

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

S.A. No.225(V) of 2012-13

(Arising out of the order of the learned JCST, Sambalpur Range,
Sambalpur, in First Appeal case No. AA.52/SAII/VAT/11-12
disposed of on 25.09.2012)

**P r e s e n t: Shri G.C.Behera, Sri. S.K.Rout & Shri M.Harichandan,
Chairman. Judicial Member-II Accounts Member-I.**

M/s.Priti Oil Ltd.,
Rengali, Sambalpur.

... Appellant.

- V e r s u s -

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

... Respondent.

For the Appellant

... Mr.U.Behera,Advocate.

For the Respondent

... Mr.M.L.Agarwal, SC(CT)

Date of hearing: **05.12.2022**

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Date of Order:**07.12.2022**

ORDER

Challenge in this appeal is the order dated 25.09.2012 passed by the learned Deputy Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in short, DCST/FAA) in first appeal case No.AA/52/SAII/VAT/ 11-12, thereby confirming the order of assessment dated 06.09.2011 passed under Section 43 of the OVAT Act by the learned Asst. Commissioner of Sales Tax, Sambalpur II Circle, Sambalpur (in short, ACST/AA) for the tax period 01.04.2009 to 31.03.2011 raising demand of Rs.56,12,703.00.

2. The case at hand is that the appellant dealer is a manufacturer of rice bran oil out of rice bran and sal seed and de-oiled rice bran (DORB) is the bye product. The company procures raw materials from both inside and outside the State of Odisha. The assessment framed on the basis of a fraud case report (FCR) submitted by Enforcement Sales Tax Wing, Sambalpur. As per the report, the officers of enforcement wing

conducted an inspection on 06.08.2009 and recovered some incriminating documents from the business premises of the dealer appellant basing on which a fraud case report was submitted.

3. Being aggrieved with such order of assessment, the dealer appellant preferred first appeal before the learned DCST (Appeal), Sambalpur Range, Sambalpur who confirmed the order of assessment.

4. Further being dis-satisfied with the order of the learned first appellate authority, the dealer appellant has preferred the present second appeal as per the grounds stated therein.

5. Even if at the inception, the recent interpretation of Section 43 of the OVAT Act as advanced by the Hon'ble High Court of Odisha in case of M/s.Keshav Automobiles Vrs. State of Odisha was not taken but later on as additional grounds, the same was taken by the dealer appellant.

6. Cross objection has been filed in the instant case by the State respondent.

7. Heard the contentions and submissions of both the parties. The sole contention raised by the learned Counsel for the dealer appellant is that the the initiation of proceeding under Section 43 of the OVAT Act was illegal and bad in law in the absence of formation of any independent opinion by the assessing authority as required under Section 43(1) of the Act. The escaped assessment could not have been initiated under Section 43 of the OVAT Act when the dealer assessee was not self assessed under Section 39 of the Act. Further contention of the dealer assessee is that the initiation of such proceeding by the assessing authority under Section 43 of the OVAT Act without complying the requirement of law and in contravention to the principles laid down by the Hon'ble High Court of Orissa in case of M/s.Keshab Automobiles Vrs. State of Odisha (STREV No.64 of 2016 decided on 01.12.2021) is bad in law. He vehemently urged that there is nothing on record to show that the dealer assessee was self assessed under Section 39 of the OVAT Act after filing the return and it

was communicated in writing about such self assessment. So when the very initiation of proceeding under Section 43 of the OVAT Act is bad in law, the entire proceeding becomes a nullity and is liable to be dropped.

After a careful scrutiny of the provisions contained under Section 43 of the OVAT Act, one thing becomes clear that only after assessment of dealer under Section 39,40,42 or 44 for any tax period, the assessing authority, on the basis of any information in his possession, is of the opinion that the whole or any part of the turnover of the dealer in respect of such tax period or tax periods has escaped assessment, or been under assessed, or been assessed at a rate lower than the rate at which it is assessable, then giving the dealer a reasonable opportunity of hearing and after making such enquiry, assess the dealer to the best of his judgment. Similar issue also came up before the Hon'ble High Court in case of M/s.Keshab Automobiles (supra) wherein the Hon'ble Court interpreting the provisions contained under Section 43 of the OVAT Act, in paras 13 to 16 of the judgment observed that “ the dealer is to be assessed under Sections 39,40,42 and 44 for any tax period. The words “ where after a dealer is assessed’ at the beginning of Section 43(1) prior to 1st. October, 2015 pre-supposes that there has to be an initial assessment which should have been formally accepted for the periods in question i.e. before 1st. Oct, 2015 before the Department could form an opinion regarding escaped assessment or under assessment.....”

So, the position prior to 1st. Oct. 2015 is clear. Unless there was an assessment of the dealer under Section 39,40,42 or 44 for any tax period, the question of reopening the assessment under Section 43(1) of the OVAT Act did not arise. The Hon'ble Court in para-22 of the judgment has categorically observed that if the self assessments under Section 39 of the OVAT Act for the tax periods prior to 01.10.2015 are not accepted either by a formal communication or an acknowledgement by the Department, then such assessment cannot be sought to be reopened under Section 43(1) of the OVAT Act. In the instant case, the impugned tax relates to pre-amended provisions of Section 43 of the OVAT Act i.e. prior to

01.10.2015. This apart, the returns filed by the appellant were also not accepted either by a formal communication or an acknowledgment issued by the Department. The similar matter has also been decided by the Full Bench of OSTT in various cases such as:

- (i) M/s.Swati Marbles Vrs. State of Odisha, S.A.No.209(V) of 2013-14 Order of Hon'ble Full Bench, OSTT dated 06.06.2022.
- (ii) State of Odisha Vrs. M/s.Jaiswal Plastic Tubes Ltd. S.A.No.90(V) of 2010-11, Order of Hon'ble Full Bench, OSTT, dated 06.06.2022.
- (iii) M/s.Jalaram Tobacco Industry Vrs. State of Odisha S.A. NO.35(V) of 2015-16, Order of Hon'ble Full Bench, OSTT dated 16.08.2022
- (iv) M/s.Eastern Foods Pvt. Ltd. Vrs. State of Odisha S.A.No.396 (VAT) of 2015-16, Order of Hon'ble Full Bench dtd.23.08.2022
- (v) M/s.Shree Jagannath Lamination and Farmes Vrs. State of Odisha, S.A.No.25 (VAT) of 2015-16, Order of Hon'ble Full Bench , OSTT dated 15.10.2022.

So in view of the above analysis, we arrive at a conclusion that the order of assessing authority and the first appellate authority are not sustainable in the eyes of law and the same warrant interference in this appeal. Hence order.

8. The appeal filed by the dealer assessee is allowed and the impugned orders of the forums below are hereby quashed. The cross objection is disposed of accordingly.

Dictated and Corrected by me,

Sd/-

(Shri S.K.Rout)
Judicial Member-II

I agree,

I agree,

Sd/-

(Shri S.K.Rout)
Judicial Member-II

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

Sd/-
(Shri M.Harichandan)
Accounts Member-I

