

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

S.A. No.310(V) of 2015-16

&

S.A. No.165(ET) of 2015-16

(Arising out of the orders of the learned JCST,
Koraput Range, Jeypore in First Appeal Case
Nos.AAV(KOR)16/15-16 & AAE(KOR) 06/15-16,
disposed of on 30.10.2015)

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

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

..... Appellant.

-Vs. -

M/s. Pawan Industries, At- Souraguda,
Jeypore, Dist-Koraput.

..... Respondent.

For the Appellant: : Mr. D. Behura, S.C.(C.T.)

For the Respondent : : Mr. R.S. Sistla, A.R.

Date of Hearing : 07.02.2024 * Date of Order : 06.03.2024**

O R D E R

These two second appeals filed by the State are against the orders dated 30.01.2015 of the Joint Commissioner of Sales Tax, Koraput Range, Jeypore (in brevity, referred to as 'ld. FAA') passed in First Appeal Case No.AAV (KOR)16/15-16 and in First Appeal

Case No.AAE (KOR) 06/15-16 causing annulment of the demands raised under Section 44 of the OVAT Act and under Section 9D(1) of the OET Act by the Sales Tax Officer, Koraput Circle, Jeypore (hereinafter referred to as ld. STO).

2. The Deputy Commissioner of Sales (Vigilance) accompanied by other personnel of Koraput Division, Vigilance, Jeypore paid a visit to the business premises of Jyoti Mill at Souraguda, Jeypore on 14.02.2014 where the business concern under the name and style as M/s Prabhat Gudakhu Factory, R.C. No.KOI-3588 is located. Sri Arvind Kumar Agrawal is the proprietor of this firm. While on verification of books of accounts, the visiting personnel seized electricity bills issued in the name of Sri Arvind Kumar Agrawal, the erstwhile partner of M/s Pawan Industries. The Vigilance staff basing upon evidence of electricity bills vouched in the name of M/s. Pawan Industries alleged that the said firm despite having got its R.C. cancelled under Section 9(6)(a) of the OST Act since 01.04.1998 was still doing business in manufacturing of plastic containers and selling the same to M/s. Prabhat Gudakhu Factory. The Vigilance staff taking into account the electricity bills issued in the name of Arvind Kumar Agrawal of M/s Pawan Industries for the period from 01.04.2008 to

14.02.2014 involving ₹22,70,139.00 together with ₹30,84,900.00 paid on the account of wages of 13 nos. of labourers, the total expenditure incurred for the said period worked out to ₹53,55,039.00. The Inspecting staff to arrive the sale turnover during the said tax period enhanced the total expenditure by 10 times and determined the GTO and TTO at ₹5,35,50,390.00 under the OVAT Act. The tax due for the period from 01.04.2008 to 31.03.2012 @ 4% on ₹3,01,33,500.00 and for the period from 01.04.2012 to 14.02.2014 @5% on ₹2,34,16,890.00 calculated to ₹23,76,185.00 which with penalty of the equal amount of tax due arrived at ₹47,52,370.00 under the OVAT Act. In respect of OET Act, the turnover has been arrived at ₹5,59,26,575.00 by adding the tax due and sale turnover determined under the OVAT Act and on levy of OET @1% thereon calculated to entry tax of ₹5,59,266.00. On imposition of penalty, the total entry tax payable determined at ₹11,18,532.00. A Tax Evasion Report with the above findings was transmitted to the appropriate authority i.e. the Id. STO to assess Sri Arvind Kumar Agrawal, partner of M/s. Pawan Industries as an unregistered firm under Section 44 of the OVAT Act and under Section 9D of the OET Act.

3. The Id. STO being swayed by the findings contained in the Tax Evasion Report assessed the dealer-assessee to tax and penalty as determined in the said Report ex-parte under Section 44 of the OVAT Act and under Section 9D of the OET Act. Aggrieved, the dealer-assessee preferred first appeal challenging the orders of the Id. STO. The Id. FAA while disposing of the case observed that M/s. Pawan Industries was a partnership firm. Consequent upon dissolution of the said partnership firm w.e.f. 01.04.1998, Sri Arvind Kumar Agrawal, one of the partners and the proprietor of M/s. Prabhat Gudakhu Factory has taken over the assets of M/s. Pawan Industries as per the terms and conditions inked in the Deed of Dissolution. Accordingly, M/s. Pawan Industries was merged with M/s. Prabhat Gudakhu Factory. The Balance Sheet produced at first appeal stood as a testimony to the assets of M/s Pawan Industries to have been taken over by Sri Arvind Kumar Agrawal. The Id.FAA observed that the electricity expenses, electricity bills etc. relating to the years 2008-09 to 2013-14 are found adorned in the Ledger accounts Books of M/s Prabhat Gudakhu Factory, although the electricity bills have been issued in the name of Sri Arvind Kumar Agrawal, M/s Pawan Industries even after dissolution of the partnership firm. As M/s Pawan

Industries was merged with M/s Prabhat Gudakhu Factory, the dealer-assessee continued manufacturing plastic containers for packing of Gudakhu using plastic granules. The Id.FAA verified the Registration Certificate issued by the Sales Tax Office and found that the R.C No.KOI-3588 has been converted to TIN-21341601621 at the advent of VAT incorporating 'Plastic packing materials' in the Packing material Section and 'Paring and 'Scrap of plastic' in raw material Section. The Id.FAA could find that the Vigilance Team had found nothing except the electricity bills in the name of M/s Pawan Industries. There was no other evidence like stock in trade or any documents detected from the place of business basing on which the Tax Evasion Report has been lodged. Rather, the Vigilance Team dragged the labour expenditure and electricity charges paid from the account of M/s. Prabhat Gudakhu Factory and lodged allegation of evasion of tax against a non-existence dealer which cannot stand to the scrutiny of law. The Id.FAA held the finding of the Tax Evasion Report as well as the orders of assessment passed by the Id. STO under both the Acts as guess work and fanciful estimation and annulled the demands raised thereunder allowing the appeals in full.

4. The State being disagreed with the orders of the Id.FAA preferred second appeals under both the Acts contending that the Deed of Dissolution alone cannot substantiate the claim of non-existence. Though it signifies legal non-existence of the firm, the Reporting Authority had physically established the existence of the firm. It is contended that the Id.FAA before annulling the demands so raised ought to have carefully examined the veracity of the Tax Evasion Report.

The dealer-respondent has filed cross objection holding the orders of the Id.FAA as justified and lawful.

5. The orders of the forums below, findings of the Tax Evasion report, grounds of appeal, written submission and other materials available on record are gone through at length. As is evident from the records, it transpires that there were two business concerns namely M/s Pawan Industries and M/s Prabhat Gudakhu Factory in existence in the business premises of Jyoti Mill at Souraguda, Jeypore. M/s Pawan Industries was a partnership firm with partners namely Sri Arvind Kumar Agrawal and Sri Pawan Kumar Agrawal under its fold whereas M/s Prabhat Gudakhu Factory is a proprietorship firm of which, Sri Arvind Kumar Agrawal is the proprietor. By virtue of a Deed of Dissolution dated 01.04.1998,

M/s Pawan Industries was closed and the assets and other liabilities of the dissolved firm were taken over by Sri Arvind Kumar Agrawal, the proprietor of M/s Prabhat Gudakhu Factory as has been vividly observed by the Id.FAA in first appeal order and reproduced in para 3 above. The Balance sheet, Ledger Book in respect of Electricity account and other allied documents adduced in first appeal portray that the electricity bills and other expenses on electricity were paid by Sri Arvind Kumar Agrawal proprietor of M/s Prabhat Gudakhu Factory for the periods under appeal, although the electricity bills were issued in the name of Sri Arvind Kumar Agrawal, M/s Pawan Industries. On detection of such anomaly, the Vigilance Team held that the dissolved firm M/s Pawan Industries despite its R.C. having got cancelled under Section 9(6)(a) of the OST Act since 01.04.1998 is still carrying on business as an unregistered dealer. It is a fake assumption. The Vigilance Team has not detected any stock in trade or other documents establishing existence of M/s Pawan Industries, as the entire assets and other liabilities of the dissolved firm have been taken over by Sri Arvind Kumar Agrawal, proprietor of M/s Prabhat Gudakhu Factory. Such an allegation of the Vigilance Team coupled with the demands raised in assessments under both the

Acts baseless. The ld.FAA is, therefore, justified in rating the handiwork of the Vigilance Team as fanciful estimation and annulled the demands raised in assessments framed under Section 44 of the OVAT Act and under Section 9D of the OET Act.

6. Under the above backdrop, the appeals filed by the State under the OVAT Act and under the OET Act are dismissed. The orders of the ld.FAA stand confirmed. In result, the orders of the ld.STO are quashed. Cross objections are accordingly disposed off.

Dictated and corrected by me.

**Sd/-
(Bibekananda Bhoi)
Accounts Member-I**

**Sd/-
(Bibekananda Bhoi)
Accounts Member-I**

I agree,

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

I agree,

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