

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

**S.A. No. 363 (VAT) of 2017-18
S.A. No. 362 (VAT) of 2017-18
&
S.A. No. 359 (VAT) of 2017-18**

(Arising out of orders of the learned JCST (Appeal), Bhubaneswar,
Range, Bhubaneswar in Appeal Nos. 01/OVAT/BH-IV/2014-15,
02/OVAT/BH-IV/2014-15 & 03/OVAT/BH-IV/2014-15,
disposed of on 20.10.2017)

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

M/s. Bhubaneswar Club,
Rajpath, Unit-VI, AG Square,
Bhubaneswar

... Appellant

-Versus-

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

... Respondent

For the Appellant

: Sri R.K. Kar, Advocate

For the Respondent

: Sri M.L. Agarwal, S.C. (CT)

Date of hearing : 20.03.2023

Date of order : 31.03.2023

ORDER

These three second appeals relate to the same party for different periods involving common question of facts and law and, therefore, they are taken up for disposal in this common order for the sake of convenience.

2. Dealer assails the orders dated 20.10.2017 of the Joint Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A Nos. 01/OVAT/BH-IV/2014-15, 02/OVAT/BH-IV/2014-15 & 03/OVAT/BH-IV/

2014-15 confirming the assessment orders of the of Sales Tax Officer, Bhubaneswar IV Circle, Bhubaneswar (in short, 'Assessing Authority').

3. Briefly stated, the facts of the cases are that –

M/s. Bhubaneswar Club runs a club wherein it sells cooked food, soft drinks, liquor, ice cream, cigarette, mixture etc. to the customers in course of business transaction. The assessments relate to the period 01.04.2010 to 31.03.2011, 01.04.2011 to 31.03.2012 and 01.04.2012 to 31.03.2013. The Assessing Authority raised tax and penalty of ₹65,92,148.00 for the period 01.04.2010 to 31.03.2011; ₹87,93,264.00 for the period 01.04.2011 to 31.03.2012 and ₹95,97,700.00 for the period 01.04.2012 to 31.03.2013 in assessment proceedings u/s. 44(1) of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') as the Dealer continues to remain unregistered despite liability to pay tax.

Dealer preferred first appeals against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the tax demands and dismissed the appeals. Being aggrieved with the orders of the First Appellate Authority, the Dealer prefers these appeals. Hence, these appeals.

The State files cross-objections supporting the impugned orders of the First Appellate Authority confirming the orders of assessment to be just and proper in the facts and circumstances of the case.

4. The learned Counsel for the Dealer submits that the orders of the Assessing Authority and the First Appellate Authorities for the periods under assessment determining the tax liability with penalty are arbitrary and illegal in view of the law and facts involved. He further submits that the authorities below have failed to appreciate the fact that the Dealer-Club is governed under "Principle of Mutuality" and does not fall within the ambit of 'sale' as no person can sale to himself or trade with himself on the facts and circumstances of the case. He relies on the order dated 07.12.2021 of the

Hon'ble Court passed in **WP (C) No. 10424 of 2014** and order dated 25.06.2020 of this Tribunal in **S.A. No. 60 (VAT) of 2007-08** relating to the instant Dealer.

5. On the contrary, learned Standing Counsel (CT) for the State supports the finding of the First Appellate Authority and the Assessing Authority and submits that the orders of the First Appellate Authority and the Assessing Authority are correct in its perspective. He further submits that the principle of mutuality is not applicable to non-Members and guests of the Members. So, he submits that the orders of the First Appellate Authority and the Assessing Authority warrant no interference in these appeals.

6. Heard the rival submissions, gone through the orders of the First Appellate Authority and the Assessing Authority vis-a-vis the materials on record in all the three appeals. Considering if the fact of supply of foods, snacks and beverages etc. to the Members of the Club in the principle of doctrine of mutuality to be treated as 'sale' in terms of Section 2(45) of the OVAT Act, the Assessing Authority assessed the tax liability and raised tax demands against the Dealer for the periods under assessment. The First Appellate Authority confirmed the assessment orders of the Assessing Authority.

7. The Dealer is a Members' Club and registered under the Companies Act, 1956. The Members of the Club contribute for their own to avail the benefit of foods, beverages and other facilities. It functions as a mutual association on the basis of principle of mutuality amongst its members. The Assessing Authority and the First Appellate Authority fail to find any material that the Dealer has extended the benefit to any other persons, i.e. non-Members except the Members of the Club or to his guest. Unless the State brings any material that the turnover of the Dealer was included the amount of non-Members or the guest of the Members, any

contribution received from its Members will not fall within the ambit of charging provisions of any taxing statute.

8. In the case of State of *West Bengal v. Calcutta Club Ltd.*, reported in **AIR 2019 SC 5310**, Hon'ble Apex Court have been pleased to observe that the supply of goods, drinks and refreshment by a Club to its members would not amount to sale thereby attracting sales tax. Relying on the said decision of the Hon'ble Apex Court, the Hon'ble Court have been pleased to quash one of the assessment order of the instant Dealer vide order dated 07.12.2021 in **WP (C) No. 10424 of 2014**. Earlier this Tribunal has also quashed the tax demand in respect of the instant Dealer for assessment period 01.04.2005 to 31.12.2005 on the ground that the same is not exigible to VAT for Members' Club.

9. So, in view of the decision cited supra, the supply of foods, beverages or drinks to its Members by the Dealer-Club does not fall within the ambit of 'sale' so as to exigible to VAT. Accordingly, I am of the view that the decision of the Assessing Authority and the First Appellate Authority are not sustainable in law. Hence, it is ordered.

10. Resultantly, the appeals are allowed and the impugned orders of the First Appellate Authority are hereby set aside. The assessment proceedings for all the periods under dispute are hereby quashed. Cross-objections are disposed of accordingly.

Dictated & Corrected by me

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

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(G.C. Behera)
Chairman**