BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No. 64(VAT) OF 2017-18

(Arising out of order of the learned Additional CST(Appeal), South Zone, Berhampur in Appeal Case No. AA(VAT)- 42/2014-15, disposed of on dated 30.07.2015)

Present: Shri R.K. Pattanaik, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member, and
Shri R.K. Pattnaik, Accounts Member-III

M/s. Ananta Automobiles Pvt. Ltd.,
Plot No. 532/1026, Rasulgarh, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Mrs K. Roy Choudhury, Advocate
For the Respondent : Sri M.S. Raman, Additional S.C. (CT)

Date of hearing: 15.05.2020 ***** Date of order: 03.06.2020

O R D E R

Following is with regard to rectification of order dated 19.09.2019 promulgated in the instant appeal vis-a-vis Issue No. IV at the behest of the appellant on the grounds inter alia that it is required to meet the error apparent on the face of record considering the facts and circumstances of the case pursuant to the order of the Hon'ble Court dated 04.12.2019 in STREV No. 95 of 2019 and a decision thereon ensuring disposal of the appeal in accordance therewith.

2. In fact, the appellant has moved the Tribunal for rectification/ modification of its order dated 19.09.2019 while disposing of the appeal in

connection with Issue No. IV contending that there was material, such as, details of the stock and scrap and its disposal and deposit of VAT on that sale, produced, but the Tribunal lost sight of the same while deciding Issue No. IV which is respecting suppression of sale as claimed by the Taxing Authority on a mismatch of figures maintained in books of account and return submitted by the appellant. As it is made to appear, the necessary rectification/modification was sought on 27.09.2019 after disposal of the appeal and in the meantime, the appellant knocked the portals of the Hon'ble Court in STREV No. 95 of 2019. As per the appellant, though the materials were produced before the Tribunal for consideration vis-a-vis Issue No. IV, the same remained unattended, consequent upon which, the decision in question was delivered with the conclusion that there was suppression of sale, since it could not be controverted by any evidence rebuttal in nature. It is strenuously urged by the learned Counsel for the appellant that the evidence was produced without fail and it was on record, the fact, which stands substantiated, on a bare perusal of the record itself, inasmuch as, the Hon'ble Court also confirmed it holding that the observation of the Tribunal regarding its absence does appear to be improper. It is again contended that being an error apparent on the face of record, the conclusion of the Tribunal which is based on absence of the materials, ought to be rectified in terms of Section 81(1) of the Odisha Value Added Tax Act, 2004 (in short, 'the Act'). Furthermore, as per the learned Counsel for the appellant, had the Tribunal taken consideration of the produced materials, or had it been that the Tribunal rectified/modified its order dated 19.09.2019 on Issue No. IV, then in that case, the conclusion on the issue would have been different altogether. With

the aforesaid contention, necessary rectification/modification has been longed for in due compliance of the order dated 04.12.2019 of the Hon'ble Court in STREV No. 95 of 2019. In course of hearing, the learned Counsel for the appellant, as it was made to understand by the Tribunal, not only claimed for rectification/modification of the order dated 19.09.2019 on Issue No. IV, but also buttressed an argument for a decision thereon by referring to the materials on record.

3. In so far as the respondent State is concerned, the learner Additional Standing Counsel (CT), without laying too much of stress on rectification/ modification of the order dated 19.09.2019, straight away, contended that no such materials were really produced before the Assessing Authority, as a result of which, the decision as to suppression of sale was imminent, which could not be rebutted by the appellant. The argument by the learned Additional Standing Counsel (CT) was further referring to the sample materials so produced by the appellant at the fag end contending that such cannot be relied upon not being contemporaneous in nature vis-a-vis the assessment period. So to say, the contention of the respondent State largely rested upon the admissibility of otherwise of the materials produced by the appellant at a much later period of time without really pressing much emphasis on rectification/ modification of the order dated 19.09.2019.

4. Under Section 81(1) of the Act, the Tribunal in exercise of its discretion, may rectify any arithmetical or clerical mistake, or any error apparent on the face of record at any time during the stipulated period from the date of an order passed by it and amend the same. A proviso is appended to it to the effect that in case the amendment which is proposed or suggested has the effect of

enhancing an assessment or otherwise increasing the liability of the assessee, it shall not do so unless a notice is served on the assessee allowing him a reasonable opportunity of being heard. So to speak, as per the above provision, the Tribunal and such other authorities as mentioned therein, not only has the jurisdiction to amend its order but also to adjudicate such issues which are likely to have an effect increasing the liability of the assessee. More or less, it seems to be a jurisdiction exercising the power to rectify the error, mistake whatever apparent on the face of record without really venturing into the evidence which would rather result in review besides taking a decision on such issues vis-a-vis the liability of the assessee. Such rectification of mistake, error are subject to sub-sections (2) and (3) of Section 81 of the Act.

5. On a bare perusal of the record, there is no denial to the fact that the appellant without wasting much time promptly approached Tribunal for necessary rectification vis-a-vis Issue No. IV and to amend its order dated 19.09.2019 by filing a petition dated 27.09.2019 and subsequently, moved the Hon'ble Court and obtained the order dated 04.12.2019 in STREV No. 95 of 2019. The memo dated 12.09.2019, as it is found in the record, suggested that a copy thereof with all documents had been served upon and received by the respondent State. Thus, from the above, it appears that the material documents were produced before the Tribunal by the appellant on 12.09.2019, the date on which, the argument was concluded in the appeal. The Hon'ble Court also held and observed in STREV No. 95 of 2019 that the relevant documents prima facie appear to have

been produced before the Tribunal and as such, the observation in that regard in the order dated 19.09.2019 was susceptible to correction.

6. Reverting to the submissions of the learned Counsel for the parties, verifying the record and deriving the source of authority from Section 81(1) of the Act, the Tribunal is of the humble opinion that the order dated 19.09.2019 in the appeal on Issue No. IV with respect to production of documents and relevant materials for its consideration ought to be rectified /modified with a finding in favour of the appellant. In other words, since from the record, material documents were found to have been produced before the Tribunal on 12.09.2019, the date on which the final argument was concluded, to that extent the Tribunal is required to hold that the appellant had produced it for consideration with respect to Issue No. IV. It seems that the Tribunal by way of inadvertence overlooked the materials produced on 12.09.2019, particularly, the sample documents with regard to disposal of the scraps. Hence, by holding so, the order dated 19.09.2019 of the Tribunal in appeal on Issue No. IV on production of material documents and a finding thereon is hereby rectified /modified.

7. Now, the consideration is, whether the Tribunal is to render a decision vis-a-vis Issue No. IV, especially, after the order dated 19.09.2019 stood rectified/ modified? As earlier mentioned, the learned Counsel for the appellant and respondent State apart from the issue on rectification or otherwise, discussed and deliberated upon the material evidence which had been before the Tribunal being produced on 12.09.2019. For a moment, the Tribunal persuaded itself not to venture into discussing the evidence so produced by the appellant vis-a-vis its

liability on Issue No. IV since order dated 04.12.2019 in STREV No. 95 of 2019 apparently confined the issue, if at all, such rectification/modification of order dated 19.09.2019 was to be permitted or not, but by the conduct of the parties, looking at the submission of the learned Counsel for the appellant and the respondent State, taking a liberty from such conduct of the parties who are more inclined to have a decision on Issue No. IV and, of course, in due compliance of the Hon'ble Court direction dated 04.12.2019 in its STREV No. 95 of 2019 and seeking the source of jurisdiction from Section 81(1) of the Act which prescribes adjudication in case on such rectification/ modification the liability of an assessee found to be affected, the Tribunal with all its humility and respect to the Hon'ble Court's direction (supra) proceeds further to take a call vis-a-vis Issue No. IV to determine, whether, the materials on record really suggested and unerringly indicated suppression of sale and if at all, the contention of the appellant with regard to the damaged spare parts disposed of as scrap for the assessment period could be acceded to. As a matter of fact, it is further suggested from the record that the audit team found discrepancies in the books of account and the return submitted by the appellant and it has been claimed by the respondent State that on account of such discrepancies, the Tribunal concluded suppression of sale in juxtaposition to the plea of disposal of obsolete stock as scrap more particularly due to want of any corroborative evidence. Since, now the materials have been found in place and resultantly, final order dated 19.09.2019 has been rectified/modified, the Tribunal needs to examine it for a decision on Issue No. IV. In the appeal, the Tribunal, setting aside the impugned order in part, remitted the matter for a decision on

Issue Nos. I, II, III and V confirming Issue No. IV since the appellant though raised a plea with respect to the unutilized/damaged spare parts and its disposal as scrap that could not be substantiated on account of want of evidence in respect thereof.

8. At the cost of repetition, it is stated that the difference in stock position of spare parts etc. amounting to ₹61,63,973.00 was held to be a sale suppression and it was added to GTO, and according to the learned Additional Standing Counsel (CT), no evidence was there before the authorities below to contradict it. According to the learned Counsel for the appellant, the unused and unutilized/damaged spare parts have been reflected in the books of account as per its original costs though they actually turned to scrap having no further use and as per general trade practices, the values of scrap are not reduced from the original cost price as that might affect the credibility in banks/financial institutions and the audit was conducted without relay appreciating the above ground realities and details of the stock available on scrap and ultimately, it led to a conclusion that there was suppression of sale which is not sustainable in the eye of law. As per the memo of written argument dated 12.09.2019, the learned Counsel for the appellant, referring to the following decisions, such as, Jayalakshmi Oil Mills Vs. State of Tamil Nadu:[2013] 58 VST 535; Sri Ramu Furniture Co. Vs. State of Tamil Nadu: [2013] 57 VST 383; and S.V. Cycles Stores Vs. Commercial Tax Officer: [2011] 46 VST 565, contended that equal addition to the turnover is likely to result in double taxation when tax and interest on the scrap sales shown to have been paid. It is also contended that even assuming that there was wilful non-disclosure, by placing reliance upon the decisions (supra), that by itself is not a sufficient ground for equal

addition. On the other hand, the learned Additional Standing Counsel (CT) reiterated the contention that the appellant had miserably failed to satisfy the Assessing Authority regarding the stock difference and in so far as the additional materials are concerned, the same are not contemporaneous and alleged to have been later to the assessment period. As per the 1st Appellate Authority, during the audit visits and assessment, the appellant failed to produce details of the obsolete stock which were produced before him for necessary verification. For some reason or the other, the appellant seems not to have produced details of the materials regarding obsolete stock at the time of audit visits and assessment and later on produced it before the 1st Appellate Authority and thereafter, submitted it to the Tribunal for its consideration. It is claimed that the stock as to the damage spare parts, which the appellant dealer acquired later to the takeover agreement with M/s. Sujata Corporation and cancellation of dealership of Rhino Car with effect from 20.03.2012, having been shown in the books of account, the Assessing Authority, in the light of general trade practices which are being followed, ought to have appreciated the fact that the value of the scraps could not have been reduced to the original cost price as that might affect the credibility in banks/financial institutions and at present, since the materials are evidence in itself to suggest that the spare parts turned scraps have been disposed of and VAT paid thereon, the finding that it to be sale suppression does not hold good. The learned Additional Standing Counsel (CT) disputed the genuineness and veracity of the sample materials. It was also challenged that unused, unutilized and damaged stock of spare parts cannot be treated as scrap as claimed by the appellant, leave alone the

fact regarding its disposal supported by materials and other documents. Such a question, whether, idle and obsolete stock of spare parts which may not have any relevance and utility can be treated as scrap and disposed of, is first of all to be determined, which was never an issue before the Assessing Authority. Apart from above, if at all the documents and relevant materials on disposal of the scrap with reference to the stock shown in books of account could really be taken into account to rebut and defeat the claim of sale suppression is again a question that lies bare and open. Besides that the contention of the respondent State that the materials so produced by the appellant at present not showing it to be contemporaneous in nature vis-a-vis the assessment period is still another question posed for determination. The above aspects need a threadbare scrutiny before any decision could be arrived at and that can only be exerted to by the Assessing Authority considering the materials produced by the appellant. The Assessing Authority may also be required to consider, if at all, on arriving at a conclusion that damaged spare parts can be treated as scrap, the general trade practices, which are normally followed by not reducing its original cost price, which is likely to affect the credibility of the dealer, as has been put forth by the learned Counsel for the appellant. Again it is to be considered, if such equal addition to the turnover in the event of disposal of scrap has resulted in double taxation which is being alleged by the appellant and all such questions relevant for the purpose. Having regard to the facts and circumstances of the case, claim and counter claim of the rival parties, the Tribunal is of irresistible conclusion that the matter should be remitted to the

Assessing Authority for a fresh decision on Issue No. IV and such would be an exercise in order to do ex debitio justicia.

9. Hence, it is ordered.

10. In the result, the matter is remitted for a fresh consideration by the Assessing Authority on Issue No. IV on stock difference and whether, it amounts to sale suppression or not by taking into account the material evidence which are being produced by the appellant before him along with other issues as directed by the Tribunal vide its order dated 19.09.2019. As a necessary corollary, the finding on Issue No. IV of the 1st Appellant Authority in Appeal Case No. AA. (VAT)- 42 of 2014-15 is hereby set aside. Resultantly, the appeal stands allowed to the extent indicated above.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(A.K.Dalbehera)
1st Judicial Member

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