***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. 55(V) of 2020***
(Arising out of the order of the learned Addl. Commissioner of Sales Tax, Koraput Range, Jeypore,
in 1st Appeal No. AAV(KOR)41/18-19,
disposed of on dtd.12.03.2020)

M/s. R.K. Enterprises,
Qr. No.D/111, HAL Township,
At/P.O.- Sunabeda,
Dist.- Koraput. ... Appellant

**- V e r s u s -**

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

For the Appellant ... Mr. K.R. Mohapatra, Advocate
For the Respondent ... Mr. S.K. Pradhan, A.S.C.

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Date of hearing: 25.09.2023 *** Date of order: 12.10.2023

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***O R D E R***

The present appeal preferred by the dealer appellant is directed against the impugned order passed by the Learned First Appellate Authority (in short Ld. FAA) Koraput Range, Jeypore, in First Appeal Case No.AAV(KOR) 41/18-19 passed on dated 12.3.2020 in confirming the order of assessment passed by the Learned Sales Tax Officer, (in short Ld. STO) Kopaput Circle, Jeypore U/s. 42 of the OVAT Act, read with

Section 81 of the said Act for the period from 1.4.2012 to 31.4.2014 raising an extra demand of Rs.21,65,166.00 which includes penalty of ₹14,43,444.00 imposed U/s.42(5) of the OVAT Act.

2. The brief fact of the case is that the dealer appellant which carries on business in execution of works contract was subjected to audit assessment for the material period by the Ld. STO resulting in refund of ₹4,06,727.00 towards excess payment of tax. While passing the said order the Ld. STO has allowed adjustment of Input Tax Credit for ₹12,66,853.45.

3. Subsequently the Ld. STO has reduced the Input Tax Credit to ₹1,38,405.00 vide corrigendum order passed U/s.81 of the OST Act resulting in aforesaid demand.

4. On being aggrieved, the dealer has preferred an appeal before the Ld. FAA, who vide his order dated 12.3.2020 has confirmed the above demand raised against the dealer vide corrigendum order passed U/s.81 of the OVAT Act.

5. On being further aggrieved, the dealer appellant has preferred the present appeal challenging the order of the Ld. FAA on following grounds:-

i) That, reduction of ITC from ₹12,66,853.45 to ₹1,38,405.00 which led to creation of impugned demand is nothing but change of opinion which is not permissible under law.

ii) That, the Ld. STO while increasing the liability of the dealer has not complied to the provision of Section 81 of the OVAT Act and passed the impugned order without extending opportunities to the dealer appellant which violates the principle of natural justice.

iii) That the purchasing dealer cannot be denied with the benefit of Input Tax Credit due to its fault of selling dealer. In stating so, the appellant has relied upon the following judicial pronouncements.

a) Elite Furniture Mart Vrs. Assistant Commissioner (ST), Coimbatore, reported in (2018) 59 GSTR 286 (Hon'ble Madras High Court)

b) Commissioner of Trade and Taxes Delhi & Others Vrs. Aris India Limited and Others TS-2-SC-2018 VAT (the Hon'ble Apex Court in SLP)

c) M/s. Mayfair Hotel & Resorts Ltd, Vide S.A.No.107(V) of 2018 order passed on dt.5.8.2019.

6. The respondent State has filed cross objection defending the orders passed by the forum below to be just and proper.

7. Heard the case from both sides.

8. In course of hearing the learned advocate of the dealer appellant has reiterated the stand taken in the grounds of appeal and has referred to judicial pronouncements in case of M/S. MASTER CONSTRUCTION CO.(P) LTD. VRS. THE STAATE OF ORISSA AND ANOTHER, reported in (1996) 17 STC P-360(SC) and COMMISSIONER OF INCOME TAX-II VRS. M/S.MARUTI INSURANCE DISTRIBUTION SERVICE LTD, of the Hon'ble Delhi High Court in W.P.(C) No.106/2012.

9. On the contrary, the learned counsel of the State has averred that the case laws cited by the appellant dealer in the grounds of appeal relate to disallowance of claim of Input Tax Credit to a purchasing dealer for the fault of selling dealer which has got no relevance in the instant case as the

impugned order of assessment passed on 9.7.2018 is an outcome of the detection of a clerical error apparent in the face of the record noticed after completion of original assessment and as such, the same is in conformity to the provision to Section81 of the OVAT Act. The Learned Counsel of the State has also stated that since the corrigendum order was a necessity due to inadvertent mistake apparent on the face of record, the same cannot be treated as change of opinion.

10. On examination of record, it is noticed that as per the assessment order the dealer appellant was initially allowed with ITC of ₹12,66,853.45 against the purchases effected from different registered dealers of Orissa. The said amount was allowed as Input Tax Credit without considering the opening and closing balance of the same as claimed by the dealer in its return as on 1.4.2012 and 31.3.2014 respectively. Since the same was left out by the Ld. STO inadvertently proceeding U/s. 81 of the OVAT Act was initiated by him for rectification of the assessment order earlier passed. Accordingly, Ld. STO has taken steps for intimating the above facts to the dealer by registered post. The dealer was also intimated about the same as per the order sheet maintained by the Ld. STO on dated 21.6.2018. Since the dealer appellant failed to cause its appearance on the scheduled date regarding proposed rectification, the Ld. STO has passed the order on 9.7.2018, which is now the subject matter of present appeal.

11. In this context, it is considered prudent to quote Section 81 of the OVAT Act, which reads as follows:-

> **Section 81. Rectification of mistake:-**
> (1) With a view to rectifying any arithmetical or clerical mistake or any error apparent on the face of the

record, the assessing authority, appellate authority or revisional authority or Tribunal may at any time within five years from the date of an order passed by it, amend such order:
***Provided that*** an amendment which has effect of enhancing an assessment or otherwise increasing the liability of the assessee shall not be made unless the assessing authority, appellate authority or revisional authority or the Tribunal, as the case may be, has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

12. On examination of sequence of action taken by the Ld. STO, it is noticed that since the opening and closing balance of Input Tax Credit as returned by the dealer was not considered in the original assessment order, the Ld. STO has resorted to rectify the above order as per Section 81 of the OVAT Act. As observed by the Hon'ble Supreme Court of India in case of MASTER CONSTRUCTION CO. (P) LTD. VRS. THE STATE OF ORISSA AND ANOTHER, reported in (19966) 17 STC 360 (SC).

> *"The jurisdiction of the Commissioner under this rule is limited and is confined only to the correction of mistakes or omissions mentioned therein. An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission unintentionally made. The error should not be an error which depends for its discovery, elaborate arguments on question of fact or law. The accidental slip or omission is an accidental slip or omission made by the court."*

13. Similarly, in case of Commissioner of Income Tax –II, Vrs. M/s. Maruti Insurance Distribution Service Limited, in W.P.(C) NO.106/2012, wherein the Hon'ble High Court of Delhi, have observed that :-

> "*Section 254(2) of the Act make it amply clear that a 'mistake apparent from the record' is rectifiable. To attract the jurisdiction under Section 254(2), a mistake should exist and must be apparent from the record. The power to rectify the mistake, however, does not cover cases where a revision or review of the order is intended. "Mistake" means to understand wrongly or inaccurately; it is an error; a fault, a misunderstanding, a misconception. "Apparent" implies something that can be seen, or is visible; obvious; plain. A mistake which can be rectified under Section 254(2) is one which is patent, obvious and whose discovery is not dependent or argument."*

14. In the present case it is found that the claim of Input Tax Credit made by the dealer i.e. (the opening and closing balance) was not initially taken care of although the same was very much available at the time of passing of the impugned order. Since the opening and closing balance of the claim of Input Tax Credit as admitted by the dealer in the returns were left out at the time of original assessment, the same can be treated as an error apparent in the face of the record. As such, the action taken by the Ld. STO in rectifying the mistake can no way be treated as change of opinion. Besides, the case laws cited in the grounds of appeal which basically deal with the mis-match of Input Tax Credit are also found to be not appropriate in the present case. Moreover, it is found that the Ld. STO has taken steps in giving a notice to the assessee about his intention for increasing the liability of the dealer as per the proviso to Section 81 of the OVAT Act.

15. Further, since the impugned order passed by the Ld. STO is the outcome of the assessment proceeding U/s.42 of the OVAT Act the levy of penalty is also considered to be just and proper in view of the decision of the Hon'ble High Court of

Orissa in case of M/s. Jindal Stainless Steel Co. Limited vrs. State of Orissa and others, reported in (2012) 54 VST 1 (Ori).

16. Accordingly the appeal preferred by the dealer is considered to be devoid of merit and hence dismissed.

17. Resultantly, the impugned order passed by the Ld. STO on dated 9.7.2018 and that of Ld. FAA are confirmed. Cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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