BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A.No. 110 (V) of 2019
&
S.A.No. 56 (C) of 2019

(Arising out of order of the learned Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack in Appeal Nos. AA-106121712000126/17-18 & AA-107121712000125/17-18, disposed of on 10.04.2019)

Present: **Shri G. Sharma, Chairman**

M/s. Alkem Laboratories Ltd.,
A.B. Complex, Near Maruti Show Room,
Plot No.3463/3464, Pratapnagari,
Bhanpur, Kataka ... Appellant

-Versus-

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

For the Appellant : Mr. J.J. Pradhan, Advocate
For the Respondent : Mr. S.K. Pradhan, Addl. S.C. (CT)

Date of hearing : 24.09.2026 *** Date of order : 15.10.2026

ORDER

Challenging the legality and propriety of orders dated 10.04.2019 passed by the Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack (hereinafter referred to as 'First Appellate Authority') in Appeal Nos. AA-106121712000126/17-18 & AA-107121712000125/17-18, both the appeals have been filed by M/s. Alkem Laboratories Ltd. (hereinafter referred to as 'Dealer').

Since both the appeals involve similar question of facts and law, this common order shall govern both these appeals.

2. The brief facts relevant for disposal of these appeals run thus–

The Dealer, in the instant case, deals in H.L. Medicines, food supplements and cosmetics on wholesale basis. The Dealer effects purchase of goods in course of inter-State trade and commerce against declarations in Form 'C' as well as branch transfer to its various branches outside the State against declarations in Form 'F'. Basing on Audit Visit Report (AVR), the Deputy Commissioner of Sales Tax, Cuttack-I West Circle, Cuttack (for brevity, 'Assessing Authority') initiated assessment proceeding u/s.42 of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'OVAT Act') for the period 01.04.2014 to 30.09.2015. In assessment, the Dealer was held liable to pay tax @13.5% on free supply of food supplements and cosmetics to the tune of ₹12,74,971.55 as no tax was collected on the same. Further, the Dealer's claim relating to decrease of output tax of ₹1,58,640/- on sale return of 13.5% items valued at Rs.11,71,494/- was disallowed. Consequently, the Assessing Authority computed the tax liability of the Dealer and raised a tax demand of ₹9,91,342/- including penalty for the period under assessment.

Similarly, the assessment proceeding U/r.12(3) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as 'CST(O) Rules') was initiated against the Dealer for the assessment period 01.04.2014 to 30.09.2015. In assessment, on verification of books of account, the Assessing Authority found the Dealer to have made stock transfer of expired/damaged medicines worth of ₹23,83,550/- to Ambuja Cement through Nagpur Branch and deducted the stock from the stock account, but failed to furnish any declaration in Form 'F' on that count, accordingly, tax was levied at appropriate rate, thereby the Assessing Authority raised a

demand of ₹1,52,101/- towards tax and interest for the period under assessment.

Being aggrieved with the orders of assessment, the Dealer preferred first appeals before the learned First Appellate Authority. The First Appellate Authority confirmed the assessment orders and upheld the demands, hence these appeals.

3. State filed cross objection under the OVAT Act.

4. The Dealer in terms of memo raised the sole ground that issuance of notices in Form VAT-306 and Form-IV without allowing the minimum period of 30 days as mandated u/s.42(2) of the OVAT Act r/w Rule 12(3)(C) of the CST(O) Rules and pursuant to such notices assessments made thereon are not sustainable in the eye of law, accordingly, prayed for setting aside the orders of the First Appellate Authority and the Assessing Authority in the ends of justice, placing reliance on the decision of the Hon'ble High Court of Orissa in the case of ***Delhi Footwear v. Sales Tax Officer, Vigilance, Cuttack and Others,*** **[2015] 77 VST 146 (Orissa).**

5. Per contra, learned Addl. Standing Counsel (CT) for the State supported the orders of the fora below to be just and proper on the ground that there was no infraction of statutory provision in completion of assessment proceedings basing on valid notices issued to the Dealer under both the Acts. Alternatively, he pleaded that since the dealer was not afforded 30 days time for appearance as per the notices issued in Form VAT-307 and Form-IV, the matters be remanded to the Assessing Authority for *de novo* assessment after affording the dealer statutory mandated minimum period of 30 days for production of books of account.

6. On perusal of records, it transpires that the present assessment proceedings u/s.42 of the OVAT Act and U/r.12(3) of the CST(O) Rules relates to the period 01.04.2014 to 30.09.2015 which were completed on 30.10.2017.

In the present case, the Dealer assailed the assessment orders passed u/s.42 of the OVAT Act and U/r.12(3) of the CST(O) Rules on the ground of invalid statutory notices. On perusal of assessment records made available by the Revenue, it transpires that the statutory notices in Form VAT-307 and Form-IV were issued to the Dealer on 27.06.2017 vide Nos.3637 and 3638 fixing the date to 25.07.2017 for appearance and production of books of account relating to the audit assessment. It further reveals that the said notices were served on the Dealer on 15.07.2017 as per the endorsement in the acknowledgment receipt kept in the record. This amply clears that less than thirty days time was allowed to the Dealer in the said notices, which is not in conformity with the statutory provision.

Section 42(2) of the OVAT Act r/w Rule 12(3)(C) of the CST(O) Rules provides that where a notice is issued to the Dealer under sub section (1) he shall be allowed time for a period not less than thirty days for production of relevant books of account. In this context, I am alive of the legal principle as enunciated by the Hon'ble High Court of Orissa in the case of ***Delhi Foot Wear*** cited supra, wherein their Lordships have been pleased to observe as under :-

> "14. If the notice issued is invalid for any reason, then the proceeding initiated in pursuance of such notice would be illegal and invalid. Section 42(2) of the OVAT Act is a mandatory provision not with regard to any procedural law, but with regard to a substantive right. Any infirmity or invalidity in the notice under section 42(2) of the OVAT Act goes to the root of jurisdiction of the assessing authority. Issue of notice under section 42(2) of the OVAT Act is a condition precedent to the validity of any assessment under section 42 of the OVAT Act. Therefore, if the notice issued for assessment is invalid, the assessment would be bad in law. Hence, the notice for assessment of tax without allowing the minimum period of 30 days for production of the books of account and documents is invalid in law and consequentially, the order of assessment and demand notice passed/issued are not sustainable in law.
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> 15. In the instant case, notice for assessment of tax basing on the audit visit report was issued in form VAT-306 dated December 30, 2006 requiring the petitioner to appear in person or through his authorised agent before the assessing officer on January 12, 2007 and produce or cause to be produced the books of account and documents for the period from April 1, 2005 to July 31, 2006. Thus, notice in form VAT-306

> shows that minimum time as provided under sub-section (2) of section 42 of the OVAT Act has not been granted to the petitioner. Thus, it is a clear case of violation/infraction of mandatory provisions of section 42(2) of the OVAT Act. Therefore, the notice for assessment of tax in pursuance of audit visit report is invalid.
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> 16. In view of the above, order of assessment passed in pursuance of notice in form VAT-306 issued in violation of requirement of section 42(2) of the OVAT Act is bad in law.
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> 17. For the reasons stated above, we quash the impugned order of assessment dated January 12, 2007 passed under annexure 1 and consequential demand notice for the period from April 1, 2005 to July 31, 2006."

7. In view of such backdrop of the matter and settled position of law, since the assessment proceedings u/s. 42 of the OVAT Act and U/r.12(3) of the CST(O) Rules were completed without allowing thirty days time for appearance and production of books of account in the statutory notices issued to the Dealer, this forum is of the humble opinion that there was infraction of statutory provision by the Assessing Authority in discharging the statutory obligation while issuing the notice, and as such, without valid notices the orders of the Assessing Authority and the First Appellate Authority for the period under dispute are not sustainable in law and liable to be set aside.

8. In the result, the appeals of the Dealer under both the Acts stand allowed and the impugned orders of the First Appellate Authority as well as the orders of assessment are hereby set aside. Cross objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman