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

**CUTTACK**.

**S.A.No.67(V) of 2020.**

(Arising out of the order of Learned Additional Commissioner of Sales Tax (Appeal), Bhubaneswar, in First Appeal Case No.AA-106101510000570/BH-II/2015-16 disposed of on dated 30.11.2019

**Present:- Shri S.K.Rout,** 2nd Judicial Member **& Shri S.R.Mishra,** Accounts Member-II.

M/s. Adani Enterprises Ltd,
2nd Floor, Fortune Tower,
Chandrasekharpur,
Bhubaneswar ... Appellant,

**- V e r s u s –**

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

For the Appellant ... Mr.P.K.Harichandan,Adv.
For the Respondent ... Mr.S.K.Pradhan,
Addl. Standing Counsel,
(CT & GST Organisation)

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Date of Hearing: 9-10-2023. Date Order:7-11-2023

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**O R D E R**

The dealer appellant on filing the second appeal U/s.78 of the Odisha Value Added Tax Act, (in short, OVAT Act) seeks intervention of this forum in the order dated 30.11.2019 passed by the Additional Commissioner of Sales Tax (Appeal), Bhubaneswar, (hereinafter referred to as Learned First appellate Authority/Ld. FAA), in confirming the order of assessment passed U/s.42 of the OVAT Act, by the Learned Deputy Commissioner of Sales Tax, Bhubaneswar III Circle, (hereinafter referred to as Learned Assessing Authority/ Ld. AA) for the tax period from 1.4.2012 to 31.3.2014 raising an extra demand of Rs.2,88,78,960.00 which includes penalty of Rs.1,92,52,640.00 U/s. 42(5) of the OVAT Act.

2. Briefly stated the fact of the case is that the dealer company which carries on business in resale of imported coal was subjected to audit assessment by the Ld. AA which resulted in creation of aforesaid demand primarily on account of disallowance of claim of credit notes issued beyond the statutory period of three months from the date of original sale as per Rule 7 of the OVAT Rules. The said amount of Rs.96,26,320.00 also includes of Rs.87,679.00 towards disallowance of claim due to non-submission of relevant documents.

3. The dealer appellant on being aggrieved with the aforesaid order passed by the Ld. AA has preferred an appeal before the Ld. FAA, who vide his Appeal Case No. AA-106101510000570/BH-II/2015-16 dt. 30.11.2019, confirmed the order of assessment.

4. On being dissatisfied with the above order passed by the Ld. FAA the dealer appellant has preferred the present appeal primarily with the following grounds:-

i) That, the action of the forum below in disallowing the claim of adjustment against credit notes issued beyond three months from the date of invoices is arbitrary, excessive and bad in law.

ii) That since issuance of credit notes depends upon certain extraneous reasons beyond the control of the dealer and rest upon the procedures provided in the contract with the purchasing dealer, i.e. National Thermal Power Corporation Ltd, (in short, NTPC), the dealer appellant should not be debarred from its claim of adjustment.

iii) That, since no time limit has been provided U/s.23 of the OVAT Act, which governs the issues relating to credit and debit notes, the

disallowance of such claim under the shelter of Rule 7 of the OVAT Rules is improper and indicates non-application of mind.

1v) That, imposition of penalty of Rs.1,92,52,640.00 U/s.42(5) of the OVAT Act is arbitrary.

v) That since the impugned order was passed after amendment of OVAT Act, w.e.f. 1.10.2015 the quantum of penalty should be equal to the amount of tax assessed instead of "twice" as wrongly imposed by the Ld. AA.

5. The State Respondent has filed Memorandum of Cross objection challenging the appeal and defending the orders passed by the Ld. FAA to be in accordance to the provisions of law.

6. Heard the case from both the rival parties and perused the impugned orders vis-a-vis the grounds of appeal and cross objection filed.

7. The central issue for resolution in the present case is ***whether the disallowance of claim of adjustment against credit notes which were issued beyond three months time from the date of invoice is legally justified on the facts and in the circumstances of the case ?***

8. The Learned Counsel of the dealer appellant by re-iterating the stand taken in the grounds of appeal has forcefully argued that the issuance of credit and debit notes are beyond the control of the appellant rather the same depends upon the terms and conditions of the bi-lateral contract made between the appellant and the purchaser M/s. N.T.P.C. Ltd,. As per

the contract the whole process of reconciliation of goods sold is time consuming affair for which the delay has been caused.

9. He further argued that as per Section 23 of the OVAT Act which prescribes for credit and debit notes does not envisage any time limit. The disallowance of claim against the credit notes issued beyond three months is unjust. He has also referred to the decision of the ***Hon'ble High Court of Allahabad, dated 19.4.2007 in case of Parisudh Machines Pvt. Ltd Vrs. Commissioner of Trade Tax,*** in support of his contention**.**

10. On the contrary, the learned counsel of the State has referred to Rule 7 of the OVAT Rules which prescribes for issuance of credit notes within three months following the tax period, during which the original sale has taken place.

11. In this context, it is felt proper to quote Rule 7 of the OVAT Rules, which reads as follows:-

**Rule 7 of the Odisha Value Added Tax Rules,2005,**

**Adjustment of sale price or tax in relation to a taxable sale, issue of credit note and debit note :-**

(1) Where there is requirement for adjustment of the sale price or tax in relation to a taxable sale, the dealer making such adjustment of the sale price or tax in relation to a taxable sale,

the dealer making such adjustment may issue a credit note or debit note, as the case may be.

(2) Credit note or debit note as referred to in sub-rule (1) shall be issued within [three] months following the tax period, during which the original sale had taken place.

(3) An adjustment of the sale price and tax in relation to a taxable sale can be made, where –

(a) the sale is cancelled; or

(b) the nature of sale is fundamentally altered; or

(c) the previously agreed consideration for the sale is altered by agreement with the buyer, where due to reasons of quality or any other reason, consistent with the normal trade practice; or

(d) the goods or part thereof are returned to the seller and, the sellers accepts the return of the goods subject to the condition that such return of goods is made within [three months] from the date of sale:-

***Provided that*** **-**

(i) a tax invoice in relation to the sale and the amount shown therein as tax charged on the sale are incorrect as a result of occurrence of any one or more of the events specified above; and

(ii) a return has been filed for the tax period in which the sale took place and an incorrect amount of tax on that sale has been accounted for as a result of the occurrence of any one or more of the events specified above.

(4) Where, due to occurrence of any or more of the events referred to in sub-rule (3) above, credit notes and debit notes are either issued or received, the dealer shall makes adjustment as per the particulars contained in the credit notes and debit notes issued and /or received in the manner prescribed in sub-rule (5) and in sub-rule (6).

(5) Subject to sub-rule (2) and (3) above, the registered dealer, on receipt of credit notes and debit notes in any tax period, shall furnish the details of such credit notes and debit notes and work out its effect on input tax credit in Annexure-V of Form VAT-201, and shall make adjustment in return by reducing or increasing the ITC, as the case may be.

(6) Subject to sub-rules (2) and (3) above, the registered dealer, on issue of credit notes and/or debit notes by him in any tax period, shall furnish the details of such credit notes and debit notes and work out its effect on output tax in Annexure-V of Form VAT-201 for making adjustment in the return by reducing or increasing the output tax, as the case may be.

(7) In cases where the input tax credit and/or output tax are adjusted in any tax period, in the manner provided in sub-rule (5) and (6) due to occurrence of any or more of the events referred to in sub-rule (3), the revised return required to be filed as per the provisions of the clause (b) of sub-section (4) of Section 33 of the Act shall be deemed to have been filed. ]

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12. A plain reading of the aforesaid Rule leads to conclusion that the adjustment of sale price and tax in relation to taxable sale has got a direct implication with filing of revised return for a particular period for which a period of three months has been prescribed U/s. 33 of the OVAT Act.

13. Besides, the Hon'ble High Court of Allahabad, in the case law cited by the Learned Counsel have been pleased to hold that :-

> ***"In this view of the matter, once delivery is taken by the purchasing party, the sale completed and in the case of the goods returned the provision of Section 8A(b) of Central Act applied and according to the said Section, goods should be returned within six months from the date of the delivery of the goods for the claim of deduction. Admittedly, the goods have been returned much after six months, and therefore, the deduction was not legally allowable and has rightly been rejected."***

14. In stating so, the Hon'ble High Court of Allahabad have also emphasised upon the time frame for adjustment of sale price within a period of six months as prescribed under the CST Act. Accordingly, the case law cited by the dealer reinforces the stand taken by the Revenue.

15. Further law is well settled that when the statute requires certain things to be done in certain way, the thing must be done in that way or not at all. Other methods or mode of purposes are impliedly and necessarily forbidden. This settled legal position is based on legal maxim *"Expressio unius est exclusion alteris".* The above observation of the ***Hon'ble High Court of Orissa, in case of M/s. Jindal Stainless Ltd, Vrs. State of Orissa and Others, reported in [2012] 54 VST 1 (Orissa***) is found to be squarely applicable in the present case. Since Rule 7 of the OVAT Rules, prescribes for issuance of credit/debit notes mandatorily within three months following the tax period, during which

the original sale has taken place, any deviation from the same is liable for rejection. Therefore, Ld. AA and Ld. FAA have rightly rejected the claim of the dealer in this score.

16. The terms and conditions of the bi-lateral agreements as referred to by the learned counsel which purportedly caused the delay in issuance of credit notes are found to have no overriding effect on the statutory provisions. Similarly, with regard to disallowance of claim of adjustment of Rs.87,629.00 on account of non-submission of documents, the dealer appellant also failed to substantiate its claim before this forum by way of production of relevant documents. Hence the action taken in this regard by the lower fora is found to be justified.

17. With regard to the issue of levy of penalty U/s. 42 of the OVAT Act, the learned counsel has argued that the same is not imposable due to want of any mens rea. But the aforesaid submission made by the learned counsel is not tenable since the penalty imposed by the lower fora is the out-come of the audit assessment completed U/s.42(5) of the OVAT Act. Since the levy of penalty is mandatory in nature in view of the decision of the Hon'ble High Court of Orissa in case of M/s. Jindal Stainless Ltd, Vrs. State of Orissa and Others, as cited (Supra), we are of the opinion that the same has rightly been imposed by the Ld. AA.

18. The Learned Counsel has again contested on the quantum of penalty imposed by the Ld. AA. In stating so, he has contended that since Section 42(5) of the Act, has already been amended w.e.f. 1.10.2015 and the impugned order of assessment was passed after 1.10.2015, the levy of penalty should be equal to the tax assessed. But the contention taken by the learned counsel is considered to be not tenable as the amendment made on 1.10.2015 is prospective in nature. It is further observed that although the assessment was completed after 1.10.2015, the same relates to the period from 1.4.2012 to 31.3.2014 i.e. prior to amendment of Section 42(5) of the OVAT Act. Thus the contention taken by the dealer appellant is not sustainable and the levy of penalty of Rs.1,97,52,640.00 by the Ld. AA is found justified.

10. Resultantly we do not find good ground to interfere in the orders passed by the lower fora. Accordingly, the appeal preferred by the dealer is dismissed being devoid of merit and the impugned orders passed by the Ld. AA and Ld. FAA are hereby confirmed. Cross objection filed by the respondent is disposed of accordingly.

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