BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 7 (VAT) of 2022
&
S.A. No. 3 (ET) of 2022

(Arising out of orders of the learned JCST (Appeal), Cuttack-II Range, Cuttack in Appeal Nos. AA/30/OVAT/CUIIR/2019-20 & AA/17/OET/CUIIR/2019-20, disposed of on 30.10.2021)

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

M/s. Rajashree Chlorochem,
B/S2/192, New Industrial Estate,
At/PO- Jagatpur, Cuttack-754021 ... Appellant

-Versus-

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

For the Appellant : Sri D.S. Jethi, Advocate
For the Respondent : Sri S.K. Pradhan, Addl. SC (CT)

Date of hearing : 22.08.2023 *** Date of order : 23.08.2023

O R D E R

Both the second appeals relate to the same party and for the same period involving common question of facts and law, but under different Acts. Therefore, they are taken up for disposal in this common order for the sake of convenience.

S.A. No. 7 (VAT) of 2022 :

2 Dealer assails the order dated 30.10.2021 of the Joint Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack (hereinafter called as 'First Appellate Authority') in F A No. AA/30/

OVAT/CUIIR/2019-20 confirming the reassessment order of the Asst. Commissioner of Sales Tax, Territorial Range, Cuttack-II, Cuttack (in short, 'Assessing Authority').

S.A. No. 3 (ET) of 2022 :

3. Dealer is also in appeal against the order dated 30.10.2021 of the First Appellate Authority in F A No. AA/17/OET/CUIIR/2019-20 confirming the assessment order of the Assessing Authority.

4. Briefly stated, the facts of the cases are that –

M/s. Rajashree Chlorochem is a manufacturer of bleaching powder by utilizing hydrated lime and liquid chlorine and sells the same inside the State including PHD Department. The reassessments relate to the period 01.04.2009 to 31.03.2011. Dealer was earlier assessed u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') and u/s. 10 of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') on 03.02.2012 on the basis of investigation report.

Assessment orders under the OVAT Act and OET Act were challenged in first appeal. The First Appellate Authority set aside the matters for fresh assessment with certain observations. Accordingly, Assessing Authority completed the reassessments and raised tax and penalty of ₹1,11,830.00 under the OVAT Act and ₹22,957.00 under the OET Act.

Dealer preferred first appeals against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the tax demands and dismissed the appeals. Being aggrieved with the orders of the First Appellate Authority, the Dealer prefers these appeals. Hence, these appeals.

The State files cross-objections supporting the impugned orders of the First Appellate Authority confirming the orders of assessment to be just and proper in the facts and circumstances of the case.

5. The learned Counsel for the Dealer submits that the orders passed by the First Appellate Authority and the Assessing Authority are otherwise illegal in law and facts involved. He further submits that without completing an assessment u/s. 39, 40, 42 or 44 of the OVAT Act, initiation of proceeding directly u/s. 43 of the said Act is not sustainable in law. He also submits that under the OET Act the Assessing Authority directly completed assessment u/s. 10 without completing an assessment u/s. 9(1) and (2) of the said Act. He further submits that there is no communication of acceptance of self-assessment return to the Dealer before passing reassessment orders u/s. 43 of the OVAT Act and u/s. 10 of the OET Act. Moreover, he submits that there is no justification in calculating the alleged suppression of bleaching powder basing on exercise book, pioneer account book and lotus flat file, which are not indicated any nexus of suppression. Therefore, he submits that the orders of the First Appellate Authority and the Assessing Authority under the OVAT Act and OET Act are liable to be set aside in the ends of justice. He relies on the decisions of the Hon'ble Court in cases of ***M/s. Keshab Automobiles v. State of Odisha*** in **STREV No. 64 of 2016** decided on 01.12.2021 and ***M/s. ECMAS Resins Pvt. Ltd. and other v. State of Odisha*** in **WP(C) Nos. 7458 of 2015 & 7296 of 2013** decided on 05.08.2022.

6. Per contra, learned Addl. Standing Counsel (CT) for the State supports the orders of the fora below and submits that the self-assessment of the Dealer has been accepted u/s. 39(2) of the OVAT Act and u/s. 9(2) of the OET Act. He further submits that there is no need of communication of acceptance of self-assessment as per the decision of the Hon'ble Orissa High Court in the case of ***Nilachal Ispat Nigam Ltd.*** in **W.P. (C) No. 22343 of 2015**. So, he submits that the orders of the fora below require no interference in appeal.

7. Having heard the rival submissions and on careful scrutiny of the record, it is apparent that reassessment u/s. 43 of the OVAT Act can only be made after the assessment is completed u/s. 39, 40, 42 or 44 of the said Act.

Hon'ble Court in the case of ***M/s. Keshab Automobiles*** cited supra have been pleased to observe in para-22 as follows :-

> "22. From the above discussion, the picture that emerges is that if the self-assessment under Section 39 of the OVAT Act for tax periods prior to 1st October, 2015 are not 'accepted' either by a formal communication or an acknowledgement by the Department, then such assessment cannot be sought to be re-opened under Section 43(1) of the OVAT Act and further subject to the fulfilment of other requirements of that provision as it stood prior to 1st October, 2015."

In view of the ratio laid down by the Hon'ble Court, the Department is required to communicate a formal communication or acknowledgment regarding the acceptance of the self-assessment u/s. 39 of the OVAT Act. In this case, the State has not filed any materials to show that the acceptance of the self-assessment has been communicated to the Dealer.

8. In view of the decision of the Hon'ble Court in case of ***M/s. Keshaba Automobiles*** cited supra, the assessment proceeding u/s. 43 of the OVAT Act is without jurisdiction in absence of any assessment u/s. 39, 40, 42 or 44 of the said Act. So, the orders of the Assessing Authority and the First Appellate Authority under the OVAT Act are not sustainable in the eyes of law as the same are without jurisdiction.

9. In the case of ***M/s. ECMAS Resins Pvt. Ltd.*** and other cited supra, Hon'ble Court have been pleased to observe that unless the self assessment is accepted by the Department by a formal communication to the dealer, it cannot trigger a notice for reassessment u/s. 10(1) of the OET Act r/w. Rule 15B of the OET Rules. The relevant portion of the order of the Hon'ble Court is reproduced herein below for better appreciation :-

> "43. The sum total of the above discussion is that as far as a return filed by way of self assessment under Section 9(1) read with Section 9(2) of the OET Act is concerned, unless it is 'accepted' by the Department by a formal communication to the dealer, it cannot be said to be an assessment that has been accepted and without such acceptance, it cannot trigger a notice for re-assessment under Section 10(1) of the OET Act read with 15 B of the OET Rules. This answers the question posed to the Court."

10. In view of the ratio laid down above by the Hon'ble Court, I am of the considered view that the assessment for the impugned period is not sustainable in the eyes of law in absence of acceptance of return of self assessment u/s. 9(1) r/w Section 9(2) of the OET Act. Hence, it is ordered.

11. Resultantly, both the second appeals filed under the OVAT Act and OET Act are allowed and the impugned orders of the First Appellate Authority confirming the reassessment orders of the Assessing Authority are hereby quashed. Cross-objections are disposed of accordingly.

Dictated & Corrected by me

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