BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 136(V) of 2017-18

(Arising out of the order of the ld. JCST (Appeal), Sundargarh Range, Rourkela, in First Appeal Case No. AA V 56 of 2011-12, disposed of on dtd.25.04.2017)

P r e s e n t: **Shri S. Mohanty,**
1st Judicial Member

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

- V e r s u s -

M/s. Anish Traders,
A/118, Nirmal Market,
Panposh Road, Rourkela,
Dist.- Sundargarh. ... Respondent

For the assessment period: 01.08.2008 to 31.03.2011

For the Appellant ... Mr. S.K. Pradhan, A.S.C.
For the Respondent ... Mr. R.K. Mishra, Advocate

Date of hearing: 10.07.2019 ******** Date of order: 10.07.2019

O R D E R

This order arises out of an appeal at the instance of Revenue in one hand and out of cross objection at the instance of the dealer on the other, preferred against the order of first appellate authority modifying thereby the order of assessing authority passed in an assessment u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act).

2. M/s. Anish Traders, a registered dealer engaged in trading of mill board, paper, handmade paper, paper board,

strawboard and exercise books on wholesale and retails basis. It faced audit assessment u/s.42 of the OVAT Act on the basis of audit visit report (in short, the AVR) properly constituted audit team under the provision. The audit team had reported about discrepancies like, the dealer has purchased 'laminated roll' which is a polythene product in course of interstate trade and commerce with payment of Entry Tax by declaring the same as paper and sold the same after laminating it on a paper on collection of VAT @ 4%. As the R.C. of the dealer does not authorize to re-sale the laminated roll, so the dealer is liable to pay tax on the laminated roll @ 12.5%. The further allegation is, there was delay in payment of VAT attracting interest to be levied on the dealer.

The assessing authority on acceptance of the AVR found that, the dealer had purchased laminated roll and prepared laminated paper and sold it as paper. Accordingly, the assessing authority in his opinion treated the laminated roll as taxable @ 12.5%, he recalculated the tax liability, imposed penalty and thereafter adjusted the tax already deposited by the dealer from it. He also imposed interest for delay payment of tax, thus the total liability against the dealer was raised at Rs.89,512.00.

3. Being aggrieved with such assessment, the assessee-dealer knocked the door of first appellate authority who in turn treated the payment made by the dealer before completion of assessment as the payment to be adjusted from the tax due and after adjusting the same, he recalculated the balance tax due then, imposed penalty and interest as well. Thus, on recalculation the tax due became reduced to Rs.13,654.00.

4. When the matter stood thus, State being aggrieved with such reduction in demand, preferred this appeal. The contention of the State is, the mode of calculation of the tax due adopted by the assessing authority is erroneous as it contradicts the provision contemplated u/s.33(5) of the OVAT Act.

5. The dealer contested the appeal by advancing Cross Objection. In the cross objection, the dealer has contended that, the goods dealt by the dealer was nothing but laminated paper covered under the category of goods called 'paper' exigible to tax @ 4%. However, though the dealer had deposited the tax as per the demand raised in the AVR but he disputes the same and claimed that there should be recalculation of tax liability.

6. From the rival contentions stated above, the questions framed for decision in this appeal are-

(i) whether both the authorities below have committed wrong in treating the goods dealt by the dealer taxable @ 4% instead of 12.5% as levied;

(ii) whether the first appellate authority is wrong in adjusting the tax already deposited before the completion of assessment as because the deposit contravenes the provision u/s.33(5) of the OVAT Act;

(iii) what order?

7. At the outset, it is pertinent to mention here that, on perusal of the orders of both the fora below, it is found that, the orders does not explicit, under which category the laminated papers sold by the dealer covered? The method adopted by both the fora below to levy tax @ 12.5% on the laminated roll is not sustainable in the eye of law, because here the dealer has purchased paper, it has also purchased laminated roll. On laminations on the paper, the dealer prepared laminated paper and sold the same. Thus, the lamination roll attached to the paper is a value addition to the paper and it is sold at a particular price on which the dealer has collected tax and deposited tax. It is to be seen, whether the dealer is authorized to sale the laminated paper or not, if yes, what should be the rate of tax on sale of such laminated paper. But, to the surprise, it is found that, both the fora below have held that, the dealer had purchased laminated roll and has sold the same, so the laminated

paper should be taxed @ 12.5%. Both the authorities below have misdirected the inquiry to treat laminated roll as a separate product and taxed the same particularly when the claim of the dealer is not disputed to the extent that, the dealer has sold laminated paper. Further, the impugned order does not reveal the first appellate authority has answered the grounds taken by the dealer before him. The first appellate authority has reiterated the findings of the assessing authority. It has not made any endeavor to answer the grounds taken by the dealer before him. So, on that score only, the order of first appellate authority cannot withstand in the eye of law.

From the discussion above, it is felt necessary to remand the matter but not to the first appellate authority but to the assessing authority for the reason that, the assessing authority is also required to give a finding on scrutiny of the fact that, the goods what was sold by the dealer covers under which category and what is the rate of tax on sale of that category of goods.

8. So far as the next question i.e. what should be mode of calculation of the tax due in an audit assessment, it has been decided by the Full Bench of this Tribunal in S.A. No.44 of 2007-08 that, for the period of assessment prior to 01.10.2015 the assessee had a right under law to made such disclosure u/s.33(5) of the OVAT Act till the result of the audit visit report. There were two time periods as per the provision u/s.33(5) of the OVAT Act prevalent before the amendment w.e.f. 01.10.2015. The time period for making self-disclosure is upto the period of receipt of tax audit notice or as a result of such tax audit. So, the mode of calculation of tax due for those period is extended upto the result of the tax audit visit. Here, we can refer to the decision of this Tribunal in S.A. No.44 of 2007-08, whereby it is observed that, prior to the change in the statute dtd.01.10.2015 the voluntary disclosure u/s.33(5) was available to the dealer till the outcome of audit visit more fully stated “in between audit notice and outcome of audit”. Whereas, for the period after 01.10.2015 onwards, the

disclosure can only be made till receipt of the audit visit notice. The tax due, penalty or interest should necessarily be calculated in strict adherence to form VAT-312 in force in respective assessment periods.

9. From the discussion hereinabove, in this case it is held that, the impugned cannot withstand in the eye of law. The matter should be remitted back to the assessing authority for assessment afresh.

Accordingly, it is ordered.

The matter is remitted back to the assessing authority for assessment afresh as per the observation hereinabove. The appeal and cross objection both are allowed accordingly on contest against each other.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

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