BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 417 (VAT) of 2014-15

(Arising out of order of the learned JCST, Balangir Range, Balangir in Appeal No. AA – 2 (SON) of 2013-14, disposed of on 19.12.2014)

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

M/s. Agrawal Iron Store,
At/PO- Badabazar, Sonepur,
Dist. Subarnapur ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri D. Behura, S.C. (CT)
Sri S.K. Pradhan, Addl. SC (CT)

Date of hearing : 28.03.2023 *** Date of order : 31.03.2023

O R D E R

Dealer assails the order dated 19.12.2014 of the Joint Commissioner of Sales Tax, Balangir range, Balangir (hereinafter called as 'First Appellate Authority') in F A No. AA – 2 (SON) of 2013-14 reducing the assessment order of the Asst. Commissioner of Sales Tax, Sonepur Circle, Sonepur (in short, 'Assessing Authority').

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

M/s. Agrawal Iron Store deals in cement, MS rod, paints, hardware goods, AC sheets, ceramic tiles, sunmica and sanitary items etc. on retail basis. The assessment period relates to 01.04.2009 to 31.03.2013. The Assessing Authority raised tax and penalty of ₹1,48,176.00 u/s. 43 of

the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') on the basis of Fraud Case Report (FCR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹1,09,398.00 and allowed the appeal in part. 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. Appellant was not present at the time of hearing. The matter was taken up for disposal *exparte* on merits as per materials available on record.

4. Dealer urges in the grounds of appeal and in the written note of submission that the assessment proceeding u/s. 43 of the OVAT Act is not maintainable in absence of acknowledgment of acceptance of self-assessed return. Dealer relies on the decision of the Hon'ble Court in case of ***M/s. Keshab Automobiles v. State of Odisha*** in **STREV No. 64 of 2016** decided on 01.12.2021. So, he urges that the orders of the First Appellate Authority and the Assessing Authority are not sustainable in the eyes of law and require interference in appeal.

5. On the other hand, the learned Standing Counsel (CT) for the State submits that the Dealer has taken the said ground before the First Appellate Authority and the First Appellate Authority did not allow on the ground that the self-assessed return u/s. 39 of the OVAT Act has been accepted. So, he submits that the order of the First Appellate Authority does not require any interference.

6. Having regard to the submissions and on careful scrutiny of the record, it is apparent that reassessment u/s. 43 of the OVAT Act can only be made after the assessment is completed u/s. 39, 40, 42 or 44 of the said Act.

Hon'ble Court in the case of ***M/s. Keshab Automobiles*** cited supra have been pleased to observe in para-22 as follows :-

> "22. From the above discussion, the picture that emerges is that if the self-assessment under Section 39 of the OVAT Act for tax periods prior to 1st October, 2015 are not 'accepted' either by a formal communication or an acknowledgement by the Department, then such assessment cannot be sought to be re-opened under Section 43(1) of the OVAT Act and further subject to the fulfilment of other requirements of that provision as it stood prior to 1st October, 2015."

The learned Standing Counsel (CT) for the State has drawn the attention of this Tribunal to the order of the First Appellate Authority wherein the First Appellate Authority has categorically recorded a finding that the self-assessment u/s. 39 of the OVAT Act was accepted. He further submits that the Dealer has not challenged the point of acknowledgment of acceptance of self-assessed return at the outset and he submits that the Dealer is precluded u/s. 98(2) of the OVAT Act to raise the same belatedly before this forum.

In view of the ratio laid down by the Hon'ble Court, the Department is required to communicate a formal communication or acknowledgment regarding the acceptance of the self-assessment u/s. 39 of the OVAT Act. In this case, the State has not filed any materials to show that the acceptance of the self-assessment has been communicated to the Dealer. Moreover, the Dealer has taken the ground of maintainability of the assessment proceeding in absence of acceptance of self-assessment return from very inception.

7. In view of the decision of the Hon'ble Court in case of ***M/s. Keshab Automobiles*** cited supra, the assessment proceeding u/s. 43 of the OVAT Act is without jurisdiction in absence of any assessment u/s. 39, 40, 42 or 44 of the said Act. So, the orders of the Assessing Authority and the

First Appellate Authority under the OVAT Act are not sustainable in the eyes of law as the same are without jurisdiction. Hence, it is ordered.

8. Resultantly, the appeal stands allowed and the impugned order of the First Appellate Authority is hereby set aside. The order of the Assessing Authority is quashed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G.C. Behera)
Chairman

Sd/-
(G.C. Behera)
Chairman