

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

**S.A.No.156(V) of 2012-13.**

(Arising out of the order of Ld. DCST(Appeal) Cuttack I Range,  
Cuttack, in First Appeal Case No.AA (VAT) 113/CUICT/2010-11,  
disposed of on dated 6.8.2012)

**Present:-Shri G.C.Behera & Shri S.K.Rout, & Shri S.R.Mishra,**  
Chairman 2<sup>nd</sup> Judicial Member Accounts Member-II.

M/s. Image Scan,  
Telenga Bazar, Cuttack . . . Appellant,

**- V e r s u s -**

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

For the Appellant . . . N o n e.  
For the Respondent . . . Mr.N.K.Rout,  
Addl. Standing Counsel,  
(CT & GST Organisation)

-----  
Date of Hearing: 15-11-2023.

Date Order:13-12-2023  
-----

**ORDER**

The dealer appellant on filing the Second Appeal U/s.78 of the Odisha Value Added Tax Act, (in short, OVAT Act) seeks the intervention of this forum against the order dated 6.8.2012 passed by the Learned Deputy Commissioner of Sales Tax (Appeal), Cuttack I Range, Cuttack, (hereinafter referred to as Learned First Appellate Authority/Ld. FAA) in setting-aside the order of assessment passed U/s.42 of the OVAT Act, by the Learned Sales Tax Officer, Cuttack I City Circle, Cuttack, (hereinafter referred to as Learned Assessing Authority/Ld. AA) for the period from 1.4.2005 to 17.6.2009.

2. Briefly stated the facts of the case are that the dealer which undertakes activities of developing graphic art film for the purpose of printing was subjected to audit assessment proceeding U/s.42 of the

OVAT Act by the Ld. AA which resulted in creation of demand of Rs.10,15,969.00 that includes an amount of Rs.6,77,305.82 as penalty U/s.42(3) of the OVAT Act.

3. The dealer on being aggrieved has preferred an appeal before the Ld. FAA who after examining the case was of the opinion that the work undertaken by the dealer comes within the ambit of works contract. Accordingly, the case was remanded to the Ld. AA for re-determination of taxable turnover after considering deduction on account of labour, service and other like charges as per the provisions prescribed U/r.6(e) of the OVAT Rules.

4. On being aggrieved the dealer has preferred the present appeal before this forum challenging the order of the Ld. FAA to be bad in law, out-come of mis-appreciation and mis-consideration of fact.

5. Cross objection filed by the State Respondent stating therein that the appeal preferred by the dealer appellant is not sustainable in the eyes of law as the Ld. FAA has rightly completed the appeal basing on the statutory provisions.

6. Heard the case from the learned counsel of the State Respondent. As the dealer appellant failed to appear, the case is disposed of on its own merit basing on the materials available on record.

7. The Learned Counsel of the State has averred that in the meantime the set-aside proceeding as per the direction of the Ld. FAA

in the impugned order has already been given effect to by the Ld. AA vide his re-assessment order passed on 20.3.2014.

8. In view of the aforesaid submission made by the State-Respondent and considering the fact that the set-aside proceeding as per the direction of the Ld. FAA has already been brought to its logical conclusion, the present appeal preferred by the dealer appellant is found to be infructuous. Accordingly the appeal preferred by the dealer is disposed of along with the cross objection filed by the State Respondent.

Dictated and corrected by me

**Sd/-**

**(S.R.Mishra)**  
Accounts Member-II.

I agree,

I agree,

**Sd/-**

**(S.R.Mishra)**  
Accounts Member-II.

Sd/-

**(G.C.Behera)**  
Chairman.

Sd/-

**(S.K.Rout)**  
2<sup>nd</sup> Judicial Member.