

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

S.A.No.70(V) of 2016-17.

(Arising out of the order of Ld. JCST, Jajpur Range, Jajpur
Road, in First Appeal Case No.AA-630 CUIII 15-16 (OVAT)
disposed of on dated 26.2.2016)

Present:- Shri S.K. Rout,
2nd Judicial Member

&

Shri S.R.Mishra,
Accounts Member-II.

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

... Appellant,

- V e r s u s -

M/s. Jay Hanuman Trading Co.,
At-Eranank, Sujanpur, Jajpur

... Respondent.

For the Appellant

... Mr.S.K.Pradhan,
(Standing Counsel).
(CT & GST Organisation)

For the Respondent

... N o n e.

Date of Hearing: 7-11-2023.

Date Order: 5-12-2023.

O R D E R

The present appeal preferred by the State Appellant is directed against the impugned order dated 26.2.2016 passed by the Learned Deputy Commissioner of Sales Tax, Jajpur Range, Jajpur Road, (hereinafter referred to as Learned First Appellate Authority/Ld. FAA) in First Appeal Case No. AA-630 CUIII 15-16 (OVAT) wherein and whereby the demand raised U/s.43 of the OVAT Act, by the Learned Assessing Authority (hereinafter referred to as Ld. AA) was reduced from Rs.4,92,417.00 to Nil for the tax period from 1.4.2010 to 31.3.2012.

2. Briefly stated the fact of the case is that the dealer which carries on business in decortivating and sale of ground-nut seeds was inspected by a team of officials on 20.4.2012 headed by the Sales Tax

Officer, Vigilance Wing, Cuttack. In course of inspection, the visiting officials have recovered some incriminating documents from the possession of the dealer depicting under-hand sale transactions. Similarly they have recovered few documents from a broker in respect of transactions effected by the instant dealer. On the basis of the above documents, the visiting officials have alleged about indulgence of the dealer in suppression of sales as well as in the practice of under-invoicing thereby discharging lesser amount of tax.

3. On receipt of the above report, the Ld. AA has instituted proceeding U/s.43 of the OVAT Act which resulted in creation of impugned demand of Rs.4,97,417.00 including penalty levied U/s.43(2) of the OVAT Act.

4. The dealer on being aggrieved has preferred an appeal before the Ld. FAA, who has annulled the impugned order being without jurisdiction. While passing the above order, the Ld. FAA was of the opinion that since the alleged transactions were inter-State in nature, the initiation of escaped assessment proceeding under the Odisha Value Added Tax Act is not sustainable. Similarly the demand raised on account of under-invoicing was also deleted by the Ld. FAA due to absence of any procedural mechanism of Section 101 of the OVAT Act, and in deciding the same the Ld. FAA has relied upon the decision of this Tribunal in S.A.No.12(VAT) of 2008-09 dated 9.2.2011 in case of M/s. Bharat Trading Co.,Cuttack Vrs. State of Orissa.

5. On being dissatisfied with the above order passed by the Ld. FAA, the State has preferred the present appeal challenging the order of

the first appellate authority to be unjust and improper in view of the immunity provided U/s.93 of the OVAT Act. Besides, the State has sought for restoration of the order passed by the Ld. AA, in view of the judgement of Hon'ble Supreme Court of India, dated 11th July 2008, and dt.15th December, 1997 in case of M/s. Deepak Agro Foods Vrs. State of Rajasthan and Others in Civil Case No.4327-28 of 2008 and that of M/s. Sri Durga Oil Mills & Anr. in Civil Appeal No.3785-86 of 1988 respectively.

6. No cross objection has been filed by the respondent dealer.

7. Heard the case from the learned counsel of the State. As there is no appearance from the side of the respondent dealer, the case is decided exparte on its own merit basing on the materials available on record.

8. During the course of hearing the learned counsel of the State has reiterated the grounds of appeal and has averred that the proceeding initiated U/s.43 of the OVAT Act cannot be invalidated in view of Section 98 of the Act, which envisages that no proceeding shall be invalid or deemed to be invalid merely because by reason of any mistake, defect or omission, if in substance and effect, the same is in conformity with or according to the intents, purposes and requirement of the Act. He further relied upon the decision of the Hon'ble Supreme Court of India in Civil Appeal Case No.4327-28 of 2008 in case of M/s. Deepak Agro Foods Vrs. State of Rajasthan & Ors, which distinguishes between a "null and void" order with an "illegal or irregular" order. In stating so, the learned counsel has contended that since it was a case of irregularity in the

assessment order the same could have been cured but should not have been declared null and void. Further, the Learned Counsel has referred to the decision dt.15.12.1997 of the Hon'ble Apex Court in Civil Appeal No.3785-86 of 1988 in case of Sales Tax Officer & Anr. Vrs. Shree Durga Oil Mills and Anr, wherein the Hon'ble Court was pleased to observe that public interest must override any consideration of private loss or gain.

9. So far as the factual aspect is concerned the State-Appellant failed to contradict the findings of the Ld. FAA that the alleged transactions are inter-State in nature. The allegation of escapement could have been well addressed by the Ld. AA by invoking escaped assessment proceeding under the CST law. On perusal of the record this forum also observes that the alleged transactions including those against which allegation of under invoicing was lodged, were inter-State in nature. We thus find that there is a gross mistake on the part of the Ld. AA in initiating proceeding under the OVAT Act against the transactions effected under the Central Sales Tax Act, which cannot be treated as a procedural irregularity and therefore not curable under the pretext of application of Section 98 of the OVAT Act. Similarly the case law cited by the learned counsel in case of M/s. Deepak Agro Foods as cited supra is also considered to be out of context.

10. In the present case since the proceeding is found to have been instituted under a wrong Act, the same cannot be treated as an illegal or irregular order, rather the same is considered to be without jurisdiction. Therefore, this forum do not find any compelling reason to interfere with the impugned order passed by the Ld. FAA.

11. Accordingly, the appeal preferred by the State Appellant is dismissed being devoid of merit and the impugned order passed by the Ld. FAA stands confirmed.

Dictated and corrected by me

Sd/-
(S.R.Mishra)
Accounts Member-II.

Sd/-
(S.R.Mishra)
Accounts Member-II.

I agree,

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