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

Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 1st Judicial Member
&
Sri R.K. Pattnaik, Accounts Member-III

S.A. No. 55(V) of 2014-15

(From the order of the ld. Addl. CST (Appeal), South Zone, Berhampur, in Appeal Case No. AA(VAT)-6/2012-13, disposed of on 27.09.2013)

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

- V e r s u s -

M/s. Durga Traders, Sriram Nagar-Aska Road, Berhampur. ... Respondent

S.A. No. 32(V) of 2014-15

(From the order of the ld. Addl. CST (Appeal), South Zone, Berhampur, in Appeal Case No. AA(VAT)-6/2012-13, disposed of on 27.09.2013)

M/s. Durga Traders, Sriram Nagar-Aska Road, Berhampur. ... Appellant

- V e r s u s -

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

For the assessment period: 01.04.2006 to 31.03.2010

For the Revenue ... Mr. M.S. Raman, A.S.C.
For the Revenue ... Mr. B.B. Panda, Advocate

Date of hearing: 14.10.2019 **** Date of order: 15.10.2019

O R D E R

This appeal and counter appeal by the adversary parties to a dispute arised out of an audit assessment u/s.42(4) of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) preferred against the order of first appellate authority, whereby and wherein, the order of assessing authority was set aside and the matter was remanded back to the assessing authority for assessment afresh.

The Revenue as appellant has prayed for reinstatement of order of assessing authority, whereas, the dealer as appellant has prayed for annulment of the entire assessment proceeding.

2. The assessee-dealer, M/s. Durga Traders is engaged in trading of dry chillies, chilly powder, turmeric, dhania and black pepper on wholesale basis. The audit team duly constituted u/s.41 of the OVAT Act on visit to the dealer's unit submitted Audit Visit Report (in short, the AVR) suggesting audit assessment on discrepancies like, (i) the dealer has not entered the purchase invoice No.51 dtd.29.12.2010 for Rs.8,55,250.00, No.34 dtd.31.12.2010 for Rs.4,64,191.00 and No.1588 dtd.04.01.2011 for Rs.54,184.00 and sales invoices No.906 dtd.14.11.2011 to 912 dtd.03.01.2011 for the total amount of Rs.33,51,125.00, (ii) the dealer-appellant has paid less amount of VAT of Rs.497.71 on the sale value of 4% taxable goods and (iii) claim of purchase return amounting to Rs.1,26,00,000.00 without substantiating by evidence. In an ex-parte order, the assessing authority dropped the allegation No.(i) above, whereas the allegation No.(ii) i.e. the less payment of VAT of Rs.498.00 was established. The 3rd allegation regarding the claim of return of goods to the selling dealer, it was rejected as the return was not inconsonance to the mandate of the provision u/r.7(3)(d) of the

OVAT Rules. In the result, the assessing authority determined the GTO by adding the suppressed turnover of Rs.1,26,00,000.00 calculated on the basis of Rule 7(3)(d) of the OVAT Rules. After deduction of VAT already collected the taxable turnover was determined at Rs.23,29,50,942.87, tax on it @ 4% was calculated at Rs.93,18,037.71, ITC allowed to the extent of Rs.18,60,539.00. Thereafter, the tax already paid by way of deposit and payment at checkgate also adjusted and accordingly the balance tax due payable by the dealer was determined at Rs.5,04,497.71. Besides, penalty u/s.42(5) of the OVAT Act was calculated at twice of the tax due was imposed. In the result, the demand in total towards tax and penalty was raised at Rs.15,13,493.00.

3. The matter was carried in appeal by the dealer. Learned Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur as first appellate authority remanded the matter back to the assessing authority with a direction to make correspondence with concerned sales tax authority of the selling dealer to ascertain if the goods were actually returned to the selling dealer M/s. Sabari Agencies, Erode, Tamilnadu or not and thereafter to determine the tax liability of the dealer.

4. On the above backdrop of the case in hand, Revenue in its appeal has contended that, the order of the first appellate authority is cryptic and the first appellate authority has not examined or asked for any evidence from the dealer, whereas it has given a direction erroneously to the selling dealer in contravention to the provision u/s.95 of the OVAT Act.

5. The dealer in its appeal contended that, provision u/r.7(3)(d) of the OVAT Rules read with sec.23(3) of the OVAT Act is not applicable to the case in hand since the dispute relates to interstate purchase. The dealer returned the purchase goods like turmeric as it was found not up to the required standard. The

authority below hastily decided the appeal and remanded the matter. It is prayed to set aside the demand and to quash the entire assessment proceeding.

6. In the appeal in hand, it is found that, the first appellate authority has remanded the matter back to the assessing authority for decision on the disputed questions like whether there was returned of goods by the dealer within time and for the purpose the assessing authority should make correspondence with concerned sales tax authority of selling dealer to investigate to the fact of claim of return of goods and then to pass appropriate order. The original assessment order was an exparte assessment order. Right from the A.G. Audit report to the impugned order, it is found the authorities below have held that, in case of return of goods it should be done in accordance to Rule 7(3)(d) of the OVAT Rules. Provisions under Rule 7(3)(d) of the OVAT Rules reads as follows:-

> " xxx xxx xxx
> xxx xxx xxx
> xxx xxx xxx
>
> (d) the goods or part thereof are returned to the seller and the seller 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."

On the other hand, sec.23(d) of the OVAT Act reads as follows:-

> "xxx xxx xxx
> xxx xxx xxx

(3) In case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchaser and a debit note shall be issued by the purchaser to the selling dealer containing the requisite particulars as may be prescribed."

7. It is pertinent to mention here that, as per the undisputed fact the dealer has purchased goods from M/s. Sabari Agencies belongs to State of Tamil Nadu. [The dealer has contended that, it has received turmeric from M/s. Sabari Agencies, Tamil Nadu during the month of July, 2010 but returned the same as the goods were not in a marketable condition. It is also stated that, the dealer has sold turmeric to M/s. Om Oil & Floor Mills Ltd. (Ruchi), Cuttack in the month of August, 2010. However, the technician examined the turmeric in the last week of November, 2010 and found the same not in conformity with the prescribed standard. As such, the supply of five trucks of turmeric was cancelled. VAT Act provides for deduction from taxable turnover, the value representing the goods. Section sec.8(1)(b) of the Central Sales Tax Act, 1956 provides that, in determining the turnover of a dealer, the sale price of all goods returned to the dealer by the purchaser of such goods within a period of six months from the date of delivery of the goods, if satisfactory evidence is produced before sales tax authorities in respect of the same. Usually, deductions are allowed if sale returns are within six months from the date of the sale. Otherwise no deduction shall be allowed from the same.

8. Here, it is apt to mention here that return of goods and rejection of goods are different terms having different meaning. Return of goods and rejection of the same admittedly stand on different footing. Return of goods is a bilateral transactions brought about by the consent of the seller and the purchaser, which consent may have been effected either prior to the 'delivery' of goods or subsequent to such delivery. Rejection of goods on the other hand is an unilateral

transaction, governed by the provision of Contract Act or The Sale of Goods Act, open only to purchaser. Hence, liability of sales tax does not arise even if goods come back after six months.

9. As per the settled principle above, when we delve into the case in hand, it is found that, the dealer has taken a plea of return of goods to the interstate seller M/s. Sabari Agencies, Tamil Nadu, whereas the dealer has taken a plea of cancellation of the sale with intrastate purchaser, M/s. Om Oil & Floor Mills Ltd. (Ruchi), Cuttack. In the event of return of goods against interstate purchase, the assessing authority is to verify the CST assessment and return if any as per sec.8(1)(b) of the CST Act of the selling dealer. Further, the assessing authority is to verify if the goods are returned within stipulated period or not. The first appellate authority and the assessing authority as well had proceeded with a wrong direction by ignoring the fact of interstate purchase and the provisions on CST Act and Rules. If the dealer has not returned the goods in accordance to sec.8(1)(b) of the CST Act being supported by debit notes and credit notes from both sides, there, the dealer will be held liable for sale suppression to the extent of worth of goods under allegedly return. On the other hand, if it is a case of cancellation or rejection, then in absence of any complete sale affected between the parties, the dealer cannot be held liable. Reliance is placed in the matter of **Metal Alloys Company Pvt. Ltd. v. Commercial Tax Officer 39 STC 404 (Cal.)**.

10. From the discussion hereinabove, we are of the view that, the remand order cannot be limited to ascertain about return of goods for sales tax authorities of selling dealer. it is held that, the assessing authority will be at liberty to decide the questions afresh by giving opportunity of being heard to the dealer extending the scope to submit oral or documentary evidence.

11. In the argument, learned Counsel for the dealer draws attention of the Bench to the impugned order and stated that, when

the present audit assessment covers the tax period from 04/2006 to 03/2010 it is not known how the assessing authority could take consideration of the sale return during the month of July, 2010 (reflected in the Page-2 line-9). On the other hand, the grounds of appeal of the appellant-dealer indicates the dealer's claim of adjustment of purchase return for the month of July, 2010 with the interstate seller and sale return in the month of November, 2010 with intrastate seller M/s. Om Oil & Floor Mills Ltd. (Ruchi), Cuttack. The submission of the learned Counsel contradicts the grounds in appeal. On the other hand, the findings of the fora below taking consideration of sale return relating to the month of July, 2010 is also creates a confusion and ambiguity. Hence, in the event of remand, the assessing authority should take consideration of this discrepancies/ambiguity and to decide the matter as per the correct factual position.

In the result, it is ordered.

The appeal and counter appeal both are allowed in part on contest against each other as per the observation hereinabove.

Dictated & corrected by me,

Sd/-
(Subrata Mohanty)
1st Judicial Member

Sd/-
(Subrata Mohanty)
1st Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III