

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

S.A. No. 266 (VAT) of 2014-15

(Arising out of order of the learned Addl. CST, North Zone
in Appeal No. AA – CUII-307/2014-15 (OVAT),
disposed of on 18.09.2014)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri B. Bhoi, Accounts Member-II

M/s. Godrej Saralee Ltd.,
(Now merged with M/s. Godrej Consumer
Products Ltd.), Banpur,
Gopalpur, Cuttack ... Appellant

-Versus-

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

For the Appellant : Sri N.K. Dash, Advocate &
Sri K.R. Mohapatra, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 22.03.2023 *** Date of order : 23.03.2023

ORDER

The Dealer is in appeal against the order dated 18.09.2014 of the Addl. Commissioner of Sales Tax, North Zone (hereinafter called as ‘First Appellate Authority’) in F A No. AA – CUII-307/2014-15 (OVAT) reducing the assessment order of the Joint Commissioner of Sales Tax, Cuttack II Range, Cuttack (in short, ‘Assessing Authority’).

2. Briefly stated, the facts of the case are that –

M/s. Godrej Saralee Ltd. deals in Godrej brand products like mosquito repellent, mosquito coil, tablets on wholesale and retail distribution. The Dealer receives stock from its regional office at Kolkata by way of stock transfer against Form-F and purchase against Form-C. The assessment period relates to 01.09.2010 to 30.06.2012. The Assessing Authority raised tax and penalty of ₹8,63,80,815.00 u/s. 42(4) of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') on the basis of Audit Visit Report (AVR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹1,24,08,219.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection supporting the impugned order of the First Appellate Authority.

3. The learned Counsel for the Dealer submits that the AVR was transmitted beyond the statutory period of seven days, which is clear violation of the mandatory provision. He further submits that the Assessing Authority cannot traverse beyond the materials available in the AVR. So, he submits that disallowance of ITC of ₹1,92,998.00 and the sales suppression of ₹3,52,00,123.70 are beyond the materials of AVR and the same cannot be considered by the Assessing Authority in audit assessment u/s. 42 of the OVAT Act. So, he submits that the orders of the First Appellate Authority and Assessing Authority are otherwise bad in law and liable to be set aside. He relies on the decisions of the Hon'ble Court in the case of *M/s. Grihasthi Udyog v. Commissioner of Sales Tax and another* (W.P.(C) No. 9856 of 2010, decided on 28.06.2022), *M/s. Pal Construction v. The Assessing Authority, Bhubaneswar I Circle, Bhubaneswar and others* (W.P.(C) No.

16957 of 2009, decided on 18.04.2022); *Bhushan Power & Steel Ltd. v. State of Orissa and others*, reported in [2012] 47 VST 466 (Orissa); and *M/s. Tata Sponge Iron Ltd. v. Commissioner of Sales Tax, Odisha, Cuttack & others* (W.P.(C) No. 3661 of 2019, decided on 17.04.2019) and the decisions of this Tribunal in S.A. No.1 (VAT) of 2012-13 dated 22.09.2022; S.A. No. 161 (ET) of 2016-17 dated 13.02.2018; S.A. No. 104 (ET) of 2017-18 dated 06.08.2019; and S.A. No. 331 (V) of 2017-18 dated 01.03.2021.

4. Per contra, the learned Standing Counsel (CT) for the State submits that the AVR has been sent to the Assessing Authority in time. He further submits that the sale suppression and ITC was detected in calculation and the same is not foreign to the AVR. So, he submits that *Bhushan Power & Steel Ltd.* case and other cases relied on by the Dealer are not applicable to the present facts and circumstances of the case. So, he submits that the order of the First Appellate Authority needs no interference in this appeal.

5. Heard the rival submissions of the parties and went through the materials on record. Dealer has raised the point of maintainability of the escaped assessment proceeding on the ground that the AVR has been sent to the Assessing Authority beyond seven days. On verification of the assessment record, it shows that the AVR was completed on 14.09.2012 and the same was sent to the Assessing Authority on 21.09.2012. So, the AVR has been sent to the Assessing Authority in time and the same does not violate the mandatory provisions of the OVAT Act. As such, the contention of the Dealer merits no consideration on this score.

It transpires from the assessment order that the Dealer has collected VAT @ 4% and 12.5% on the sale value, which is reflected in the VAT return. The Assessing Authority further found that the Dealer has collected VAT @ 4% on the sale of mosquito repellent worth of

₹28,53,82,732.58 instead of 12.5%. So, on such finding, the Assessing Authority assessed the differential tax of 8.5% on the said amount. The Assessing Authority added ₹3,52,00,123.70 towards sales suppression and determined the GTO and TTO at ₹33,01,15,169.07. The Assessing Authority also disallowed the ITC of ₹1,92,998.00.

The Assessing Authority assessed the tax of ₹4,12,64,396.11. The Dealer has paid ₹1,24,70,791.00 along with the return. So, the Assessing Authority raised tax and penalty of ₹8,63,80,815.00 for the period under assessment.

The First Appellate Authority allowed levy of tax @ 4% on the turnover of mosquito repellent of ₹28,53,82,732.58. The First Appellate Authority recomputed the tax liability of ₹1,24,08,219.00 including penalty, which resulted in reduction of demand.

6. AVR shows that the Dealer has declared output tax of ₹1,24,87,732.86 and availed ITC of ₹1,21,005.75. AVR further shows that the Dealer has to pay ₹1,26,08,738.61 and he has paid ₹1,24,70,791.00. So, he has to pay ₹1,37,948.00. The Assessing Authority recorded a finding that the Dealer has not submitted the details of ITC availed. So, he disallowed ITC of ₹1,21,005.75.

The Dealer claims that the Assessing Authority cannot traverse beyond the AVR and disallowed ITC worth of ₹1,92,998.00 and sales suppression of ₹3,52,00,123.70 which has not been reported in the AVR. In support of his contention, he relies on the decision in the case of ***Bhushan Power & Steel Ltd.*** cited supra.

7. In the case of ***Bhushan Power & Steel Ltd.*** cited supra, Hon'ble Court have been pleased to observe as follows :-

“Held, that a perusal of the rule 12(3) of the Central Sales Tax (Orissa) Rules read with section 42 of the Orissa Value Added Tax Act, 2004 made it clear that audit assessment had to be

completed on the basis of the materials available in the audit visit report. There was no scope for the assessing authority to utilize any materials other than the materials available in the audit report while making the audit assessment. xxx”

8. In the instant case, the Audit Team has suggested in the AVR to disallow ITC of ₹1,21,005.75. On the basis of AVR, the Assessing Authority computed the tax liability and detected sales suppression of ₹3,52,00,123.70 and ITC of ₹1,92,998.00. The same cannot be held to be extraneous facts to the AVR submitted. So, the decision in the case of *Bhushan Power & Steel Ltd.* cited supra is not applicable to the present facts and circumstances of the case.

9. The assessment order reveals that the Assessing Authority found sales suppression of ₹3,52,00,123.70 basing on the statement of accounts filed by the Dealer with reference to AVR. The details are given below -

Opening balance as on 01.09.2010 is	- ₹ 1,55,48,476.39
Stock received against Form ‘F’	- ₹18,75,34,423.32
Goods purchased against Form ‘C’	- ₹11,59,55,983.57
Goods purchased within the State	- ₹ <u>15,43,973.00</u>
Total goods purchased and received	- ₹32,05,82,856.28
Less : Closing balance as on 30.06.2012	- Nil
Total	- ₹32,05,82,856.28
Less : Sale from 01.09.2010 to 30.06.2012	- ₹ <u>28,53,82,732.58</u>
Sales suppression	- ₹ 3,52,00,123.70

So, the Assessing Authority added the sales suppression of the aforesaid amount to the GTO and TTO and computed the tax liability as per law. The Assessing Authority further found that the Dealer-Company had no opening balance and closing balance of ITC, i.e. on 01.09.2010 and 01.07.2012 respectively. The Dealer has availed ITC of ₹1,92,998.00 on purchase of goods during the period 01.09.2010 to 30.06.2012. So, the Assessing Authority disallowed the ITC claimed.

10. The assessment order further reveals that the Dealer has returned GTO of sales worth of ₹29,49,15,045.37 and computed the tax @ 4% on ₹28,53,82,732.58 and @ 12.5% on ₹95,32,312.79. But, as it appears, the Assessing Authority did not deduct the sale of goods worth ₹95,32,312.79 while arriving at the sales suppression. The Dealer has taken a plea that M/s. Godrej Consumer Products Ltd. was merged with the Dealer-Firm and the closing stock of the firm was ₹1,49,59,586.58 and the same was not adjusted before alleging sales suppression. The aforesaid fact finds support from the AVR submitted under the OET Act wherein the Audit Team has suggested to recover the ET on the said value of ₹1,49,59,586.00. The said closing stock relates to the period under assessment. In view of such facts, the Assessing Authority ought to have taken into consideration the closing stock of ₹1,49,59,586.00 instead of 'Nil' and the sale of goods worth ₹95,32,312.79 while arriving at the sales suppression.

11. The Dealer has filed a copy of order dated 13.02.2018 passed in **S.A. No. 161 (ET) of 2016-17** of the instant Dealer, wherein this Tribunal remanded the matter to the Assessing Authority for disposal afresh with an observation that the Assessing Authority shall re-determine the tax liability after taking into account the order passed by the Hon'ble Bombay High Court, scheme of amalgamation and evidence to be adduced by the Dealer showing discharge of liability by the transferee Company.

In view of the finding of this Tribunal rendered in **S.A. No. 161 (ET) of 2016-17** for disposal afresh by the Assessing Authority, we are of the unanimous view that the present appeal needs to be remanded for re-determining the GTO, TTO and tax liability as per law keeping in view the order passed by the Hon'ble Bombay High Court, scheme of amalgamation and evidence to be adduced by the Dealer showing discharge of liability by the transferee Company. The Dealer is at liberty to file relevant documents

and evidence relating to the claim of ITC and closing stock of goods which shall be considered in accordance with by the Assessing Authority. Hence, it is ordered.

12. Resultantly, the appeal is allowed in part and the orders of the First Appellate Authority and the Assessing Authority are hereby set aside. The matter is remanded to the Assessing Authority to make assessment afresh in accordance with law keeping in view the observations made supra within a period of three months from the date of receipt of this order. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

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

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

I agree,

**Sd/-
(S.K. Rout)
2nd Judicial Member**

I agree,

**Sd/-
(B. Bhoi)
Accounts Member-II**