

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

S.A. No. 43 (VAT) of 2016-17

&

S.A. No. 96 (VAT) of 2016-17

(Arising out of order of the learned JCST (Appeal), Sundargarh Range,
Rourkela in First Appeal No. AA V 36 of 2009-10,
disposed of on 20.04.2016)

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

S.A. No. 43 (VAT) of 2016-17

M/s. Vikram Private Limited,
S3 H 1 -02, Kalinga Vihar,
Rourkela-769015 ... Appellant

-Versus-

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

S.A. No. 96 (VAT) of 2016-17

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

-Versus-

M/s. Vikram Private Limited,
S3 H 1 -02, Kalinga Vihar,
Rourkela-769015 ... Respondent

For the Dealer : Sri S.C. Agarwal, Advocate
For the State : Sri M.L. Agarwal, S.C. (CT)

Date of hearing : 30.11.2022 *** Date of order : 29.12.2022

O R D E R

Dealer prefers S.A. No. 43 (VAT) of 2016-17 and the State files S.A. No.96 (VAT) of 2016-17 against the same order dated 20.04.2016 of the Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (hereinafter called as 'First Appellate Authority') in F A No. AA V 36 of 2009-10 reducing the assessment order of the Asst. Commissioner of Sales Tax, Rourkela I Circle, Uditnagar (in short, 'Assessing Authority'). They are taken up together for disposal in this composite order for the sake of convenience.

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

M/s. Vikram Private Limited carries on business in manufacturing and trading of sponge iron. The assessment period relates to 01.04.2005 to 31.03.2006. The Assessing Authority in assessment raised tax demand of ₹12,77,732.00 u/s. 42 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 allowed the appeal in part and reduced the assessment to ₹8,75,493.00. Being aggrieved with the order of the First Appellate Authority, both the Dealer and the State prefer these appeals. Hence, these appeals.

The State files cross-objection against the appeal of the Dealer.

3. The learned Counsel for the Dealer submits that the Assessing Authority is duty bound to provide 30 days time or more to comply with the notice in Form VAT-306 u/s. 42 of the OVAT Act, whereas in this case, the notice was served on the Dealer on 06.08.2009 fixing the date to 12.08.2009 and the assessment was completed on 12.08.2009 and served on the Dealer on 05.09.2009, which is gross violation of law. He further submits that since the order is bad in law, imposition of penalty is also bad and thus, the same

is liable to be quashed. In support of contention, the learned Counsel relies on the decisions of the Hon'ble Court in case of *Jindal Stainless Ltd. v. State of Odisha*, reported in [2012] 54 VST 1 (Orissa); *Delhi Foot Wear v. Sales Tax Officer, Vigilance, Cuttack and others*, reported in [2015] 77 VST 146 (Orissa) and *Patitapabana Bastralaya v. Sales Tax Officer & Others* in WP(C) No.14696 of 2009 decided on 24th September, 2014.

4. Per contra, the learned Standing Counsel (CT) for the State submits that the finding of the First Appellate Authority is unjustified pertaining to deletion of interest. He further submits that statute has clearly mandated the provision by using the term 'shall' and, therefore, charging of interest is automatic. So, he submits to quash the order of the First Appellate Authority on deletion of interest. He further submits that unless the party is prejudiced and there is failure of justice in the said short notice, it will not affect the merit of the case. The State has also relied on *Commissioner of Customs v. Virgo Steels*, [2004] 3 RC 218 (SC); *Bahrein Petroleum Co. Ltd. v. P.J. Pappu*, AIR 1966 SC 634; *State of Orissa v. Chakobhai Ghelabhai*, (1960) 11 STC (SC) (Constitution of Bench); *State of Orissa v. Shri Gurumurthi Patra*, (1973) 31 STC 160 (Orissa); *Kondapalli Viraraju v. State of Andhra Pradesh*, (1958) 9 STC 42 (AP); and *H.V. Nirmala v. Karnataka State Financial Corporation*, (2008) 7 SCC 639.

5. On hearing the rival submissions and on careful scrutiny of the materials available on record, the assessment order shows that the Assessing Authority issued a notice in form VAT-306 along with the Tax Audit report to the assessee on 06.08.2009 asking the assessee-Dealer to appear on 12.08.2009. It is also not in dispute that the Dealer appeared on 12.08.2009 and produced the relevant documents and books of account and documents before the Assessing Authority. It is also not in dispute that the Assessing Authority passed the assessment order on the same day, i.e. 12.08.2009.

6. The Dealer challenged the assessment order on the ground of invalid notice as per the provisions u/s. 42(2) of the OVAT Act.

Section 42(2) of the OVAT Act are extracted herein below for better appreciation :-

“Section 42(2)-

Where a notice is issued to a dealer under sub-section (1), he shall be allowed time for a period of not less than thirty days for production of relevant books of account and documents.”

Bare reading of Section 42(2) of the OVAT Act shows that where a notice is issued to the Dealer under sub-section (1), he shall be allowed time minimum thirty days for production of relevant books of account and documents. The words ‘shall be allowed time’ show that the Dealer should be allowed time not less than 30 days. The word ‘shall’ used in the provision shows it is mandatory.

7. In the case at hand, the record shows that notice was issued on 06.08.2009 fixing for appearance and cause production of books of account and documents on 12.08.2009, hearing was completed and the assessment order was passed on the same day, i.e. 12.08.2009, which is clear violation of mandatory provision of Section 42(2) of the OVAT Act. The Dealer had raised the issue of short notice before the First Appellate Authority, but he did not accept the same.

In the cases of *Jindal Stainless Ltd. & Delhi Foot Wear* cited supra, Hon’ble Court have been pleased to observe that minimum time of 30 days as provided u/s. 42(2) of the OVAT Act has not been provided to the petitioner and thus, it is a clear case of violation/infracton of mandatory provisions of Section 42(2) of the Act, therefore, the notice for assessment of tax in pursuance of AVR is invalid.

The decisions relied on by the State are not applicable to the present facts and circumstances of the case. So, further discussions on the said citations of the State are redundant.

8. In view of provisions of law vis-a-vis the settled principles of law as enunciated by the Hon'ble Court in the above cited cases, we are of the unanimous opinion that the Assessing Authority has not provided the minimum time of 30 days in the notice for hearing to the Dealer. So, the notice and the assessment order are not sustainable in the eyes of law. Consequently, all the proceedings which were initiated on the strength of said notice are not sustainable in the eyes of law.

Further, we feel it proper to remit the matter to the Assessing Authority for de novo assessment in accordance with law after allowing the Dealer due opportunity of hearing. The Dealer is at liberty to raise all the points for consideration by the Assessing Authority. Hence, it is order.

9. Resultantly, the appeal filed by the Dealer is allowed whereas the appeal preferred by the State is dismissed. The orders of the fora below are hereby set aside. The matter is remanded to the Assessing Authority for de novo assessment keeping in view the observations made above 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/-
(M. Harichandan)
Accounts Member-I**