

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

S.A.No.61(V) of 2016-17.

(Arising out of the order of Ld.JCST, Balasore Range,
Balasore, in First Appeal Case No.AA-6/BA-2015-16(VAT)
disposed of on dated 31.3.2016)

&

S.A.No.34(ET) of 2016-17

(Arising out of the order of Ld. JCST, Balasore Range,
Balasore, in First Appeal Case No.AA-07/BA-2015-16(ET)
disposed of on dated 31.03.2016)

P r e s e n t:-Shri G.C.Behera & Shri S.K.Rout & Shri S.R.Mishra,
Chairman 2nd Judicial Member Accounts Member-III

M/s.Bansika Engineering,
Samkona Mauza, Kuruda,
Dist-Balasore

. . . Appellant

- V e r s u s -

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

. . . Respondent.

For the Appellant
For the Respondent

. . . Mr.M.L.Agarwalla, Adv.
. . . Mr.D.Behura, SC(CT).

Date of Hearing : 09-08-2023

. . . Date of Order:18-08-2023.

O R D E R

The dealer has preferred the present appeals against the orders dt.31.3.2016 passed by the Ld. JCST, Balasore Range, Balasore (in short Ld. FAA) in First Appeal Case No.AA-6/BA-2015-16(VAT) and AA-07/BA-2015-16 (ET) confirming the orders passed U/s.43 of the OVAT Act and U/s.10 of the OET Act by the Learned Sales Tax Officer, Balasore Circle, Balasore, (in short Ld. STO). Since the aforesaid two appeals relate to same tax period from 1.4.2012 to 31.3.2013 of the same assessee involving common question of facts and law, they are taken up together for hearing and disposal of this composite order.

2. Briefly stated the fact of the case reveals that the dealer which carries on business in manufacturing and sale of Steel Almirah and M.S.

Gate, Grill etc. was subjected to assessment U/s.43 of the OVAT Act and U/s.10 of the OET Act based on a tax evasion report resulting in extra demand of Rs.10,34,560.00 and Rs.1,70,910.00 under the OVAT Act and OET Act respectively.

3. On being aggrieved with the aforesaid order passed by the Ld. STO the dealer has preferred an appeal before the Ld. FAA, who in his order dated 31.3.2016 has confirmed the demands raised by the Ld. STO.

4. On being further aggrieved the dealer appellant has preferred the present appeal before this forum on the grounds that the orders passed by the Ld. FAA are arbitrary and erroneous in as much as that the same are not maintainable before the eyes of law.

5. The respondent State on the other hand has filed cross objection against the appeal stating therein that since the orders passed by the Ld. STO and Ld.FAA are in conformity with the statutory provisions, no interference is warranted.

6. Heard the Learned Counsels appearing for both the parties and perused the records/documents produced before this forum.

Before delving into the factual aspect of the case, it is felt proper to examine the maintainability issue of the case as raised by the appellant since the purpose of any assessment proceeding before the taxing authorities is not only to assess the tax liability of the assessee correctly but to ensure that the same is completed in accordance with law. In this context, the Ld. Counsel of the appellant has referred to the judgement passed by the Hon'ble High Court of Orissa in case of **M/s.Keshab Automobiles Vrs. State of Odisha** in STREV No.64 of 2016 wherein the Hon'ble Court have been pleased to observed that :

“ It is significant that prior to the amendment with effect from 1st October, 2015, the trigger for invoking Section 43(1) of the OVAT Act required a dealer to be assessed under section 39,40,42 and 44 for any tax period. The words “where, after a dealer is assessed” at the beginning of section 43(1) prior to 1st October, 2015, pre-supposes that there has to be an initial assessment which should have been formally accepted for

the periods in question i.e. before 1st October, 2015 before the Department could form an opinion regarding escaped assessment or under-assessment or the accused taking the benefit of a lower rate or being wrongly allowed deduction from his turnover or input tax credit to which he is not eligible.”

The Hon’ble Court have further observed that “Therefore, the position prior to 1st October, 2015 is clear. Unless there was an assessment of the dealer under section 39, 40, 42 and 44 for any tax period, the question of reopening the assessment under section 43(1) of the OVAT Act did not arise.”

The above decision of the Hon’ble High Court of Orissa has also been affirmed by the Hon’ble Supreme Court of India in their order dt.13th July 2022 in S.L.P. (Civil) NO.9912 of 2022 in case of Deputy Commissioner of Sales Tax, Vrs. Rathi Steel and Power Ltd., and batch.

Similarly so far as OET Act is concerned, the relevant provisions i.e. Section 9(2) and Section 10 correspond exactly to Section 39(2) and Section 43 of the OVAT Act respectively as those provisions stood prior to amendment of 1st October 2015. The same was decided by the Hon’ble High Court of Orissa in W.P.(C) No.7458/2015 in case of ECMAS Resins Pvt Ltd., Vrs. State of Orissa and others. Thus from the aforesaid judicial pronouncements, it is clear that without assessment being complete the initiation of proceedings for escaped assessment is mis-conceived.

In the present case, it is revealed that assessments framed under OVAT Act and OET Act relate to the tax period from 1.4.2012 to 31.3.2013 which entirely cover the pre-amendment period of the OVAT Act. On examination of records produced at the time of hearing it is revealed that the Ld. STO has not adhere to the requirements of the pre-conditions prior to initiation of the present proceedings U/s.43 of the OVAT Act and U/s.10 of the OET Act. He has re-opened the assessment simply on the basis of a tax evasion report received against the business activities of the dealer. No evidence in respect of completion of self assessment or provisional assessment or audit assessment prior to initiation of escaped

assessment along with separate communication of such orders to the dealer could be produced by the State Counsel. The Ld. FAA has also ignored these aspects with regard to maintainability of the escaped assessment proceedings. In view of the above provisions of law, we considered to infer that the assessment made under the impugned cases are not sustainable before the eyes of law and as such, liable to be quashed.

7. In view of the foregoing discussion the second appeals preferred by the dealer appellant under the OVAT Act and OET Act are allowed. The impugned orders of the forum below are hereby quashed. The cross objection filed by the respondent State are hereby disposed of accordingly. Dictated and corrected by me,

(S.R.Mishra)
Accounts Member-III.

(S.R.Mishra)
Accounts Member-III.

I agree,

(G.C.Behera)
Chairman.

I agree,

(S.K.Rout)
2nd Judicial Member.