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. 317(V) of 2012-13

(From the order of the ld. DCST (Appeal), Balangir Range, Balangir, in First Appeal Case No. AA-35 (KA) of 2010-2011, disposed of on 11.12.2012)

M/s. S.N. Traders,
Jagannath Temple Road,
Bhawanipatna, Kalahandi. ... Appellant

- V e r s u s -

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

S.A. No. 299(V) of 2013-14

(From the order of the ld. DCST (Appeal), Balangir Range, Balangir, in First Appeal Case No. AA-35 (KA) of 2010-2011, disposed of on 11.12.2012)

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

- V e r s u s -

M/s. S.N. Traders,
Jagannath Temple Road,
Bhawanipatna, Kalahandi. ... Respondent

For the assessment period: 01.04.2008 to 31.03.2010

For the Dealer ... Mr. Damodar Pati, Advocate
For the Revenue ... Mr. M.S. Raman, A.S.C.

Date of hearing: 24.09.2019 ******** Date of order: 03.10.2019

O R D E R

The appeal and cross appeal being arised out of an order by the first appellate authority in an escaped assessment u/s.43 of the Orissa Value Added Tax Act, 2004 (hereinafter referred as, the OVAT Act) preferred by adversary parties like, State of Odisha and the dealer, for sake of convenience and to avoid conflicting views, if any,both are decided by this common order.

2. **Factual backdrop:-**

M/s. S.N. Traders, a registered dealer engaged in trading of cement, M.S. Rod, G.I. Sheet, M.S. Angle, M.S. Round etc. faced escaped assessment u/s.43 of the OVAT Act initiated by STO, Kalahandi as learned assessing authority on the basis of fraud case report bearing No.2 dtd.30.04.2010 from Enforcement Range, Bhawanipatna.

3. As per the report, the Enforcement Range, during their visit to the dealer's unit on 25.03.2010, verified purchase register maintained upto 27.02.2010 and sale register and stock register maintained upto 28.02.2010 with last retail invoice dtd.21.02.2010, last tax invoice vide bill dtd.18.03.2010. Physical stock in the business premises was also verified. Thereafter, the books of account and connected documents on being produced by the dealer were also considered and finally sale suppression to the tune of Rs.78,400.00 for the year 2008-09 and Rs.1,93,293.00 for the year 2009-10 were suggested. The learned assessing authority accepted the report of suppression however enhanced the turnover by five times turnover as against 100 times suggested by the enforcement team. In the result, balance tax due of Rs.7,69,836.97, penalty of Rs.15,39,673.94 u/s.43(2) of the OVAT Act and further penalty of Rs.20,000.00 u/s.62(6) of the OVAT Act were imposed. At the instance of dealer, the demand altogether for Rs.23,29,511.00 was questioned before the first

appellate authority who in turn, reduced the same to Rs.3,11,319.00 as he recalculated the suppression and deleted the enhancement as he deleted the enhancement of suppressed turnover by restricting it to actual suppression as determined.

4. When the matter stood thus, the order of first appellate authority is assailed by the dealer as appellant in S.A. No.317(V) of 2012-13, whereas, on the other hand the State of Orissa also assailed the impugned order in S.A. No.299(V) of 2012-13.

The dealer's contention may be broadly summarized as follows. The assessment u/s.43 of the OVAT Act without assessment either u/s.39 or 42 of the OVAT Act being preceded to it, the entire escaped assessment is illegal and not sustainable. The assessment proceeding without post fact approval from the next higher authority as per rule 43(3) of the OVAT Rules vitiates the entire proceeding. The penalty as raised is illegal, if not, it must be reduced to one time as per the change in the provision w.e.f. 01.10.2015.

conversely,

The Revenue has contended that, deletion of enhancement by the First appellate authority is not in accordance to law, whereas the impugned order is just and proper on other issues.

5. The questions involving law and fact for decision as raised by the dealer are,

(i) Whether the proceeding u/s.43 of the OVAT Act being not preceded by any assessment u/s.39 or 42 as alleged, is illegal and not maintainable?

(ii) Whether the penalty as imposed is illegal or in alternative the penalty should be restricted to one time?

The question framed for decision as per the State appeal is,

(iii) Whether the first appellate authority is wrong in deleting the enhancement to the suppressed turnover?

6. **Findings and reasons thereof**-

Question No.(i)

Advancing argument on behalf of the appellant-dealer, learned Counsel Mr. Pati argued that, the initiation of proceeding u/s.43 of the OVAT Act in the case in hand is not maintainable since the same is not preceded by assessment under any of the provision u/s. 39, 40, 42 or 44 of the OVAT Act. It is further argued that, provision u/s.39 as it was by then i.e. the period prior to amendment of 2015 requires, the return should be filed within 'stipulated period' and it should be 'in order'. Here, as the dealer cannot be treated as self assessed u/s.39 of the OVAT Act as per law so, it can be said that there was no basis for re-assessment proceeding u/s.43 of the OVAT Act.

6-(a). For sake of brevity, the provision u/s.39 of the OVAT Act as it was before amendment in the year 2015 and after amendment is reproduced below.

Sec.39 of the OVAT Act before amendment:

> **39. Self assessment.-**
> (1) Subject to provisions of sub-section (2), the amount of tax due from a registered dealer or a dealer liable to be registered under this Act shall be assessed in the manner hereinafter provided, for each tax period or tax periods during which the dealer is so liable.
>
> (2) If a registered dealer furnishes the return in respect of any tax period within the prescribed time and the return so furnished is found to be in order, it shall be accepted as self assessed subject to adjustment of any arithmetical error apparent on the face of the said return.]"

Sec.39 of the OVAT Act after amendment w.e.f. 01.10.2015 :

> **39. Self assessment.-**
>
> **(1) (as before)*****
>
> (2) If a registered dealer furnishes the return in respect of any tax period, it shall be deemed to be self-assessed".

Similarly provision u/s.43 of the OVAT Act reads as follows :

"43. Turnover escaping assessment.-
[(1) Where, the assessing authority, on the basis of any information in his possession which indicates that the whole or any part of the turnover of the dealer in respect of any tax period or tax periods has –

(a) escaped assessment; or
(b) been under-assessed; or
(c) been assessed at a rate lower than the rate at which it is assessable;
or that the dealer has been allowed –

(i) wrongly any deduction from his turnover, or
(ii) input tax credit, to which he is not eligible,

the assessing authority may serve a notice on the dealer in such form and manner as may be prescribed and after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he deems necessary, proceed to assess to the best of his judgment the amount of tax due from the dealer.]
(2) If the assessing authority is satisfied that the escapement [or under-
assessment of tax on account of any reason (s) mentioned in sub-section (1) above] is without any reasonable cause, he may direct the dealer to pay, by way of penalty, a sum equal to [* * *] the amount of tax additionally assessed under this section.
(3) No order of assessment shall be made under sub-section (1) [after the
expiry of seven years] from the end of the tax period or tax periods in respect of which the tax is assessable.
(4) Notwithstanding anything contained to the contrary in this Act, an
Assessment under this section shall be completed within a period of six months from the date of service of notice issued under sub-section (1) :
Provided that if, for any reason, the assessment is not completed within the time specified in this sub-section, the Commissioner may, on the merit of each such case, allow such further time not exceeding six months for completion of the assessment proceeding.

Provided further that if the Commissioner feels it necessary to do so for good and sufficient reasons, he

> may allow such further time not exceeding another six months beyond the time allowed under the first proviso for completion of the assessment proceeding.]"

6-(b). A careful reading of provision u/s.43 of the OVAT Act as it revealed, the pre-condition for initiation of proceeding u/s.43 is, there must have an assessment under any of provision u/s. 39, 40, 42 or 44 of the OVAT Act. The case in hand relates to pre-amendment period and the provision as it was by then contains the term like "within the prescribed time" and return so furnished "is found to be in order".

7. Learned Counsel for the dealer argued that, the dealer had not filed return in time and also it was not in order. ***Per contra,*** learned Addl. Standing Counsel, Mr. Raman harped on the point that, "is found to be in order" the term relates to a subjective but not the objective satisfaction of the taxing authority. Once the return is filed it is to be treated as found to be in order. So far as the term "within the prescribed time", learned Addl. Standing Counsel (ASC) argued that, same is to the satisfaction of the authority. The dealer as an intentional defaulter cannot take advantage of the fact that, he has not filed return in time.

8. Hon'ble Supreme Court in ***Rajendra Singh Vrs. State of Madhya Pradesh, AIR 1996 SC 2736*** held that while examining complaints of violation of statutory rules and conditions, it must be remembered that violation of each and every provisions does not furnish a ground for the Court to interfere. In the case of directory provisions, substantial compliance would be enough. Unless it is established that violation of a directory provision has resulted in loss and/or prejudice to the party, no interference is warranted. Even in the case of violation of a mandatory provision, interference does not follow as a matter of course: **Chintamani Industries Vrs. Commissioner of Sales Tax, (2009) 25 VST *220***. It is succinctly

held in ***Vice Chancellor Vrs. SK Ghosh, ILR (1954) Cuttack 288 (SC)*** that the substance is more important than the form and if there is a substantial compliance with the spirit and substance of law, an unessential defect in form cannot be allowed to defeat what is otherwise proper and valid action. Conspectus of decisions rendered by Hon'ble Apex Court in the matters of *Director of Inspection of Income-tax (Investigation) Vrs. Pooran Mall & Sons, (1974) 96 ITR 390 (SC); TV Usman Vrs. Foor Inspector, Tellicherry Municipality, AIR 1994 SC 1818; Rachhpal Singh Vrs. State of Punjab, (2002) 6 SCC 462; State of UP Vrs. Harendra Arora, (2001) 6 SCC 392*, would make it clear that when the provisions of statute have been substantially complied with and no prejudice has been caused to the assessee, the assessment cannot be held to be null and void."

9. Coming to the provision under law and the mandates of the legislature behind particular provision i.e. u/s.39 of the OVAT Act, if we see the provision as it was before the amendment or after the amendment, it is found that, the term like 'within prescribed time' and 'return so furnished found to be in order' are omitted by amendment.

We must keep in mind that, there was/is no provision under law for regular audit assessment of all dealer and that is why the provision of self-assessment is there and as because the provision u/s.43(2) of the act has undergone an amendment which is nothing but mere explanatory in nature and intended to sort out the ambiguity if any arises in interpretation. Therefore, a different meaning cannot be attributed to the provision looking at the amendment which is formal and explanatory in nature. Thus, from the discussion above, it is held that the proceeding u/s 43 of the act is maintainable.

10. <u>Question No.(iii)</u>

The next point of controversy before us is the justification of the deletion of enhancement to escaped turnover in the impugned order. Enforcement team had suggested for enhancement by 100

times, ld. Assessing authority enhanced the turnover by 5 times, whereas ld. first appellate authority deleted the enhancement and thereby reduced the escaped turnover to the actual amount (value of goods escaped assessment) detected.

11. Ld. assessing authority has held as below:-

"the reporting officials have suggested for enhancement by 100 times but keeping in mind the period involved in nature and quantum of business it is reasonable to enhance the established suppressed turnover to the extent of five times."

Here is a case where the dealer is found to have maintained books of account. The present one is an escaped assessment on the basis of fraud case report. The principle of best judgment only can be adopted where the books of account of the dealer is rejected. Object and purpose of the best judgment principle is to arrive at a fair and proper estimate of turnover and it is not meant for enhancement in turnover in every case and in a mechanical manner. Reliance can be placed in **CST v. Syam Bastra Bhandar (1997) 106 STC 326 (MP)**. While making best judgment assessment the A.O. must provide reasonable chance to the dealer to produce evidence which will assist in making the judgment. Without an effort to enquire into the evidences and hearing to that effect, the best judgment cannot be lawful. Even where it is a guess work there should not be less speculative element in the judgment.

It also may be stated that, Rule 53 of the OVAT Rules provides that, the assessing authority shall after hearing the dealer in the manner prescribed in sub-rule (2) assess the dealer to the best of judgment.

12. In the case in hand, the Audit Team had suggested for enhancement by 100 times without any basis. The assessing authority enhanced the turnover by five times without offering any opportunity of being heard to the dealer and that too without an

enquiry into the details and most importantly, without rejecting the books of account of the dealer. On the other hand, even though it is noticed that, the deletion of enhancement by the first appellate authority is not backed by any opinion that sufficient reason but in the totality of the facts and circumstances above and in application of the principle discussed above, we are of the view that, there is no scope to enhance the suppressed turnover when the books of account is not rejected. This question is accordingly answered in negative to the State.

13. Question No.(iii)

Delving into the question of penalty as per sec.43(2) of the OVAT Act if it is attracted to the case in hand or not. It is a settled position that when escapement is not a bonafide mistake but intentional suppression falls under any of the situation as per sec.43(2) of the Act. Penalty is necessarily attracted the case in hand is one of that situation as contemplated in the provision. Here is held that, penalty is attracted to the present case. In this context, the next point of controversy which is strenuously argued by counsel for both sides is, whether the change in the provision by omission of quantum on two times with effect from 01.10.2015 should be applicable to the cases or not? Learned Addl. Standing Counsel, Mr. Raman placed reliance in the authorities below,

(i) Shiv Prasad Sahu Vrs. State of Odisha, (2009) 19 VST 417 (Ori.)

(ii) National Aluminium Company Limited vrs. DCST, [2012] 56 VST 68 (Ori.)

(iii) Dharamendra Textile Processors [2008] 18 VST 180 (SC); [2008] 306 ITR 277;

(iv) Bansapani Iron Ltd. Vrs. State of Odisha, 2016 (I) ILR-CUT 50.

On the other hand, learned Counsel for the dealer placed reliance in the case of **Shree Bhagwati Steel Rolling Mills v. CCE[(2016) 3 SCC 643**.

The main contention of the ld. counsel for the State is, since the assessment period involved in this case relates to the period prior to 01.10.2015, the amended law imposing penalty at one time is not applicable. More particularly, when there is an instruction to that through circular by CCT to that effect. Further, when penalty is civil in nature then, absence of *mens-rea* is not a pre-condition to impose penalty. Per contra, learned counsel for the dealer's pleas are, the provision has not undergone amendment or repeal but there is an omission which will date back to the commencement of the act.

At the outset, it is pertinent to mention here that, in many of the cases this Tribunal has decided this question in favour of the dealer by imposing penalty at one times as per the provision as on date.

Argument of the learned Counsel for the dealer is, after change in the provision there is no scope and reason for the assessing authority to read the word which is omitted. By virtue of omission of a word, the entire provision of penalty has not been omitted, it is the quantum of penalty is reduced by such omission. Earlier it was two times but now it become one time. This change came w.e.f. 01.10.2015 by the gazette notification of the Law Department, Govt. of India under the head of

"Odisha Act 7 of 2015
The Odisha Value Added Tax (Amendment) Act, 2015.
An Act further to amend the Odisha Value Added Tax Act, 2004"

As per the above Odisha Act 7 of 2015, many provisions has gone amended, substituted, omitted and new terms inserted. Argument of the learned Counsel for the dealer is quite conceivable that, intention of the legislature is to be gathered from use of the terms above relating to different provisions under the said Act.

It is argued that, when it is not repeal but an omission then in absence of any saving clause under the Act by expressed term it is to be treated as if, the term omitted, was not there in the

provision at all. In **Rayala Corporation Pvt. Ltd. & Others v. Director of Enforcement (1970) AIR 494**, the Apex Court has held as follows:-

> "Section 6 of the General Clause Act cannot obviously apply on the omission of Rule 132(A) of the BIRS. For the second above reason, Sec.2 applies to repeal and not to omission and applied allegation report is of a Central Act or Regulation and not of a Rule."

However, in a later period **in M/s. Sheen Golden Jewels (India) Pvt. Ltd v. State Tax Officer and Others (2019) 62 GSTR 207 (Ker)**, it is held that

> "164. Indeed, in ***Shree Bhagwati Steel Rolling Mills v. CCE[(2016) 3 SCC 643] ,***a two-Judge Bench though, has elaborated on not only on "deletion" and "omission" but also on "repeal". It has cited Halsbury's Laws of England the Legal Thesaurus (Deluxe Edition) by William C. Burton to unearth semantic distinctions, if any, of those expressions. **Then, Shree Bhagwati Steel Rolling Mills has held that on a conjoint reading of the three expressions "delete", "omit", and "repeal", it becomes clear that "delete" and "omit" are used interchangeably, so that when the expression "repeal" refers to "delete"**, it would necessarily take within its ken an omission as well. It finds no substance in the argument that a "repeal" amounts to an obliteration from the very beginning, whereas an "omission" is only in futuro.
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> **(underlined by me)**
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> 165. If the expression "delete" would amount, Shree Bhagwati Steel Rolling Mills further holds, to a "repeal", it is clear that a conjoint reading of Halsbury's Laws of England and the Legal Thesaurus leads to the same result: an "omission", a form of repeal, is tantamount to a "deletion". ***Interpreting Fibre Boards (P) Ltd. v. CIT[(2015) 10 SCC 333]***, in the statutory backdrop of Section 6-A of the General Clauses Act, Shree Bhagwati Steel Rolling Mills affirms that repeal would include repeal by way of an express omission. Indeed, it declares, after elaborate reasoning, that the observations in **Rayala Corporation** on "repeal" and "omission" are obiter."

14. Well settled principle is, the rule of beneficial construction requires, ex-post facto law should be applied to reduce the rigorous sentence of the previous law on the same subject. Such a law is not affected by Article 20(1). The principle is based upon the legal maxim *"Salus Populi Est Suprema Lex"* which means the *"welfare of the people is the supreme for the law"*. It is inspired by principles of justice, equity and good conscience.

14.(a) It is held by authorities that, even ex-post facto law of such a type should be applied to mitigate the rigour of the law. This principle is based both on sound reason and common sense. "A retrospective statute is different from an ex-post facto statute". Reliance is placed in the matter of **Smt. Dayawati v. Inderjit, AIR 1966 SC 1423 PARA 10.**

14(b). It is settled both on authority and principle that a later statute again described an offence created by an earlier statute and imposes a different punishment or varies the procedure of the earlier statute is repealed by implication. In this regard, we may refer to the decision in **Rattan Lal v. State of Punjab, AIR 1965 SC 444** and in **Ramesh v. State of Madhya Pradesh and Another 2004 CriLJ 62**. Here, we may profitably refer to the case of **State v. Gian Singh, AIR 1999 SC 3450**, wherein the Apex Court expressed the view as under:- "It is the fundamental right of every person that he should not be subject to greater penalty what the law prescribes, and no ex post facto legislation is permissible for escalating the severity of the punishment. But if any subsequent legislation would downgrade the harshness of the sentence for the same offence, it would be a salutary principle for a administration of criminal justice to suggest that the said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence." It is well also settled in law that mere differentiation does not per se amount to discrimination within the

inhibition of the equal protection clause. **Ashutosh Gupta v. State of Rajasthan, (2002) 4 SCC 34** is relied.

14.(c) The intention of the legislature will be frustrated if a liberal and pragmatic approach is not given. Principle of parity or equality before law will not be violated here because, it is certain, the changed quantum of penalty is an inevitable application to the assessments for subsequent period. Further, it is also not disputed that appeal is a continuation of the proceeding.

Learned Addl. Standing Counsel, Mr Raman harped the point of controversy from another angle, taking cue from the ratio laid down by the Hon'ble Apex Court in **Dharamendra Textile Processors [2008] 18 VST 180 (SC); [2008] 306 ITR 277** it is argued that, here the penalty being civil in nature, it became mandatory in nature and the principle of beneficial construction has no application in case of civil liability. It may also be noted that, in the matter of **Shiv Dutt Rai Fateh Chand Etc. Etc vs Union of India & Anr. Etc 1984 AIR 1195, 1983 SCR (3) 198 the Hon'ble SC has observed that,** the word 'penalty' used in Article 20(1) cannot be construed as including a 'penalty' levied under the sales tax laws by the departmental authorities for violation of statutory provisions penalty imposed by the sales tax authorities is only a civil liability, though penal in character.

But, notwithstanding the proposition of law as above that the penalty is civil in nature the argument advanced by learned Addl. Standing Counsel can be negated placing reliance in the matter of **Finance Intelligence Unit India v. Corporate Bank CRL.877/2017 and other cases in batch decided on 04.09.2019** by the Hon'ble High Court of Delhi, whereby it is held as follows:

> "29.Mr Aggarwala sought to distinguish the aforesaid decisions by contending that the decisions were rendered in the context of laws relating to criminal offences. He submitted that in the present cases, the respondent banks have suffered a civil liability and, therefore, the said decisions are inapplicable.

30. This Court finds no merit in the aforesaid contention. Even if it is assumed that the liability imposed on the respondent banks is a civil liability, no distinction can be drawn on the aforesaid ground so as to deprive the respondents of the rule of beneficial construction. It is also relevant to refer to the decision of the Supreme Court in Commissioner of Tax (Central)-I, New Delhi v. Vatika Township Private Limited: (2015) 1 SCC 1. In the said case, the Supreme Court had authoritatively held that if a legislation confers the benefit on some persons without inflicting a corresponding detriment on some other person or where it appears that the intention of legislature is to confer such benefit, the rule of purposive construction would be applicable and the said legislation would be construed as applicable with retrospective effect. The relevant extract of the said decision is set out below:-

"29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'OfficeCherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. [(1994) 1 AC 486 : (1994) 2 WLR 39 : (1994) 1 All ER 20 (HL)] Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Govt. of India v. Indian Tobacco Assn. [(2005) 7 SCC 396] , the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in

> the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra [(2006) 6 SCC 289] .
> Xxx xxx
>
> 35. The rule that the enactment must be construed as prospective is not applicable in cases of a beneficial legislation. In such cases, the same must be construed retrospectively. It would be unfair to impose a higher punishment then as prescribed under a statute as currently in force, merely because the person visited with such punishment has committed the offence / default prior to the legislation being enacted."

15. Law relating to taxation are undergoing changes time to time looking at the hardship and burden on the tax payer by a welfare state. Reduction in quantum of penalty is inserted in the said process by the legislature. Therefore, a tax payer in pending lis cannot be debarred from enjoying the fruit of the change in law as he is one among them for whose benefit the change of law is made. An instruction in administrative side if any cannot debar the dealer from getting the benefit of the change in law.

Keeping in view the discussion hereinabove, it is held that, the penalty is to be calculated at one time of the tax assessed only. Thus, from the discussion above, it is held that penalty u/s.43(2) of the OVAT Act should be calculated at one time of the tax due in that case.

16. On a conspectus of the discussions on each question framed, we can summarize the findings as follows:-

(i) The very initiation of proceeding u/s.43 of the OVAT Act in the present case is maintainable.

(ii) The deletion of enhancement by the first appellate authority has not been rejected by expressed terms being just and proper is not interceptable.

(iii) The penalty as per sec.43(2) of the OVAT Act is to be restricted to one time to the present case even though the period of assessment is prior to 01.10.2015, hence the impugned order calls for modification.

In the result, it is ordered.

ORDER

The appeal by the dealer is allowed in part. The suppression amount determined by first appellate authority is confirmed. The penalty as imposed u/s.43(2) of the OVAT Act is reduced to one time. Demand be raised accordingly. Appeal by the Revenue being sans merit, here by dismissed on contest.

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