

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

S.A. No. 45 (C) of 2020

(Arising out of order of the learned JCST, Cuttack I Range,
Cuttack, in Appeal No. AA(C) 41/CUICT/2011-12,
disposed of on 22.03.2012)

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

M/s. Sasha Industries,
Bepari Sahi, Cuttack ... Appellant

-Versus-

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

For the Appellant : Sri R. Chimanka, Advocate
For the Respondent : Sri S.K. Pradhan, Addl. SC (CT)

Date of hearing : 18.12.2023 *** Date of order : 19.12.2023

ORDER

Dealer assails the order dated 22.03.2012 of the Joint Commissioner of Sales Tax, Cuttack I Range, Cuttack (hereinafter called as 'First Appellate Authority') in F.A. No. AA(C)41/CUICT/2011-12 summarily rejecting the appeal preferred against the provisional assessment order of the Asst. Commissioner of Sales Tax Officer, Cuttack I City Circle, Cuttack (in short, 'Assessing Authority').

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

M/s. Sasha Industries is a manufacturer of leather goods like gents purse, ladies purse, belts etc. The provisional assessment relates to the period 01.04.2010 to 31.03.2011. The Assessing Authority raised tax

demand of ₹11,26,947.00 u/r. 12(1)(b) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

The dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority summarily rejected the appeal on the grounds that the appeal petition was not in proper form and also non-deposit of 20% of the demanded tax.

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 *ex parte* order of the First Appellate Authority summarily rejecting the appeal without allowing sufficient opportunity is unjust and improper. He further submits that the provisional assessment period included in the subsequent assessment order passed u/r. 12(3) of the CST (O) Rules for the period 01.04.2009 to 31.03.2012. He contends that appeal has already been admitted, so, this Tribunal cannot record a finding at the hearing stage that the appeal is not maintainable. So, he submits that the order of the First Appellate Authority is otherwise bad in law and liable to be set aside.

4. On the contrary, the learned Addl. Standing Counsel (CT) for the State submits that the appeal filed by the Dealer is not maintainable before this forum since the Dealer fails to deposit 20% of the demanded tax and the appeal memo is not in proper form for which the appeal has been summarily rejected by the First Appellate Authority.

5. Heard rival submissions and gone through the orders of the Assessing Authority & First Appellate Authority vis-a-vis the materials on record. It transpires that the First Appellate Authority has rejected the appeal summarily due to non-deposit of 20% of the tax demand, which is a pre-condition of entertaining the appeal as per the provision of sub-section (4) of Section 77 of the OVAT Act r/w. Rule 22 of the CST (O) Rules.

Now, the issue remains that whether appeal preferred against such summary rejection is maintainable before this forum or not. The relevant provisions of Section 77(7) and 78(1) of the OVAT Act are quoted below for better appreciation of the case :-

“77(7) In disposing of an appeal, the appellate authority may, after giving the appellant a reasonable opportunity of being heard and after causing such enquiry as he may deem necessary –

- (a) confirm, reduce or annual the assessment of tax, or the imposition of interest or levy of penalty, if any; or*
- (b) enhance the assessment including any part thereof whether or not such part is the subject-matter in the appeal; or*
- (c) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as he may be directed.”*

“78(1) Any dealer or, as the case may be, the Government, if not satisfied with an order passed under sub-section (7) of Section 77 may within sixty days from the date of receipt of such order, prefer an appeal in the prescribed manner to the Tribunal.”

6. On a conjoint reading of the above provisions, it is crystal clear that against the first appeal order passed u/s. 77(7) of the OVAT Act, a party can prefer second appeal before this forum. Admittedly, the impugned order passed by the First Appellate Authority being summary rejection due to non-deposit of statutory dues, i.e. 20% of demanded tax, as per provision of Section 77(4) of the OVAT Act, the present appeal preferred by the Dealer is not maintainable before this forum as the same does not arise from the order passed u/s. 77(7) of the OVAT Act. However, the Dealer may redress his grievance at the appropriate forum under the provisions of law.

It is also contended on behalf of the Dealer that after admission of the appeal, this forum is precluded to give any finding on maintainability of appeal. Point of maintainability can be decided at any stage before final disposal. So, I do not find any merit in the contention of the Dealer. Hence, it is ordered.

7. Resultantly, the appeal is not maintainable and hence, stands dismissed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

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

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(G.C. Behera)
Chairman**