

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 155 (VAT) of 2020

(Arising out of order of the learned Addl. CST (Appeal), Central Zone, Odisha (At-Cuttack) in Appeal No. AA – 106101910000067/2019-20, disposed of on 12.10.2020)

Present: **Shri G.C. Behera, Chairman**

M/s. Nilachal Carbo Metalicks Pvt. Ltd.,
At/PO- Baramana, Purna Baulamala,
Dist. Jajpur ... Appellant

-Versus-

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

For the Appellant : Sri B.B. Panda, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 21.02.2023 *** Date of order : 24.02.2023

ORDER

Dealer is in appeal against the order dated 12.10.2020 of the Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha (At-Cuttack) (hereinafter called as ‘First Appellate Authority’) in F A No. AA – 106101910000067/2019-20 reducing the assessment order of the Joint Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short, ‘Assessing Authority’).

2. The facts of the case, in short, are that –

M/s. Nilachal Carbo Metalicks Pvt. Ltd. is a Private Limited Company and engaged in manufacturing and sale of lam coke as well as resale of coal and lam coke. The assessment period relates to 01.04.2011 to

31.03.2013. The Dealer was originally assessed u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') on 21.04.2014. Subsequently, the Assessing Authority raised tax and penalty of ₹4,20,000.00 u/s. 43 of the OVAT Act on the basis of A.G. Audit report.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹2,10,000.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection supporting the order of the First Appellate Authority to be just and proper.

3. The learned Counsel for the Dealer submits that the orders of the First Appellate Authority and the Assessing Authority are erroneous and contrary to the provisions of law and fact involved. He submits that as the transaction, i.e. sale of used car, is not ancillary or incidental to his primary business, no VAT is leviable. He further submits that the Dealer has paid VAT at the time of purchase of the said car and payment of VAT subsequently on sale of the used car shall amount to double taxation. So, he submits that the order of the First Appellate Authority needs interference in this appeal. He relies on the decisions in cases of *Commissioner of Sales Tax, Madhya Pradesh v. Sajid Hussain Automotive Service*, [1991] 82 STC 335 (MP); and *Morarji Brothers (Import & Export) Pvt. Ltd. v. State of Maharashtra*, [1995] 99 STC 117 (Bombay).

4. On the other hand, the learned Standing Counsel (CT) for the State submits that the VAT is required to be paid in every stage of sales. He further submits that the vehicle has been purchased for the company in connection with business purpose. The Dealer has not disclosed the sale proceeds of the sale of used car in the return to show its bonafideness. The Dealer had suppressed the said transaction to evade tax liability. So, the

Assessing Authority and the First Appellate Authority rightly levied tax on the sale of used car, which needs no interference in the appeal.

5. Having heard the rival submissions and on going through the materials on record, it transpires from the assessment order that the Dealer had not included the sale proceeds of ₹35,00,000.00 towards sale of his used vehicle in the return. So, the Assessing Authority assessed the VAT @ 4% on the GTO/TTO of the Dealer on the sale of old used car during 2011-12 as per Entry 123A of Part-II of Rate Chart which comes to a sum of ₹1,40,000.00. The Assessing Authority raised tax liability of ₹4,20,000.00 including penalty as per Section 43(2) of the OVAT Act. The First Appellate Authority reduced the tax to ₹70,000.00 and accordingly reduced tax liability to ₹2,10,000.00 including penalty.

6. The Dealer claims that he is not required to pay any tax as the transaction is not ancillary or incidental to his primary business. The Dealer has produced the copy of invoice No. IK031011 RIN 00001 dated 26.06.2010 from M/s. Interkrafts, Kolkata with billing address shown at Nilachal House, N-4/158, IRC Village, Nayapalli, Bhubaneswar, Odisha, India, PIN-751015 towards payment of ₹85,87,559.00 which includes VAT of ₹9,54,173.27. The Dealer had purchased the said car in the name of the company for use of company's employees and executives.

The Dealer claims that the transaction relating to used car is not incidental/ancillary to his business. Section 2(7) of the OVAT Act defines '**business**', includes –

- “(a) any trade, commerce or manufacture;
- (b) any adventure or concern in the nature of trade, commerce or manufacture;
- (c) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;
- (d) any transaction in connection with, or incidental or ancillary to, the commencement or closure of such trade, commerce, manufacture, adventure or concern;

- (e) any occasional transaction, whether or not there is volume, frequency, continuity or regularity of such transaction, in the nature of such trade, commerce, manufacture, adventure or concern, whether or not such trade, commerce, manufacture, adventure, concern or transaction is effected with a motive to gain or profit or whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure, concern or transaction.

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Section 2(7)(d) and (e) includes any transaction or any occasional transaction in connection with or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern shows that the transaction of purchased used car in the instant case was in the name of the company for use of company’s employees and executives. So, the decisions relied on by the Dealer are not applicable to the present facts and circumstances of the case as it has already held that the transaction or occasional transaction is connection with the business.

7. The Dealer further claims that he had paid VAT at the time of purchase of the car and levying VAT at the time of sale of the said car shall amount to double taxation. The copy of the invoice shows that the Dealer had paid VAT @ 12.5% on the purchase value, which comes to a sum of ₹9,54,173.27. Entry 123A of Part-II of Schedule-B under the OVAT Act provides the provision of taxation of used car @ 4% as on 01.04.2012 and @ 5% thereafter. It is also settled position of law that VAT is required for payment in every stage of sales. SRO No. 104/2010 dated 31.03.2010 of Finance Department provides exemption from tax of the sale of used car as specified in item No. 123A of Schedule-B appended thereto to the extent to which the rate of tax in respect thereof exceeds 2% which shall come into force on 1st April, 2010 subject to condition that the selling dealer shall be registered under the OVAT Act and the dealer is not entitled to claim any ITC on the tax paid materials purchased for use in renovation of the used car before its resale. So, the contention of the learned Counsel for the Dealer

that payment of VAT on the used car amounts to double taxation cannot be acceptable in view of entry No. 123A vis-a-vis the SRO No. 104/2010. Moreover, the Dealer appears to have not disclosed the transaction of the used car in its return. So, the Assessing Authority rightly determined the TTO, but levied 4% VAT, to which the First Appellate Authority reduced the same to 2% keeping in view the SRO No. 104/2010 and levied tax and penalty on it thereby resulting in reduction of demand.

8. On the foregoing discussions, I am of the considered opinion that the First Appellate Authority rightly determined the tax liability of the Dealer, which warrants no interference in appeal. Hence, it is ordered.

9. Resultantly, the appeal is dismissed and the impugned order of the First Appellate Authority stands confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

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

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(G.C. Behera)
Chairman**