

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 44(C) of 2011-12

(Arising out of order of the learned JCST, Jajpur Range,
Jajpur Road in First Appeal No. AA- 80-KJB (C)- 2011-12,
disposed of on 27.08.2011)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member, &
Shri M. Harichandan, Accounts Member-I

M/s. Padma Logistic and Khanij Pvt. Ltd.,
Barbil, Dist. Keonjhar ... Appellant

-Versus-

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

For the Appellant : Sri S. Lal, Advocate
For the Respondent : Sri M.L. Agarwal, S.C. (CT)

Date of hearing : 21.11.2022 *** Date of order : 24.11.2022

ORDER

The Dealer is in appeal against the order dated 27.08.2011 of the Joint Commissioner of Sales Tax, Jajpur Range, Jajpur Road (hereinafter called as 'First Appellate Authority') in F A No. AA- 80-KJB (C)- 2011-12 reducing the assessment order of the Sales Tax Officer, Barbil Circle, Barbil (in short, 'Assessing Authority').

2. The case of the Dealer-appellant, in short, is that:

Dealer deals in iron ore fines and blue dust both inside and outside the State. The assessment period relates to 01.04.2007 to 31.03.2009. The Assessing Authority raised tax demand of ₹39,35,380.00 u/r. 12(4) of the

Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') basing on the Tax Evasion Report (TER) submitted by the STO, Vigilance, Balasore Division, Balasore.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority allowed the appeal in part and reduced the demand to a sum of ₹24,42,244.00. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

3. State files cross-objection supporting the orders of the First Appellate Authority and the Assessing Authority. State takes a plea that in the case of reassessment u/r. 12(4) of the CST (O) Rules, reasonable opportunity was extended to the Dealer. So, he claims that in the worst the matter may be remanded for reassessment.

4. Learned Counsel of the Dealer, Mr. S. Lal, submits that the reassessment u/r. 12(4) of the CST (O) Rules is not maintainable in absence of the original assessment under sub-rule (1), (2) or (3) of Rule 12 of the CST (O) Rules. He further submits that in absence of issue of any statutory notice in Form VAT-613/VAT-614, the application of Section 101 of the OVAT Act read with Rule 130 of the OVAT Rules is pure non-application of mind and the same cannot sustainable in the eyes of law. He further submits that the estimation of sales suppression by the Assessing Authority as well as the First Appellate Authority has no reasonable nexus with the materials available on record. He further submits that the imposition of two times penalty on estimated sales suppression, the assessee should have given an opportunity of being heard. He further submits that imposition of two times penalty on estimated sales suppression not being the actual suppression is bad in law, arbitrary and against natural justice. He further submits the orders of the Assessing Authority and the First Appellate Authority are not sustainable in law and the same require interference in

appeal. He relies on the decisions of the Hon'ble Court passed in *M/s. Priti Oil Ld. v. State of Orissa* in **O.J.C. No. 3848 of 1999** passed on dated 06.02.2019 and in case of *M/s. Keshab Automobiles v. State of Odisha* decided on 01.12.2021 in **STREV No. 64 of 2016**.

5. On the other hand, learned Standing Counsel (CT) for the State supports the findings of the Assessing Authority and the First Appellate Authority and submits that the First Appellate Authority had not committed any wrong and the order of the First Appellate Authority needs no interference in this appeal. Learned Standing Counsel (CT) for the State submits that sufficient opportunity was given to the Dealer at the time of reassessment u/r. 12(4) of the CST (O) Rules.

6. On the above background, we formulate the following questions for adjudication of the case:-

- (i) Whether in the facts and circumstances of the case the order of the Assessing Authority passed u/r. 12(4) of the CST (O) Rules is justified in reassessment in absence of the assessment made u/r. 12(1), (2) or (3) of the CST (O) Rules?
- (ii) Whether in the facts and circumstances of the case the estimation of sale price of iron ore fines and blue dust by the Assessing Authority and order of confirmation by the First Appellate Authority in contravention to the provisions of Section 101 of the OVAT Act w/r Rule 130 of the OVAT Rules are justified?

7. The Dealer has challenged the maintainability of the reassessment u/r. 12(4) of the CST (O) Rules in absence of assessment u/r. 12(1), (2) or (3) of the said Rules. As it strikes the root, we considered issue No. (i) as preliminary issue before going to the merit of the case.

8. The relevant Rule 12(4) of the CST (O) Rules is quoted below for better appreciation of the case :-

“(4)(a) Where, after a dealer is assessed under sub-rule (1), (2) or (3) for any 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 any period or periods has escaped assessment, or has been under-assessed, or has been 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 exemption under the Act or has been wrongly allowed set off of input tax credit in excess of the amount admissible under clause (c) of sub-rule (3) of Rule 7 of these rules, he shall serve a notice in Form IVA on the dealer.”

9. A bare reading of the provision of Section 12(4) of CST (O) Rules the words “*After a dealer is assessed under sub-rule (1), (2) or (3) for any period*” the Assessing Authority can make the reassessment on the basis of any information in his possession. During hearing of this appeal, the State fails to produce any materials on record to show that self-assessment of the Dealer was accepted by issuing acknowledgment to that effect.

10. In the case of *M/s. Keshab Automobiles v. State of Odisha* in **STREV No. 64 of 2016** decided on 01.12.2021, the Hon’ble Court have been to please to observe that reopening of the assessment sought to be made under Section 43 of the OVAT Act is held to be bad in law in absence of completion of the assessment u/s. 39, 40, 42 and 44. Rule 12(4) of the CST (O) Rules provides the *pari materia* provisions to that of Section 43 of the OVAT Act.

In view of the ratio laid down by the Hon’ble Court in *M/s. Keshab Automobiles’* case cited supra, in absence of any assessment proceeding u/s. 39, 40, 42 and 44, no reassessment u/s. 43 of the OVAT can be taken up. As Rule 12(4) of the CST (O) Rules is *pari materia* provisions to that of the OVAT Act, the reassessment u/s. 12(4) of the CST (O) Rules is not maintainable in absence of any assessment u/r. 12 (1), (2) or (3) of the said Rules.

11. Having regard to the decision of the Hon'ble Court cited supra and the provisions of Rule 12(4) of the CST (O) Rules, we are of the considered view that the reassessment u/r. 12(4) of the said Rules in absence of assessment u/r. 12(1), (2) and (3) is not sustainable in law.

As it strikes the root and touches the maintainability of the proceeding, we find it redundant to adjudicate the other issue raised before this forum.

12. On the foregoing discussions, we are of the unanimous opinion that the reassessment made by the Assessing Authority and the order of confirmation by the First Appellate Authority in contravention of the provisions of Rule 12(4) of the CST (O) Rules are not sustainable in law in absence of any acceptance of self-assessed return.

13. Resultantly, the appeal is allowed. The orders of the Assessing Authority and the confirmation by the First Appellate Authority are hereby set aside. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

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

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

I agree,

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

I agree,

**Sd/-
(M. Harichandan)
Accounts Member-I**