

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

**S.A.No.238(V) of 2014-15.**

(Arising out of the order of Ld.DCST(Appeal)Bhubaneswar Range,  
Bhubaneswar, in First Appeal No.AA-106111110000079,  
disposed of on dated 31.05.2014.)

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

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

. . . Appellant

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

M/s. Jalan Infortech Pvt. Ltd.,  
At/P.O. Plot No.463, Saheed Nagar,  
Bhubaneswar

. . . Respondent.

For the Appellant

. . . Mr.D.Behura,SC(CT)

For the Respondent

. . . Mr.N.K.Das, Advocate.

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Date of Hearing : 03-08-2023

Date of Order:02-09-2023.  
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**ORDER**

The present appeal of the State-Appellant has been directed against the impugned order of Ld. Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar, (hereinafter referred to as Ld. FAA) passed on 31.5.2014 in First Appeal Case No.AA-106111110000079 in reducing the extra demand raised in the Assessment Order passed on dated 15.2.2011 by the Ld. Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar (hereinafter referred to as Ld. STO) framed U/s.42 of the OVAT Act for the tax period from 1.4.2005 to 31.10.2008.

2. Being aggrieved by the impugned order of the Ld. FAA, the State-Appellant has preferred the present appeal before the Tribunal on the following grounds :-

i) That the order passed by the Ld. FAA appears to be unjust and improper.

ii) That the Ld. FAA being biased with the contention of the dealer has allowed adjustment of credit notes which the dealer has failed to take

before the Audit Visit Authority as well as the Ld. STO and the same was considered without verification of the Profit & Loss Account.

iii) That the contention taken by the dealer appears to be an after-thought and the documents relied upon by the Ld. FAA are manufactured at a later stage.

iv) That Accordingly the order of Ld. FAA is required to be set-aside with restoration of the assessment order passed by the Ld. STO

3. In response, the dealer-respondent has filed cross-objection in the following manner.

a) The appeal preferred by the State before this forum is neither based on facts and circumstances of the case nor on the points of law.

b) The Ld. FAA has rightly accepted the submission of the dealer assuming jurisdiction as extended forum of the Assessing Authority and has allowed the credit notes after minutely verifying the same with reference to the books of accounts produced before him during the appeal.

c) The contention taken by the State-Appellant claiming the books of accounts and documents produced by the dealer before the Ld. FAA are manufactured one, is nothing but bereft of available records and as such, liable to be dropped.

d) The order of the Ld. FAA which has been passed after detailed verification of the books of accounts and other material evidences produced before him is a reasoned one and needs no interference.

e) The assessment order and order of the Ld. FAA are not maintainable due to violation of Section 41(4) of the OVAT Act, since the Audit Visit Report was submitted beyond the statutory period of 07 day after completion of audit.

4. The brief fact of the case is that the dealer-assessee which carries on business in resale of computer, its spares and peripherals was subjected to audit assessment U/s.42 of the OVAT Act for the material period by the Ld. STO resulting in extra demand of Rs.2,66,475.00 which includes penalty of Rs.1,77,650.00 U/s.42(5) of the OVAT Act. The impugned demand is primarily noticed to be on account of mis-match of

purchase and sale figures and discrepancy noticed in the physical stock of goods on the date of audit visit.

5. The dealer on being aggrieved has preferred first appeal before the Ld. FAA who after necessary reconciliation of the books of accounts, has allowed adjustment of credit notes which resulted in reduction of the tax and penalty.

6. Heard the case. Perused the LCR and other relevant documents produced before us.

7. With regard to the question of maintainability of the proceedings, the learned advocate of the respondent has averred that the same is not in conformity to the provisions of law as the AVR basing on which the assessment proceeding was completed has been submitted beyond the statutory period of 07 days violating Section 41(4) of the OVAT Act. The aforesaid contention has been verified with reference to the LCR. It is noticed that the audit verification was completed by the Ld. STO (Audit) on 9.7.2010 and the AVR was transmitted to the concerned circle authority for assessment on dt.15.7.2010 i.e. within the statutory period of 07 days from the date of completion of audit. Accordingly we do not find any infirmity in the action of the Ld. STO (Audit) in submitting the AVR.

8. Now coming to the issue of adjustment of credit notes, on verification of Lower Case Record, it is found that the dealer respondent has submitted the details of credit notes in course of audit for which the contention of the appellant State that it is a new issue raised at the time of first appeal is not sustainable.

9. With regard to the contentions of the Appellant State that the Ld. FAA has considered the claim of adjustment on account of credit notes without verification of books of accounts and Profit and Loss Account and has been biased by the dealer is also found to be not sustainable since the impugned order it-self speaks about detailed verification made by the Ld. FAA on this account. Moreover, the Appellant-State failed to specifically point out any irregular adjustment made by the Ld. FAA in the impugned order.

10. As Ld. FAA is found to have made detailed exercise in adjustment of credit notes with reference to the books of accounts and returns filed by the dealer, and the State being failed to categorically mention about any irregular adjustment by the Ld. FAA, the present appeal preferred by the State is considered to be devoid of merit and hence dismissed.

11. In the result, the appeal filed by the State-Appellant is dismissed and the order passed by the Ld. FAA is confirmed. Cross objection filed by the respondent is disposed of accordingly.

Dictated and corrected by me,

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

**(S.R.Mishra)**  
Accounts Member-II.  
I agree,

**(G.C.Behera)**  
Chairman  
I agree,

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