BEFORE THE JUDICIAL MEMBER-II:
ODISHA SALES TAX TRIBUNAL: CUTTACK.

P r e s e n t: **Shri S.K. Rout,**
2nd Judicial Member

S.A. No. 82(V) of 2020
(Arising out of the order of the learned Addl. Commissioner of Sales Tax (Appeal), Rourkela,
in Appeal Case No. AA 63 (V) RL-I/2018-19,
disposed of on dtd.31.08.2019)

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

- V e r s u s -

M/s. UITC India Pvt. Ltd.,
Railway Station Road, Kalunga,
Sundergarh. ... Respondent

For the Appellant ... Mr. N.K. Rout, A.S.C.
For the Respondent ... Mr. C.R. Das, Advocate

Date of hearing: 18.11.2023 *** Date of order: 14.12.2023

O R D E R

State prefers this appeal challenging the order dtd.31.08.2019 passed by the learned Addl. Commissioner of Sales Tax (Appeal), Rourkela (hereinafter referred to as, ACST/first appellate authority) in Appeal Case No. AA 63 (V) RL-I/2018-19, thereby allowing the appeal in part and reducing the tax demand to ₹1,46,460.00 against the order of assessment dtd.31.03.2014 passed by the learned

Deputy Commissioner of Sales Tax, Rourkela I Circle, Uditnagar (hereinafter referred to as, learned DCST/assessing authority) u/s.43 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) raising demand of ₹2,19,690.00 including penalty of ₹1,46,460.00 for the tax period 01.04.2012 to 31.03.2013.

2. The case at hand is that, the dealer-respondent M/s. UITC (India) Pvt. Ltd. having TIN-21492001906 carries on business in manufacture and sale of coal tar pitches, naphthalene and anthracene. Pursuant to tax evasion report, learned assessing authority initiated proceeding u/s.43 of the OVAT Act and the demand as mentioned above was raised.

3. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who allowed the appeal in part and reduced the tax demand as mentioned above.

4. State being dissatisfied with the order of the learned first appellate authority has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection in this case is filed by the dealer-respondent.

6. During pendency of this appeal, the dealer-respondent has filed cross objection raising the plea of maintainability of assessment proceeding u/s.43 of the OVAT Act stating that there was no formal communication with regard to acceptance of return as self assessed u/s.39 of the

OVAT Act. So, the proceeding u/s.43 of the OVAT Act being not sustainable is liable to be set aside.

7. Per contra, the State-appellant vehemently contended to such question raised by the dealer-respondent stating that the pure question of law affecting the tax liability can be raised at any stage and not question of fact or mixed question of fact and law. This apart, the State-appellant furthermore contended stating that new points/issues raised by the dealer-respondent in the memo of cross objection was neither raised, adjudicated nor it was an issue while disposing of the appeal. Further, the dealer-respondent has also not preferred second appeal before this Tribunal regarding new points or issues raised in the memo of cross objection but such plea is taken later on. To refute such contention of the State, the dealer-respondent argued stating that it being a question law, can be raised by the respondent-dealer before this Tribunal. To support such claim, the dealer-respondent has relied upon the decisions reported in (2017) 100 VST 24 (Orissa), 2017 (1) ILR-CUT-615 (Orissa) in the case of State of Orissa represented by the Commissioner of Sales Tax, Orissa vrs. M/s. D.K. Construction and S.A. No.1(VAT) of 2020 vide order dated 08.11.2023 decided by this Tribunal. The decisions relied upon by the dealer-respondent are befitting to support its claim. This apart, in the case of **M/s. National Thermal Power Co. Ltd, Vrs. Commissioner of Income Tax (1997) 7 Supreme Court Cases 489**, the Hon'ble Apex Court have been pleased to observe that :-

> *"The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with*

law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income-Tax (Appeal). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier".

8. Similarly in case of **Kiran Singh & Others Vrs. Chaman Paswan and Others 1954 AIR 340**, the Hon'ble Supreme Court have been pleased to observe that:

"*it is a fundamental approach well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever or wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether it is in respect of subject matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.*

9. In view of such, relying the cases of **M/s. National Thermal Power Co. Ltd.** (supra) and **Kiran Singh & Others** (supra) the cross objection raising the plea of maintainability of proceeding u/s.43 of the OVAT Act taken by dealer-respondent is accepted.

10. From the rival contentions of the parties, the sole issue emerged for adjudication is whether the assessment

proceeding initiated u/s.43 of the OVAT Act is maintainable or not in absence of any formal communication of acceptance of return as self assessed u/s.39 of the OVAT Act.

11. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record vis-à-vis the grounds of appeal, cross objection and orders of the fora below. The sole contention of the dealer-respondent is that the assessment order is not maintainable. It was vehemently urged by the learned Counsel for the dealer-respondent that the initiation of proceeding u/s.43 of the OVAT Act was illegal and bad in law in absence of formation of independent opinion by the assessing authority as required u/s.43(1) of the Act. The escaped turnover assessment could not have been initiated u/s.43 of the OVAT Act when the dealer-respondent was not intimated by way of formal communication with regard to the acceptance of return as self assessment u/s.39 of the OVAT Act. Further contention of the dealer-respondent is that, the initiation of such proceeding by the assessing authority u/s.43 of the OVAT Act without complying the requirement of law and in contravention to the principles laid down by the Hon'ble High Court of Orissa in the case of **M/s. Keshab Automobiles v. State of Odisha (STREV No.64 of 2016 decided on 01.12.2021)** is bad in law. He vehemently urged that there is nothing on record that the dealer was communicated in writing about self assessment done u/s.39 of the OVAT Act. So, when the initiation of proceeding u/s.43 of the OVAT Act is bad in law, the entire proceeding becomes nullity and is liable to be dropped.

12. In the result, the appeal preferred by the State is dismissed and the cross objection filed by the dealer-respondent is allowed. As a corollary the orders of the fora below are hereby quashed.

Dictated & corrected by me,

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

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(S.K. Rout)
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