authority for the pre-amended assessment period 01.04.2014 to 30.09.2015 is not maintainable in law for lack of jurisdiction. But, the order of the Assessing Authority for the post-amendment assessment period 01.10.2015 to 30.09.2016 is maintainable and the Assessing Authority rightly arrived at the stock discrepancy for the said period. The First Appellate Authority went wrong in remanding the matter for fresh assessment for the entire periods under assessment. Hence, it is ordered.

13. Resultantly, the appeal is allowed in part and the impugned order of the First Appellate Authority is hereby set aside. The order of assessment of the Assessing Authority for the per-amended period, i.e. 01.04.2014 to 30.09.2015 is hereby quashed, but the order of assessment of the Assessing Authority for the post-amended period, i.e. 01.10.2015 to 30.09.2016 is hereby confirmed. The Assessing Authority is instructed to issue revise demand notice as per law. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G.C. Behera)
Chairman

Sd/-
(G.C. Behera)
Chairman