

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

**S.A. No. 14 (VAT) of 2020**

(Arising out of order of the learned JCST (Appeal), Territorial Range, Cuttack II, Cuttack, in Appeal No. AA-106221722000115/OVAT/BH-III, disposed of on 14.11.2019)

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

M/s. Sreerampur Steels (P) Ltd.,  
Plot No. 519/1753/3231, KIIT Chowk,  
Bhubaneswar-751024 ... Appellant

-Versus-

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

For the Appellant : Sri A.K. Roy, Advocate  
For the Respondent : Sri N.K. Rout, Addl. S.C. (CT)

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Date of hearing : 05.09.2023 \*\*\* Date of order : 30.09.2023  
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**ORDER**

Dealer is in appeal against the order dated 14.11.2019 of the Joint Commissioner of Sales Tax (Appeal), Territorial Range, Cuttack II, Cuttack (Camp at Bhubaneswar) (hereinafter called as 'First Appellate Authority') in F.A. No. AA-106221722000115/OVAT/BH-III confirming the assessment order of the Sales Tax Officer, Bhubaneswar III Circle, Bhubaneswar (in short, 'Assessing Authority').

2. Briefly stated, the facts of the case are that –

M/s. Sreerampur Steels (P) Ltd. is engaged in manufacturing of iron ores after crushing the iron lumps into marketable shape and size and

sells the same both in course of inter-State and intra-State trade. The assessment period relates to 01.04.2006 to 31.03.2011. The Assessing Authority raised tax and penalty of ₹14,36,262.00 u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') on the basis of AG (Audit) objection.

The dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the tax demand and dismissed the appeal. 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 order of the First Appellate Authority to be just and proper.

3. Learned Counsel for the Dealer submits that the Assessing Authority has not applied his independent mind before reopening the assessment after completion of audit assessment and preferred to initiate the proceeding merely on the basis of A.G. (Audit) objection. So, he submits that the order of the Assessing Authority is otherwise bad in law and the same as well as the impugned order are required interference in appeal.

He relies on the decisions of the Hon'ble Apex Court in cases of *State of Uttar Pradesh v. Aryaverth Chawl Udyog & others*, reported in [2016] 91 VST 1 (SC); *Hindustan Steel Ltd. v. State of Orissa*, reported in [1972] 83 ITR 26 (SC); *Sree Krishna Electricals v. State of Tamil Nadu and another*, reported in [2009] 23 VST 249 (SC); and Hon'ble High Court of Orissa in case of *Indure Ltd. v. Commissioner of Sales Tax, Cuttack, Orissa and others*, reported in [2006] 148 STC 61 (Ori.).

4. On the other hand, the learned Addl. Standing Counsel (CT) for the State submits that the decisions cited by the Dealer are not applicable to the present facts and circumstances of the case. He further submits that the

Assessing Authority can reopen the assessment on the basis of any information in his possession regarding under assessment or escaped assessment or less reversal of ITC. So, he submits that the orders of the Assessing Authority and First Appellate Authority being reasoned orders need no interference.

He relies on the decisions in cases of *R.S. Joshi v. Ajit Mills Ltd.*, reported in (1971) 4 SCC 110; *Gujurat Travancor Agency v. CIT (2) (1989)*; and *Securities & Exchange Board of India v. Cabot International Capital Corporation, (2005) 123*.

5. Heard rival submissions of the parties, gone through the orders of the First Appellate Authority and Assessing Authority vis-a-vis the materials on record. It reveals that the Dealer had effected intra-State sales of goods worth of ₹8,75,15,054.00 while the value of the goods in course of intra-State sales was ₹67,87,46,999.00. The Dealer had availed ITC of ₹2,10,47,407.00. The Dealer had not reversed any ITC till the date of audit assessment from 01.06.2008 to 31.03.2011. The Assessing Authority reversed ITC of ₹48,29,749.00 against reversible ITC of ₹53,08,502.00, which resulted less reversal of ITC of ₹4,78,753.00 as reported by the A.G. (Audit). Accordingly, the Assessing Authority computed the tax liability of the Dealer including penalty. The First Appellate Authority confirmed the assessment in appeal.

The Dealer assails the impugned order on the following grounds :-

- (i) The First Appellate Authority did not consider the additional grounds of appeal and judgments of the Hon'ble High Court and Hon'ble Apex Court;
- (ii) The Assessing Authority has not found any independent opinion and completed the assessment on the basis of A.G.

(Audit) report after completion of assessment u/s. 42 of the OVAT Act; and

(iii) The imposition of penalty is unlawful.

6. As regards ground No. (i), i.e. non-consideration of additional grounds of appeal and judgments of Hon'ble Apex Court and Hon'ble Court, the Dealer has relied on the decisions in case of *Aryaverth Chawl Udyoug & others* and *Indure Ltd.* cited supra.

It is not in dispute that the assessment u/s. 42 of the OVAT Act was completed earlier with a finding of reversible ITC of ₹48,29,749.00. The Assessing Authority found that the Dealer had availed ITC of ₹2,10,47,407.00 for the period 01.06.2008 to 31.03.2011. The assessment order further reveals that the Dealer had not availed reverse ITC till the date of assessment. The Assessing Authority reversed ITC of ₹48,29,749.00. He found that the A.G. (Audit) made objection that the Assessing Authority reversed ITC of ₹48,29,749.00 against reversible ITC of ₹53,08,502.00, which resulted in less reversal of ITC of ₹4,78,753.00, leading to short levy of tax besides, penalty of ₹9,57,507.00 as per Section 43(2) of the OVAT Act. The First Appellate Authority affirmed the finding of the Assessing Authority.

Learned Counsel for the Dealer relies on the decision of the Hon'ble Apex Court in the case of *Aryaverth Chawl Udyoug* (supra) and Hon'ble High Court of Orissa in case of *Indure Ltd.* (supra) and submits that the Assessing Authority has not applied his independent mind while reopening the assessment u/s. 43 of the OVAT Act after completion of the proceeding u/s. 42 of the said Act.

In the case of *Aryaverth Chawl Udyoug* (supra), Hon'ble Apex Court have been pleased to observe that –

“Under section 21(1) of the U.P. Trade Tax Act, 1948, reassessment proceedings can be initiated only if the assessing authority has “reason to believe” that there is a case of escaped assessment and not otherwise. It is now trite law that whenever a statute provides for “reason to believe”, either the reasons should appear on the face of the notice or they must be available on the materials which have been placed.”

In the case of *Indure Ltd.* (supra), Hon’ble Court have been pleased to observe as follows :-

“That the words “for any reason” in section 12(8) of the Orissa Sales Tax Act do not give wider powers to the authorities to reopen assessment compared to the words “reason to believe” incorporated in the statutory form in which notice for reopening assessment is to be issued in view of provisions of rule 23 of the Orissa Sales Tax Rules, 1947.”

7. Section 43 of the OVAT Act deals in turnover escaping assessment if the whole or part of the turnover of the dealer in respect of such tax period has been escaped assessment, or under assessed, or assessed at a rate lower than the rate at which it is assessable; or that the dealer has been allowed wrongly any deduction from his turnover, or input tax credit, to which he is not eligible. The relevant provision of Section 43 of the said Act, as it stood then, is quoted herein below for better appreciation :-

**“43. Turnover escaping assessment –**

- (1) *Where, after a dealer is assessed 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 –*
- (a) *escaped assessment, or*
  - (b) *been under-assessed, or*
  - (c) *been assessed at a rate lower than the rate at which it is assessable;*
- or that the dealer has been allowed –*
- (i) *wrongly any deduction from his turnover, or*
  - (ii) *input tax credit, to which he is not eligible,*
- the assessing authority may serve a notice on the dealer in such form and manner as may be prescribed and after giving the dealer a reasonable opportunity of being heard and after making such enquiry*

*as he deems necessary, proceed to assess to the best of his judgment the amount of tax due from the dealer.*

- (2) *If the assessing authority is satisfied that the escapement or under assessment of tax on account of any reason(s) mentioned in sub-section (1) above is without any reasonable cause, he may direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax additionally assessed under this section."*

A bare reading of the aforesaid provision reveals that the Assessing Authority was required to form an independent opinion regarding escapement turnover after completion of assessment u/s. 42 of the OVAT Act. The Hon'ble Court and the Hon'ble Apex Court were pleased to reiterate that the Assessing Authority is required to form an independent opinion regarding escapement turnover after completion of audit assessment prior to issue notice to the Dealer for the escaped assessment.

In the instant case, the State fails to produce the connected assessment record for reference. However, the assessment order reveals that the Assessing Authority issued notice in Form VAT-307 to the Dealer on the basis of A.G. (Audit) objection without forming any opinion regarding less reversal of ITC. So, the assessment proceeding u/s. 43 of the OVAT Act cannot be allowed to stand. Consequently, the impugned order of the First Appellate Authority confirming the assessment order is bound to fail. Hence, it is ordered.

8. Resultantly, the appeal stands allowed and the impugned order of the First Appellate Authority confirming the order of assessment is hereby quashed. Cross-objection is disposed of accordingly.

**Dictated & Corrected by me**

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

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(G.C. Behera)  
Chairman**