BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 23 (C) of 2024

(Arising out of order of the learned Joint Commissioner of Sales Tax (Appeal), Balasore Range, Balasore in Appeal No. AA 13/MBC 2023-24 (CST), disposed of on 22.04.2024)

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

M/s. Lal Traders & Agencies Pvt. Ltd.,
At:- Badampahar, Dist.- Mayurbhanj. ... Appellant

-Versus-

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

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

Date of hearing : 18.09.2026 *** Date of order : 09.10.2026

O R D E R

Challenging the legality and propriety of order dated 22.04.2024 passed by the Joint Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (hereinafter referred to as 'First Appellate Authority') in Appeal No. AA 13/MBC 2023-24 (CST), this appeal has been filed by M/s. Lal Traders & Agencies Pvt. Ltd. (hereinafter referred to as 'Dealer').

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

The Dealer is engaged in the business of mining and sale of iron ore lumps and iron ore fines in course of intra-State, inter-State and export. The assessment of the Dealer for the period 01.04.2012 to 31.03.2014 was earlier completed U/r.12(3) Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST(O) Rules') by the Joint Commissioner of Sales Tax, Balasore

Range, Balasore, vide order dtd.26.11.2015 raising demand of ₹17,72,23,428.00 including penalty. The order of assessment was challenged before the Addl. Commissioner of Sales Tax (Appeal), Balasore in Appeal No.AA-57/MBC-2021-22(CST), who in turn, set aside the order for assessment afresh with certain direction and pursuant to the said order, the Deputy Commissioner of Sales Tax, CT & GST Circle, Mayurbhanj, Baripada (hereinafter referred to as 'Assessing Authority') initiated the reassessment proceeding for the material period. On examination of the books of account, the Assessing Authority held the suppressed turnover of ₹1,60,95,170.00 to be taxed @ 5%, besides disallowed the balance amount of ₹2,67,08,796.00 for the claim of export sale in absence of Form-H, accordingly raised tax demand along with penalty of ₹53,05,636.00 for the period under assessment. Being aggrieved with the order of assessment, the Dealer preferred first appeal before the First Appellate Authority. The First Appellate Authority keeping in view the decision of the Hon'ble Court in STREV No.64 of 2017 dtd.08.12.2022, wherein the Hon'ble Court was pleased to delete the penalty imposed for non-submission of 'C' and 'H' form, remanded the matter to the Assessing Authority for recomputation of tax and interest liability of the Dealer, hence this appeal.

3. In course of hearing, the learned Counsel appearing for the Dealer pressed ground No.(E) of the additional grounds of appeal and urged that, the AVR has not been submitted to the Assessing Authority within the stipulated period of seven days as per the provisions of Rule 10(3) of the CST (O) Rules. It is specifically contended that, the audit was completed on 31.03.2015 and the AVR was submitted much beyond the statutory period of limitation. He further submitted that initiation of assessment proceeding basing on such AVR is bad in law. In support of his contention, learned Counsel placed reliance on the decision of the Hon'ble High Court of Orissa in the case of ***Jindal Stainless Steel Vrs. State of Orissa and others,*** **[2012]**

54 VST 1 (Orissa), and submitted that the assessment proceeding for the impugned period is not sustainable in the eye of law and liable to be set-aside.

4. Per contra, the learned Addl. Standing Counsel (CT) appearing for the State submitted that as per order sheet, the audit was completed on 31.03.2015 and on 07.04.2015, the AVR record was transmitted to Joint Commissioner of Sales Tax, Balasore Range for assessment and as such, there is no infraction of any statutory provisions. Accordingly, he contended that, the orders of the fora below require no interference.

5. Having regard to the submission on behalf of the parties *vis-a-vis* the orders of the Assessing Authority and the First Appellate Authority, this Tribunal formulates the following substantial question of law :

> **"Whether the AVR has been submitted to the Assessing Authority beyond the period of seven days as mandated u/r.10(3) of the CST(O) Rules?"**

6. The provision of Rule 10(3) of the CST(O) Rules provides that:

> "(3) After completion of tax audit of a dealer under sub-rule (3) of Rule 12, the officer authorised to conduct such audit shall, within seven days from the date of completion of the audit, submit the audit report, to be called "Audit Visit Report" to the assessing authority along with the statements recorded and documents obtained evidencing suppression of purchases or sales, or both, erroneous claim of deductions and evasion of tax, if any, relevant for the purposes of investigation, assessment of such other purposes."

On perusal of the above provisions, it amply clears that after completion of the audit of any dealer, the officer authorised to conduct such audit shall, within a period of 7 days from the date of completion of audit, submit the AVR to the Assessing Authority in the prescribed format along with other documents.

7. Our Hon'ble High Court of Orissa in the case of ***Jindal Stainless Ltd.*** cited supra held that the provision contained in Sec. 41(4) of the OVAT Act, is mandatory one and non-compliance of the same would invalidate the AVR.

Keeping in view the above statutory provision as well as the law laid down by the Hon'ble High Court, it is now incumbent upon this forum to examine as to whether the Assessing Authority has complied with the mandatory provision before completing the audit assessment.

8. In order to decide the issue raised by the Dealer, this forum perused the connected LCR. The order sheet of the tax audit proceeding reflects that the audit completed on 31.03.2015, and on a subsequent date, i.e. on 07.04.2015, the AVR record was shown to have been transmitted to the Joint Commissioner of Sales Tax, Balasore Range. What is relevant here is the date of submission of the AVR to the Assessing Authority. When a party to a litigation disputes or challenges certain facts within the knowledge, control and domain of the adversary, it is the onerous duty of the adverse party to controvert such dispute or challenge. Here in the instant case, the preparation and submission of AVR was within the domain of the department. As such, the State has the responsibility to dislodge the claim of the Dealer by producing the relevant AVR record. Despite the direction for production of relevant assessment record as per order dtd.21.07.2026 of this forum, the Revenue failed to produce the original assessment record for verification, for which this forum is unable to ascertain the exact date of submission of AVR to the Assessing Authority. The State could not place any evidence in proof of dispatch or movement of the AVR from the control of the Audit team to the Assessing Authority. Mere reflection of preparation of AVR and submission of the same in the order sheet will not discharge the legal duty of the Department sans any evidence to substantiate the same.

Under such factual background, this forum has left with no other option than to accept the argument advanced by the Dealer.

The above being the factual backdrop, this Tribunal is of the considered view that the AVR prepared by the Audit Team was not submitted to the Assessing Authority within the period of limitation as prescribed under the statute, hence all the proceedings including original assessment under the CST Act basing on such AVR are *non est* in the eye of law.

9. In result, the appeal of the Dealer is allowed. The orders of the First Appellate Authority and the Assessing Authority are hereby set-aside.

Dictated & Corrected by me,

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman