BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 89 (VAT) of 2020

(Arising out of order of the learned Addl. CST (Appeal), Rourkela in Appeal No. AA-19 (V) Range/2017-18, disposed of on 05.09.2019)

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

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

-Versus-

M/s. Utkal Metaliks Ltd.,
Industrial Estate, Kalunga, Raurkela,
Dist. Sundaragada ... Respondent

For the Appellant : Sri N.K. Rout, Addl. S.C. (CT)
For the Respondent : Sri S.C. Agarwal, Advocate

Date of hearing: 13.08.2026 *** Date of order : 09.09.2026

O R D E R

Challenging the legality and propriety of order dated 05.09.2019 passed by the Addl. Commissioner of Sales Tax (Appeal), Rourkela (hereinafter referred to as 'First Appellate Authority') in Appeal No. AA-19 (V) Range/2017-18, this appeal has been filed by the State.

2. The brief facts relevant for disposal of this appeal run thus–

M/s. Utkal Metaliks Ltd. (hereinafter referred to as 'Dealer') is a manufacturer and seller of sponge iron. Basing on the Fraud Case Report (FCR), the Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter referred to as 'Assessing Authority')

initiated assessment proceeding u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') for the period 01.04.2008 to 31.03.2009. The Assessing Authority examined the allegation of purchase suppression of 63.740 MT of iron ore reported in the FCR with reference to the books of account and holding the sales suppression of ₹4,37,040.00 to be established, determined the GTO/TTO at ₹6,55,560.00 to the best of judgment, thereby assessed the tax liability of ₹26,222.40 and levied penalty of ₹52,444.80 u/s. 43(2) of the OVAT Act, in toto ₹78,667.00 on the Dealer for the period under assessment. Being aggrieved with the order of assessment, the Dealer preferred first appeal before the learned First Appellate Authority. The First Appellate Authority upheld the GTO/TTO so also the tax determined by the Assessing Authority, but levied penalty of one time instead of two times of the tax so additionally assessed and reduced the demand to ₹52,445.00, hence this appeal.

3. The Dealer filed no cross-objection.

4. Learned Addl. Standing Counsel (CT) appearing for the State assailed the impugned order of the First Appellate Authority on the sole ground that levy of penalty equal to one time instead of two times of the tax so additionally assessed for the pre-amended period as illegal and erroneous. Placing reliance on catena of decisions, it is argued that one time penalty levied by the First Appellate Authority is infraction of the provision of the OVAT Act and thus, liable to be set aside, accordingly, pleaded for restoring the order of assessment.

5. Per contra, learned Counsel appearing on behalf of the Dealer submitted that there having no confrontation made with the alleged seller to the Dealer to testify the veracity of the allegation, the assessment completed basing on the untested documents, thereby

raising the impugned demand of tax and penalty is unlawful and liable to be set aside in the ends of justice.

6. On perusal of the orders of the fora below, it transpires that the Assessing Authority in assessment proceeding considered the FCR of the STO, Vigilance Wing, Sambalpur, alleging receipt of raw materials, i.e. iron ore, from M/s. Muskan Minerals basing on seized slip Nos. 92 to 99, found during inspection which the Dealer had not accounted for and led to sale suppression of sponge iron amounting to ₹4,37,040.00 (36.42 MT X ₹12,000.00) produced out of the alleged purchase of 63.740 MT of iron ore. Having gone through the explanations of the Dealer *vis-a-vis* the allegation of the FCR, the Assessing Authority came to conclusive conclusion that slip Nos. 92 to 97/ Gate Pass Nos. 494, 493, 486, 481 and 470 dated 03.02.2009 revealed ample testimony to the fact that the Dealer had purchased 63.740 MTs of iron ore from M/s. Muskan Minerals on 03.02.2009, which had not been accounted for in the regular books of account, accordingly established the sales suppression out of such unaccounted purchase of iron ore, thereby rejected the books of account as incorrect and completed the assessment to the best of judgment after enhancing the escaped turnover by 50%. Consequently, the Assessing Authority computed the tax liability including penalty of two times of tax assessed as per Section 43(2) of the OVAT Act for the period under assessment. In first appeal, the First Appellate Authority upheld the findings of the Assessing Authority and also the tax computed at ₹26,222.40 in assessment.

In the instant case, the Dealer found to have admitted that it had received 63.740 MTs of iron ore despatched through vehicle No. OR-15-N-0691 from M/s. Muskan Minerals against slip Nos. 92 to 97 via Gate Pass Nos. 494, 493, 486, 481 and 470 on 03.02.2009 subject

to contradiction in terms of slip number and quantity, which could not justify properly with material evidence before the Assessing Authority. This being the scenario, the Assessing Authority rightly satisfied that there is escapement of tax without any reasonable cause.

Notably, on account of levy of penalty, the First Appellate Authority reduced the penalty imposed equal to one time instead of twice the amount of tax so additionally assessed u/s. 43(2) of the OVAT Act. The provision of Section 43(2) of the OVAT Act for the pre-amended, *i.e.* prior to 01.10.2015, stipulates that if the assessing authority is satisfied that the escapement of tax on account of any reason mentioned in sub-section (1) is without any reasonable cause, he may direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax additionally assessed under this section. Having regard to the statutory provision, this forum is of the humble opinion that once the escapement of tax is satisfied without any reasonable cause, the Dealer is liable to pay a sum equal to twice the amount of tax additionally assessed. It is only where reasonable cause exists for escapement of tax, there cannot be levy of penalty. Furthermore, there is no discretion vested on the statutory authority to impose penalty equal to one time instead of twice the amount of tax additionally assessed for the pre-amended period where such authority is satisfied that the escapement of tax was without any reasonable cause.

In view of the above backdrop of the matter, this forum is of the considered opinion that the impugned order suffers from infirmity in levying one time penalty instead of twice the amount of tax additionally assessed for the period under assessment as levied by the Assessing Authority in view of Section 43(2) of the OVAT Act and thus, the order of assessment for the pre-amended period is liable to be restored as lawful.

7. In the result, the appeal filed by the State stands allowed and the impugned order of the First Appellate Authority is hereby set aside. The order of the Assessing Authority for the period under assessment is restored.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman