



Bhadrak Circle, Bhadrak (in short, AA/DCST) u/s.43 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The brief facts of the case are that:

The instant dealer M/s. Facor Power Ltd., D.P. Nagar, Randia, Bhadrak is a limited company and engaged in the business of generation of electricity up to 45 MWH out of coal. The dealer company effects purchase of consumables and raw materials both from outside and inside the State. The dealer company sells scraps inside the State of Odisha and pays VAT on it. The dealer company also supplies electricity to M/s. Facor Ltd., Randia on cost basis but electricity is tax free under the OVAT Act. Since the dealer company engaged in the generation of electricity, no input tax credit is availed by the dealer company as per provisions of law. It is worthwhile to note that the dealer company admitted to have purchased goods Rs.1,19,03,789.96 supported with Tax invoices and documentary evidences and goods worth of Rs.24,65,066.33 purchased from unregistered dealers without paying tax and accordingly the assessment had been completed for the period 01.10.2010 to 31.12.2012 under the OET Act. In that analogy, it would be proper to levy purchase tax u/s.12 of the OVAT

Act on goods worth of Rs.24,65,066.33 being purchased from the unregistered dealers not suffered tax earlier. As per OVAT Act and Rule, purchase tax @5% is leviable on Rs.24,65,066.33 not on Rs.1,43,68,856.29 as observed by the A.G. Audit. In view of the above fact, the Escape Turnover of the dealer company in the instant case, is determined at Rs.24,65,066.33 which is also treated as Taxable Turnover and taxed @5%. The tax due @5% on Rs.24,65,066.33 is calculated to Rs.1,23,253.31. Besides, a penalty of Rs.2,46,506.62 i.e. twice the amount of tax assessed is imposed on the dealer company u/s.43(2) of the OVAT Act, 2004. The tax and penalty calculates together came to Rs.3,69,760/- which is payable by the dealer at the stage of assessment.

3. Being aggrieved by the order passed by the learned STO, the dealer preferred first appeal before the learned Addl.CST (Appeal), Balasore who in turn dismissed the appeal and confirmed the order of assessment as such the demand remained as it is.

4. Being further aggrieved by the order of the learned Addl.CST (Appeal), the dealer-appellant has preferred this second appeal before this Tribunal.

5. Cross objection has been filed by the State-respondent in this case.

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned First Appellate Authority. He has vehemently argued that, the order of the learned FAA appears to be unjust and improper. The order of the learned Assessing Authority as well as First Appellate Authority has neither been based on the facts and circumstances of the case nor on the points of law. The learned Assessing Authority as well as First Appellate Authority has acted either assuming proper jurisdiction or in excess of their jurisdiction. The determination of GTO and TTO in the instant case is arbitrary, unwarranted and uncalled and liable to be revised. The learned Assessing Officer while raising the demand on the basis of observation of AG (Audit) has relied on following :

“The dealer company has purchased goods worth Rs.2465066.33 from unregistered dealers and shown the same under any other receipt and those goods were not suffered VAT, as such, those goods

were liable for purchase tax u/s.12 of the OVAT Act, 2004”.

The re-opening of the assessment with above observation of the learned Assessing Authority is not correct. The assessment u/s.42 of the OVAT Act for the above period was completed basing on the books of accounts maintained by the dealer-company. The other purchases as mentioned at Col.No.11 of the Form VAT-201 is nothing but mostly relates to own use materials. The materials purchased from the unregistered dealer like stationery, mattress and office furniture etc. used for office purposes only and booked in the purchase account. Hence, the dealer is in no way liable for payment of purchase tax u/s.12 of the OVAT Act, 2004. Hence, the demand raised on this purchase value is not maintainable and liable to be quashed. The observation of learned FAA with regard to the non-production of documentary evidence in support of the purchases made from unregistered sources is not at all required as admittedly the goods purchased are mostly stationery items, mattress, office furniture etc. which no way relates to the modus operandi of the business of the dealer-appellant and accordingly the dealer is not liable to pay any purchase tax on such purchases under

the provision of Sec.12 of the OVAT Act and therefore the assessment of tax as confirmed by the learned FAA is liable to be deleted. The levy of penalty in the instant case is mechanical and gross non-application of judicial mind as penalty is imposed without having any wilful suppression for which the same is illegal. The learned Advocate for the dealer has cited many judgments in support of his stand. The learned Advocate for the dealer has prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing learned Addl. Standing Counsel, Mr. Raman for the State argued that, the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer-appellant, which is not sustainable in the eyes of law. The learned Assessing Officer and learned FAA have rightly completed assessment/appeal basing on the statutory provisions under the Act and Rules to the extent the dealer has raised the point. The grounds raised by the dealer-

appellant are without any legal foundation and both the forums rightly determined the tax liability taking into account the statutory provisions. The order of learned FAA is crystal clear with respect to the other points raised by the dealer. He has dealt each and every item which is self-explanatory in nature and requires no further interference by this Tribunal.

The instant dealer, M/s. Facor Power Ltd. is a limited company and engaged in the business of generation of electricity up to 45 MWH out of coal. The dealer company effects purchase of consumables and raw materials both from outside and inside the State. The dealer-company sales scrap inside the State of Odisha and pays VAT on it. The dealer-company has originally been assessed u/s.42 of the OVAT Act basing on the AVR. The AG Odisha on scrutiny of assessment record observe in the inspection report No.16/2014-15 that the dealer-company has purchased goods worth of Rs.1,43,68,856/- from unregistered dealers and shown the same under any other receipt and those goods were not suffered VAT as such those goods were liable for purchase tax u/s.12 of the OVAT Act. The imposition of tax and penalty amounting to Rs.3,69,760/- has been calculated as per the

OVAT Act, therefore, it is just and proper. Also the learned Addl. Standing Counsel has cited some judgments in support of his stand. He has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

8. Heard the learned Advocate, Mr. K.R. Mohapatra appearing on behalf of the dealer and learned Addl. Standing Counsel, Mr. M.S. Raman on behalf of the State. Gone through the grounds of appeal, cross objection filed by the State-respondent, the impugned orders of appeal and assessment and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion that, the points raised by the learned Advocate for the dealer is quite satisfactory and this is a fit case where the matter should be remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer as per provisions of law. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the learned First Appellate Authority is hereby set-aside. The matter is remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer

as per provisions of law after giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated and Corrected by me,

Sd/-  
(S. Mishra)  
2<sup>nd</sup> Judicial Member

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