BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 133 (VAT) of 2016-17

(Arising out of order of the learned JCST (Appeal), Sundargarh Range, Rourkela, in Appeal No. AAV 35/2010-11, disposed of on 15.02.2016)

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

M/s. Sharda Re-Rollers Pvt. Ltd.,
Beldihi, Vedvyas, Rourkela ... Appellant

-Versus-

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

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

Date of hearing : 03.05.2023 *** Date of order : 12.05.2023

O R D E R

Dealer is in appeal against the order dated 15.02.2016 of the Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela, (hereinafter called as 'First Appellate Authority') in F.A. No. AA V 35/ 2010-11 confirming the assessment order of the Sales Tax Officer, Rourkela-II Circle, Panposh (in short, 'Assessing Authority').

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

M/s. Sharda Re-Rollers Pvt. Ltd. is engaged in manufacturing and sale of M.S. Ingot, M.S. Rod & Bar with a capacity of 5 M.T. per Charge/heat. The assessment period relates to 01.04.2009 to 31.12.2009.

The Assessing Authority raised tax and penalty of ₹1,92,374.00 u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') on the basis of Fraud Case Report (FCR).

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 files additional grounds of appeal and submits that the Assessing Authority was not justified in assessing the Dealer u/s. 43 of the OVAT Act without completing the assessment u/s. 39, 40, 42 or 44 of the OVAT Act. He further submits that the acceptance of self-assessment was not communicated to the Dealer and as such, reopening the proceeding u/s. 43 of the OVAT Act on receipt of FCR is not sustainable in law. He relies on the decision of the Hon'ble Court in case of ***M/s. Keshab Automobiles v. State of Odisha*** (**STREV No. 64 of 2016**, decided on 01.12.2021). So, he submits that the orders of the Assessing Authority and the First Appellate Authority are liable to be set aside in the ends of justice.

4. On the other hand, the learned Standing Counsel (CT) for the State submits that the Dealer did not raise the issue regarding acceptance of self-assessment return either at the time of assessment or before the First Appellate Authority. He further submits that if the Dealer did not raise the issue in the earliest opportunity, he is precluded to take such ground before the second appellate authority for the first time by way of additional grounds of appeal. He further submits that communication/acknowledgement of the

order of acceptance of self-assessed return is a matter of fact and the same cannot be objected at this belated stage before this forum.

5. 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."

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. As the proceeding u/s. 43 of the OVAT Act is not maintainable on the point of jurisdiction and the same has been decided as preliminary issue, so, it is not required to deal with other contentions raised by the Dealer before this forum on merit.

6. 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.

7. 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