

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

S.A. No. 39 (VAT) of 2020

&

S.A. No. 29 (ET) of 2020

(Arising out of orders of the learned JCCT & GST (Appeal),
Sundargarh Territorial Range, Rourkela in First Appeal
No. AA V 146 of 2018-19 & AA V 109 ET of 2018-19,
disposed of on 27.11.2019)

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

M/s. Maa Girija Ispat (P) Ltd.,
Bijabahal, Kuarmunda,
Dist. Sundargarh ... Appellant

-Versus-

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

For the Appellant : Sri B.B. Panda, Advocate
For the Respondent : Sri M.L. Agarwal, S.C. (CT)

Date of hearing : 28.10.2022 *** Date of order : 10.11.2022

ORDER

Both these appeals relate to the same Dealer involving common question of facts and law. So, they are heard together and disposed of by this composite order for the sake of convenience.

2. The Dealer challenges the order dated 27.11.2019 of the Joint Commissioner of CT & GST (Appeal), Sundargarh Territorial Range, Rourkela (hereinafter called as 'First Appellate Authority') in F A No. AA-AA V 146 of 2018-19 reducing the assessment of the Sales Tax Officer, Rourkela II Circle, Panposh (in short, 'Assessing Authority'). The Dealer

also assails the order dated 27.11.2019 of the First Appellate Authority in F.A. No. AA V 109 ET of 2018-19 reducing the assessment of the Assessing Authority.

3. The facts of the cases, in brief, are that –

M/s. Maa Girija Ispat Pvt. Ltd. is engaged in manufacturing of M.S. ingot. The assessment period relates to 01.07.2015 to 30.11.2015. The Assessing Authority raised tax demand of ₹5,12,721.00 u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, ‘OVAT Act’) basing on the Tax Evasion Report (TER) of the STO, Investigation Unit, Jharsuguda. Likewise, the Assessing Authority also raised tax demand of ₹93,222.00 u/s. 10(1) of the Odisha Entry Tax Act, 1999 (in short, ‘OET Act’) on the basis of TER.

Dealer preferred appeals under both the Acts against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority dismissed the appeals, but reduced the demand to ₹3,63,201.00 under the OVAT Act and ₹76,272.00 under the OET Act. Being further 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 as just and proper.

4. Learned Counsel for the Dealer submits that no demand can be raised in an assessment on suspicion and conjecture. He further submits if the Dealer disowns the ‘kachha chitha’, the same cannot be utilized unless it is established by the Revenue that the noting made in the slip relates to unaccounted business transaction of the Dealer. He further takes a plea that a proceeding u/s. 43 of the OVAT Act is not sustainable unless the self-assessment of the Dealer is accepted and communicated to the Dealer. So, he submits that the orders of the First Appellate Authority and the Assessing Authority are otherwise bad in law and require interference in appeal.

He relies on the decisions in the case of *M/s. Kshab Automobiles v. State of Odisha* (STREV No. 64 of 2016); *M/s. K.J. Ispat Ltd. v. Commissioner of Commercial Taxes, Orissa, Cuttack and another*, reported in 2012 (II) ILR-CUT-743; and *State of Orissa and others v. D.K. Construction and others*, reported in [2017] 100 VST 24 (Orissa).

5. Per contra, learned Standing Counsel (CT) for the State supports the findings of the First Appellate Authority and submits that the First Appellate Authority has rightly determined the tax liability keeping in view the alleged sale suppression of M.S. ingot of 100.200 MT as per TER. He further submits that that the Dealer has not taken the plea of maintainability in the grounds of appeal. So, he submits that this Tribunal is precluded to entertain the said ground at this stage. Therefore, he submits that the orders of the First Appellate Authority do not require any interference in appeal.

6. As regards, the point of maintainability of Section 43 proceeding, the Dealer relies on the decision of the Hon'ble Court in the case of *M/s. Keshab Automobiles* cited supra and submits that Section 43 proceeding is not maintainable unless the self-assessment is accepted and communicated to it. The State objects such contention on the ground that the same was not taken in the grounds of appeal before this forum or the forum below. The Dealer also relies on the decision of Hon'ble Court in the case of *State of Orissa and others v. D.K. Construction and others* cited supra.

6.1. Admittedly, the Dealer has not taken the ground of maintainability in the grounds of appeal in the memorandum of appeal. He only raises the same at the time of hearing of the appeals. The grounds of appeal filed by the Dealer before the First Appellate Authority of both the proceedings show that the Dealer has specifically admitted that the acceptance of self-assessed return. The Assessing Authority in the order of assessment categorically observed the same. So, the Dealer is precluded to raise the same in the second appeal. The decisions cited supra are not applicable to

the facts and circumstances of the present case. Hence, we do not accept the submission of the learned Counsel for the Dealer on that score.

7. As regards purchase suppression of M.S. ingot by the Dealer, it is not in dispute that the Dealer deals in M.S. ingot. 'Kachha chitha' (appears to be 'kachha register') recovered by the Central Excise Department from M/s. Ambica Iron & Steel Pvt. Ltd. reveals some entries regarding sale transaction in between the Dealer and M/s. Ambica Iron & Steel Pvt. Ltd. He relies on the decision of Hon'ble Court in the case of *M/s. K.J. Ispat Ltd.* cited supra where Hon'ble Court observed that slip recovered from the premises of the assessee, initial burden lies on the assessee to explain the slip recovered. Where the dealer disowns the slip, unless it is established by the Revenue that noting made in the slip relates to unaccounted business transactions of the Dealer, no adverse inference can be drawn.

7.1. In the case at hand, the Dealer disowns any purchase of M.S. ingots from M/s. Ambica Iron & Steel Pvt. Ltd., but admits that it sells M.S. ingot to M/s. Ambica Iron & Steel Pvt. Ltd. As the Dealer admits that it sells M.S. ingot to M/s. Ambica Iron & Steel Pvt. Ltd. and the noting in the kachha chitha shows business transaction in between the Dealer and M/s. Ambica Iron & Steel Pvt. Ltd., the Dealer has to rebut the noting by producing the books of account regarding sale of M.S. ingot to M/s. Ambica Iron & Steel Pvt. Ltd., which he fails to do so. Thus, the First Appellate Authority has rightly recorded a finding regarding the unaccounted for sale suppression by the Dealer and computed the tax liability, which calls for no interference in appeal. Therefore, the decision relied on by the Dealer is not applicable to the present facts and circumstances of the case.

8. Since on the foregoing discussions, it has already been held the sale suppression is established against the Dealer under the OVAT Act, so the same view is hold good for the proceeding under the OET Act.

9. In view of the foregoing discussions, I find no infirmity or illegality in the impugned orders of the First Appellate Authority to call for any interference.

10. In the result, both the appeals stand dismissed and the orders of the First Appellate Authority are hereby confirmed. Cross-objections are disposed of accordingly.

Dictated & Corrected by me

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

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(G.C. Behera)
Chairman**