

**BEFORE THE JUDICIAL MEMBER-II:
ODISHA SALES TAX TRIBUNAL: CUTTACK.**

**P r e s e n t: Shri S.K. Rout,
2nd Judicial Member**

S.A. No. 21(V) of 2021

(Arising out of the order of the learned Addl. Commissioner of Sales Tax (Appeal), Commissionerate of CT & GST, Odisha (At Cuttack), in Appeal Case No. AA 106121912000051/2019-20, disposed of on dtd.12.01.2021)

M/s. Bagri Automobiles,
At:- N.H.-5, Gandarpur, College Square,
Cuttack-753003.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant ... Mr. H.K. Patra, Advocate
For the Respondent ... Mr. S.K. Pradhan, A.S.C.

Date of hearing: 03.08.2023 *** Date of order: 01.09.2023

ORDER

The dealer prefers this appeal challenging the order dtd.12.01.2021 passed by the learned Addl. Commissioner of Sales Tax (Appeal), Commissionerate of CT & GST, Odisha (At Cuttack) (hereinafter referred to as, ACST/first appellate authority) in Appeal Case No. AA 106121912000051/2019-20, thereby confirming the reassessment order passed by the learned Deputy Commissioner of Sales Tax, Cuttack I East Circle, Cuttack (hereinafter referred to as, DCST/assessing

authority) u/s.43 of the Orissa Value Added Tax Act, 2004 (in short, the OVAT Act) for the period 01.04.2011 to 31.01.2012 raising demand of ₹6,87,221.00 including penalty of ₹4,58,147.52 u/s.43(2) of the OVAT Act.

2. The brief fact of the case is that, the dealer-appellant in the instant case M/s. Bagri Automobiles having TIN-21531201828 carries on business in trading of automobile parts, tractor parts and its spares and lubricants on wholesale and retail basis. The dealer purchases goods from both inside and outside the State of Odisha and effects its sales within the State of Odisha only. The regular assessment or order was made u/s.42 of the OVAT Act by the Sales Tax Officer, Cuttack I East Circle, Cuttack on dtd.04.02.2013 for the tax period 01.04.2007 to 31.03.2012. Pursuant to the audit visit report, proceeding u/s.43 of the OVAT Act was initiated and the demand as mentioned above was raised.

3. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who confirmed the demand.

4. Further, being dissatisfied with the order of the learned first appellate authority, the dealer has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection in this case is filed by the State-respondent.

6. During course of argument, learned Counsel for the dealer-appellant contended that the first appellate authority without examining the fact confirmed the order of

assessment which is arbitrary and not tenable in the eyes of law. So, the orders of the fora below should be quashed.

Per contra, learned Addl. Standing Counsel for the Revenue argued stating that there is no reasonable merit in the second appeal filed by the dealer and that the learned assessing authority has rightly completed the assessment u/s.43 of the OVAT Act which is based on the statutory provisions under the Act and Rules.

7. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record, grounds of appeal, cross objection and the orders of the fora below. On perusal it reveals that the dealer was initially subjected to audit assessment u/s.42 of the OVAT Act vide order passed on dtd.04.02.2013 for the material period. Thereafter, pursuant to receipt of an adverse report against its business activities proceeding u/s.43 of the OVAT Act was initiated and completed vide order dtd.15.12.2015 by the learned Sales Tax Officer resulting the demand of ₹6,87,220.00. Then being aggrieved with the said order, the dealer-appellant preferred an appeal before the learned Joint Commissioner of Sales Tax (Appeal), Cuttack I Range, Cuttack who remanded the case to the forum below with a direction to allow another opportunity for completion of reassessment after examining the books of account/documents to be produced by the dealer-appellant with reference to the adverse report. Furthermore, it reveals from the order of the learned first appellate authority that even if sufficient opportunities were given to the dealer-appellant for production of relevant books of account, documents for necessary verification with

reference to the seized documents/adverse report. The dealer failed to produce the same before the learned assessing authority for which the learned assessing authority/DCST completed the reassessment proceeding basing on the materials available on record.

8. So when it becomes quite evident that the visiting officials verified the documents recovered with reference to the books of account and detected suppression of business goods to the extent of ₹65,25,341.00, but at the time of original assessment completed on 15.12.2015 even if sufficient opportunities were given to the dealer to produce the relevant books of account against alleged transactions, but the dealer failed to furnish the same for which the demand as mentioned above was raised. This apart, even if during the course of reassessment proceeding sufficient opportunities were given to the dealer to substantiate the allegations by producing relevant books of account but the dealer failed to furnish the same. This apart, even if during the course of hearing of the appeal which is the extended forum of assessment, the dealer-appellant failed to produce the books of account and lastly during final hearing of the appeal the dealer candidly stated that no books of account could be produced as the same were destroyed by white ants. So, considering the background of the case, both the forums below rightly observed that the dealer-appellant was indulged in business malpractices and had nothing to offer against the allegation raised. So, when the dealer-appellant failed to substantiate the allegation by producing the relevant books of account/documents in course of regular assessment, reassessment as well as appeal

proceedings despite sufficient opportunities extended, both the forums below have rightly adjudicated upon the matter which needs no interference.

9. In the result, the appeal preferred by the dealer is dismissed and the orders of the fora below are hereby confirmed. Cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-
(S.K. Rout)
2nd Judicial Member

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