

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

S.A. Nos. 104 (VAT) of 2019

&

S.A. Nos. 105 (VAT) of 2019

(Arising out of orders of the learned Addl. CST (Appeal), Central Zone, Odisha, Cuttack, in Appeal Nos. AA- 106121812000122/2018-19 & AA- 106121812000126/2018-19, disposed of on 30.03.2019)

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

M/s. Anchor Electricals Pvt. Ltd.,
Kathagada Sahi, Cuttack ... Appellant

-Versus-

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

For the Appellant : Sri D.K. Hazra, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 21.06.2023 *** Date of order : 30.06.2023

ORDER

Both these appeals relate to the same party and for the same period involving common question of facts and law. So, they are heard analogously and disposed of in this common order for the sake of convenience.

S.A. No. 104 (VAT) of 2019 :

2. Dealer assails the order dated 30.03.2019 of the Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack (hereinafter called as 'First Appellate Authority') in F.A. No. AA-106121812000122/2018-19 confirming the assessment order of the Deputy

Commissioner of Sales Tax, Cuttack-I City Circle, Cuttack (in short, 'Assessing Authority').

S.A. No. 105 (VAT) of 2019 :

3. Dealer is also in appeal against the order dated 30.03.2019 of the First Appellate Authority in F.A. No. AA- 106121812000126/2018-19 confirming the assessment order of the Assessing Authority.

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

M/s. Anchor Electricals Pvt. Ltd. carries on business in electrical and electronics goods as well as equipments on wholesale basis. The assessment periods relate to 01.10.2015 to 31.03.2016 and 01.04.2016 to 30.06.2017. The Assessing Authority raised tax and penalty of ₹5,08,305.00 u/s. 42A of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') for the period 01.10.2015 to 31.03.2016. Similarly, the Assessing Authority raised tax and penalty of ₹9,11,786.00 u/s. 42A of the OVAT Act for the period 01.04.2016 to 30.06.2017.

The Dealer preferred first appeals against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the orders of assessment for both the periods. 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 orders of the First Appellate Authority to be just and proper.

5. Learned Counsel for the Dealer submits that the Dealer has discharged its duty by furnishing relevant documents, i.e. credit note, debit note, etc. He further submits that the Dealer should not suffer for the laches of the purchasing dealer, who returned the goods, did not reverse their ITC availed during purchase. He further submits that the orders of the Assessing Authority and First Appellate Authority are otherwise bad in law and the same need interference in appeal.

6. On the contrary, the learned Standing Counsel (CT) for the State submits that the Dealer has not discharged its burden by filing relevant and cogent materials for decreasing the output VAT. He further submits that the First Appellate Authority and Assessing Authority have passed the reasoned order and the same require no interference in appeal.

7. Heard the submissions of both parties, gone through the orders of the First Appellate Authority and the Assessing Authority vis-a-vis the materials on record. It transpires from the record that the Dealer had challenged the findings of the First Appellate Authority and Assessing Authority regarding refusal of decreased output VAT on the ground that the purchasing dealers, who returned the goods, did not reverse their ITC availed during purchase for the periods under assessment.

The fact remains that the Assessing Authority specifically observed that the Dealer produced a list showing date of issue of credit note, credit note no., customer name, taxable amount of credit note and output decreased thereof, which were matched with its books of account as well as in the periodical returns filed under the OVAT Act and found correct. He refused the decreased output VAT only on the ground that during verification of the periodical returns of the purchasing dealers, who returned the saleable goods, did not reverse their ITC availed during purchase of those goods, which were subsequently returned to the present Dealer.

8. It is settled law that the burden of proof lies on the Dealer to prove its case by adducing cogent materials to avail the ITC in view of the decision of the Hon'ble Apex Court in case of *State of Karnataka v. M/s. Ecom Gill Coffee Trading Private Limited (Civil Appeal No. 230 of 2023 decided on 13.03.2023)*.

It is settled principles of law that Dealer should not be penalised for the laches of the purchasing dealers. In the case of *On Quest Merchandising India Pvt. v. Government of NCT of Delhi and others* in

batch appeal decided on 26.10.2017 in **WP (C) No. 6093 of 2017**, wherein the Hon'ble Delhi High Court have been pleased to observe as under :-

“54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax www.taxguru.in W.P.(C) 6093/2017 & connected matters Page 40 of 40 collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act.”

In the case of *Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and others*, [TS-2-SC-2018-VAT, Hon'ble Apex Court confirmed the said view of the Hon'ble High Court of Delhi in the case of *Arise India Limited and others Vs. Commissioner of Trade & Taxes, Delhi and others*, [TS-314-HC-2017(Del)-VAT].

In view of the ratio cited supra, the State cannot deny the ITC of the Dealer merely on the ground that the purchasing dealers failed to disclose proper purchase in Annexure to VAT-201. So, the First Appellate Authority and the Assessing Authority went wrong in disallowing the claim of ITC of the Dealer due to mismatch, which warrants interference in appeal. The Department, however, is at liberty to proceed against the defaulting purchasing dealers for non-disclosure of proper purchase and cannot deny the ITC to the Dealer. Further, the Department is able to come across material to show that the purchasing dealers and the selling dealer acted in collusion then the Department can proceed in accordance with law.

9. Assessment record reveals that the Dealer has filed the debit note details from 01.10.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017 along with opening and closing stock of goods. Though the Dealer has filed the debit note in details for the aforesaid periods along with opening and closing stock of goods, but the assessment order is silent regarding filing of debit

note. The Assessing Authority could have verified the same from the purchasing dealers by verifying the veracity of the debit note filed by the Dealer. The Dealer, as it appears, has discharged its burden and filed all the relevant documents, i.e. books of account including credit note, debit note, opening and closing stock and returns. The Assessing Authority could have verified the same, but arbitrarily refused the decreased output VAT. In turn, the First Appellate Authority also mechanically concurred with the finding of the Assessing Authority without verifying the documents filed at assessment proceeding.

10. On the foregoing discussions, I came to an irresistible conclusion that the First Appellate Authority and Assessing Authority went wrong in disallowing decreased output VAT of the Dealer on the ground that the purchasing dealer, who returned the goods, did not reverse their ITC availed during purchase. Hence, it is ordered.

11. Resultantly, the appeals stand allowed and the impugned orders of the First Appellate Authority confirming the assessment orders are hereby set aside. The matters are remitted to the Assessing Authority for due examination of decrease output VAT claimed by the Dealer for the periods under assessment keeping in view the observations made supra within a period of three months from the date of receipt of this order.

The Department, however, is at liberty to proceed against the defaulting purchasing dealers for non-disclosure of proper purchase and cannot deny the ITC to the Dealer due to mismatch. Further, if the Department is able to come across material to show that the purchasing dealers and the selling dealer acted in collusion then the Department can proceed in accordance with law.

Cross-objection is disposed of accordingly.

Dictated & Corrected by me

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

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