

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

S.A. No.352(V)/15-16

(Arising out of the order of the learned JCST,
Balangir Range, Balangir in first appeal case No.
AA-01(KA) of 2015-16 dtd.16.10.2015)

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

M/s. Panchanan Stone Crusher,
At/Po- Sargiguda, Dist-Kalahandi. Appellant.

-Vrs -

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

For the Appellant : : Mr. S.K. Mishra, Id. Advocate
For the Respondent : : Mr. D. Behura, Id. S.C.(C.T.)

Date of Hearing :23.05.2023 * Date of Order: 25.05.2023**

O R D E R

The dealer-assessee is in appeal against the order dated 16.10.2015 of the Joint Commissioner of Sales Tax, Balangir, Range, Balangir (hereinafter called as 'Id. FAA') passed in First Appeal Case No. AA-01(KA) of 2015-16 confirming the order of assessment of the Sales Tax Officer, Kalahandi Circle, Bhawanipatna (in short, 'Id. STO').

2. The case of the dealer-assessee, in short, is that-
M/s. Panchanan Stone Crusher, At/Po-Sargiguda, Dist-Kalahandi, TIN-21104800231 deals in stone chips, Metal, bajari,

stone dust etc., on retail basis. The dealer-assessee was assessed U/s.43 of the OVAT Act for the assessment period 01.04.2011 to 10.06.2014 basing on the Tax Evasion Report received from the Deputy Commissioner of Sales Tax(Vigilance), Koraput Division, Jeypore and raised demand of ₹21,50,954.00 which includes penalty of ₹14,33,969.00.

3. The dealer-assessee preferred appeal against the order of the ld. STO before the ld. FAA. The ld. FAA dismissed the appeal and confirmed the order of assessment. Being further aggrieved with the order of ld. FAA, the dealer prefers this appeal. Hence, this appeal.

The State files cross-objection supporting the orders of the forums below to be just and proper.

4. The ld. Counsel for the dealer submits that the orders of assessment and the first appellate order are unjust and improper. He avers, inter alia, that without assessing the dealer U/s.39, 40, 42 or 44 of the OVAT Act, the impugned order of assessment passed U/s. 43 of the OVAT Act is without jurisdiction and without any authority of law and as such, the impugned demand is not maintainable or sustainable in the eyes of law. He further submits that the ld. STO has to form his objective opinion and cannot totally abdicate or surrender his discretion to the report of the enforcement by mechanically

reopening the assessment U/s.43 as has been done in the present case. So, he submits that orders of the Id. STO and Id. FAA are not feasible or maintainable in the eyes of law and as such, the same are liable to be quashed in the interest of justice. He relies on the decisions of the Hon'ble Court in the case of ***M/s. Keshab Automobiles v. State of Odisha in STREV No.64 of 2016*** decided on 01.12.202.

5. 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 of the judgment as follows:-

“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 fulfillment 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 material to show that the acceptance of the self-assessment has been communicated to the dealer.

In view of the decision of the Hon'ble Court in **M/s. Keshaba Automobiles v. State of Odisha** 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 ld. STO and ld. FAA are not sustainable in the eyes of law as the same are without jurisdiction. Hence it is ordered.

6. Resultantly, the appeal is allowed and the orders of the ld. STO and ld. FAA are hereby set-aside. As a necessary corollary thereof, the assessment order is hereby quashed. The cross-objection is disposed of accordingly.

Dictated and corrected by me.

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

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

I agree,

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

I agree,

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