**BEFORE THE DIVISION BENCH : ODISHA SALES TAX TRIBUNAL: CUTTACK.**

**S.A.No.22(VAT) of 2017-18**

(Arising out of the order of the learned JCCT, Cuttack-II Range, Cuttack, in First Appeal Case No.AA.16/OVAT/CUIIJ/2015-16, disposed of on 22.10.2016)

**Present: Smt. Sweta Mishra, 2nd Judicial Member.**
**&**
**Sri S. M. Dash, Accounts Member-III.**

M/s.Neelachala Construction & Labour Supplier,
At:Chunabelari, PO: Paradeepgarh,
Dist: Jagatsinghpur. ... Appellant.

**- V e r s u s –**

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

For the Appellant ... None.
For the Respondent ... Mr. S.K.Pradhan, Addl. S.C. (C.T).

**Assessment Period: 01.08.2011 to 31.03.2013**

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Date of hearing: **13.08.2021** Date of Order: **17.08.2021**

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## ***O R D E R***

By means of the present appeal, the appellant M/s. Neelachal Constructions and labour supplier at Paradeep, has assailed the first appeal order dated 22.10.2016 passed by the learned Joint Commissioner of Sales Tax (Appeal), Cuttack II Range, Cuttack under

section 43 of the OVAT Act whereby the appeal had been dismissed and the assessment order has been confirmed.

2. The brief facts of the case is that the appellant is a works contractor and labour supplier by registration and is registered as such, under the jurisdiction of the STO, Jagatsinghpur Circle, Paradeep. The appellant had filed returns from 01.08.2011 to 31.03.2013 admitting no turnover during the period in question. In the meanwhile, the assessing authority received a tax evasion report from the DCST, Vigilance, Cuttack Division who reported total suppression of turnover at Rs.70,52,365.00 for financial year 2011-12 and 2012-13 which had taxed implication of Rs.3,21,420.00. He had proposed penalty at Rs.6,42,840.00, thus, arriving a total tax and penalty payable at Rs.9,64,260.00.

3. Now, on the basis of the tax evasion report, STO initiated proceeding under Section 43 of the OVAT Act as per the provisions of law when it had been found that the dealer had filed nil returns for the years 2011-12 and 2012-13 which had also been captured in the VAT portal of the Commercial Tax department. In view of non filing of returns notice and reminders had been issued to the present appellant from 28.10.2014 to 23.03.2015 to produce books of account for assessment but the dealer failed to appear to make his position clear before the assessing authority with regard to allegation of suppression of tax made by DCST, Vigilance, Cuttack Division, Cuttack. As a result, the exparte order had been passed by assessing officer on 03.06.2021 deciding the tax at Rs.3,21,420.00 and penalty of Rs.6,42,846.00, thus imposing a total tax and penalty liability of Rs.9,64,260.00. The appellant challenged the above mentioned assessment order in first appeal in appeal case No. AA.16/OVAT/CUIIJ/2015-16.

4. Before the first appellate authority, the appellant disputed the GTO determined by the assessing officer on the ground that amount of bills received by the appellant from the contractee is less than the amount assessed by the Sales Tax Officer. It also disputed the penalty imposed by the assessing officer @ twice the tax due as he has paid Rs.1,67,143.00 with interest before receiving the assessment notice.

5. The present appellant had also taken further stand that during the financial year 2011-12, it had issued bills R/A 1 to R/A 5 amounting to Rs.31,19,863.00 against which the contractee has cleared bills of Rs.19,23,210.00 after rejecting the balance materials as unspecified goods. Similarly, it had been stated that the dealer appellant had issued R/A bills 6 to 10 in financial year 2012-13 amounting to Rs.32,47,084.00 against which the contractee cleared goods worth Rs.22,55,359.00 and holding the balanced material as unspecific goods. It had been stated that the dealer had received payment of Rs.19,23,210.00 for the financial year 2011-12 and Rs.22,55,359.00 for the financial year 2012-13 upon which it has deposited VAT of Rs.76,928.00 along with interest of Rs.8,128.00 for 2011-12 and of Rs.1,12,759.00 and interest of Rs.18,046.00 for 2012-13. The first appellate authority having found no good grounds to interfere with the order of assessment, had dismissed the appeal and confirmed the assessment.

6. Against the order of the first appellate authority, the appellant herein, challenges from the conclusion of the first appellate authority whereby, the assessment order had been confirmed and the appeal has been dismissed.

7. In the present appeal the appellant herein had also reiterated the same grounds, in his written note submitted before this forum. The

grounds are the same as it had taken before the first appellate authority saying that it had discharged the tax liability for the financial years 2011-12 and 2012-13, on the basis of amount received against R/A bills from the contractee. That in accordance with the actual amount received by it from the contractee it has paid the tax along with the interest. On the whole, the appellant has not denied the correctness of the tax evasion report of DCST, Vigilance, Cuttack Division, Cuttack whereby it has been alleged that the appellant had supplied following value of goods to its contractee during the years under the question (2011-12 and 2012-13).

| Items | Year | Suppressed amount |
|---|---|---|
| | 2011-12<br>2012-13 | Rs.31,19,863.00<br>Rs.39,32,502.00 |
| | Total | Rs.70,52,365.00 |

8. The Advocate on behalf of the appellant had filed a note praying to dispose of the matter on the basis of above mentioned written note of submission without seeking the presence of the Advocate. In the written note of submission the appellant sought to settle two legal issues i.e. (first) Gross transaction to be accepted at Rs.41,78,599.00 and the (second) non levy of penalty.

**Issue No.**1- Whether, the gross transaction is to be accepted as Rs.41,78,599.00 instead of Rs.70,72,365.00?

We have carefully examined the case and have found that the appellant has filed nil returns for the financial year 2011-12 and 2012-13 and the matter of suppression of tax had been first reported by DCST, Vigilance, Cuttack Division, Cuttack the assessing officer wherein tax evasion of Rs.70,52,365.00 against the appellant had been alleged. The

appellant had made no attempt to clear the allegation before the assessing authority, before the first appellate authority as well as now, before the second appellate authority by producing books of account. The claim that the contractee had rejected the goods of appellant worth Rs.11,96,653.00 for the financial year 2011-12 and Rs.15,91,725.00 for the financial year 2012-13 are not supported by any factual evidence. To sustain such a wide claim as above, the appellant has not produced any in documents in support of the stand that aforementioned goods had actually been rejected by the contractee and has been returned to the appellant. No debit notes as required under the VAT law has been shown to have been issued by the contractee to the contractor so that it could have been taken as a valid proof of the claim that the goods have been returned to the appellant by the contractee. By admission, the goods are in the possession of the contractee and therefore, it has not been returned to the appellant as per the provisions of the law as per Section 11(4) of the OVAT Act. Since, the possession of the goods have been transferred from the appellant to the contractee, the sale is completed under the provisions 11(4) of OVAT Act. Therefore, we are not inclined to accept the claim of the appellant and confirm the first appeal order, which held that the appellant is liable to pay tax for the entire of Rs.70,52,365.00 for the years 2011-12 and 2012-13.

**Issue No.**II. Whether, non-levy of penalty is justified in the circumstances of the case?

The question whether the penalty will be dispensed with in the circumstances of the present case is very much clear from the provision of law contained in Section 43(2) of the OVAT Act which is quoted below:-

" If the assessing authority is satisfied that the escapement or under assessment of tax on account of any reasons mentioned in sub-section (1) above 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."

There is no estoppels against the statutory law. The appellant has not shown any good reason in his support which had caused the suppression and consequent escapement of turnover.

9. In view of the above discussion, the order of the first appellate authority is confirmed and the appeal is dismissed. It has been claimed by the appellant that it had deposited vat of Rs.76.298.00 along with the interest of Rs.8,128.00 for 2011-12 and had deposited Rs.1,12,759.00 along with interest of Rs.18,025.00 for 2012-13. This needs to be verified from the records and accordingly, the tax and penalty are to be worked out by giving adjustment of the aforementioned amount, if the claims so made by the appellant is found to be as correct as per records. As a result, the matter is remanded to the first appellate authority for the limited purpose of recomputation as stated above. Cross objection filed by the State-respondent is disposed of accordingly.

Dictated & Corrected by me,

**(S.M.Dash)**
**Accounts Member-III.**

**(S.M.Dash)**
**Accounts Member-III.**

I agree,

**(Smt. Sweta Mishra)**
**2nd Judicial Member.**