BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 296 (VAT) of 2018
&
S.A. No. 184 (ET) of 2018

(Arising out of orders of the learned Joint Commissioner of CT & GST (Appeal), Sundargarh Territorial Range, Rourkela in Appeal Nos. AA V 18 of 2014-15 & AA V 9 ET of 2014-15, disposed of on 31.08.2018)

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

M/s. Rabi Metallicks Ltd.,
Plot No.I-10, Civil Township,
Rourkela, Dist.- Sundargarh ... Appellant

-Versus-

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

For the Appellant : Mr. B.P. Mohanty, Advocate
For the Respondent : Mr. D. Das, Addl. S.C. (CT)

Date of hearing : 21.09.2026 *** Date of order : 12.10.2026

O R D E R

Challenging the legality and propriety of orders dated 31.08.2018 passed by the Joint Commissioner of CT & GST (Appeal), Sundargarh Territorial Range, Rourkela (hereinafter referred to as 'First Appellate Authority') in Appeal Nos. AA V 18 of 2014-15 & AA V 9 ET of 2014-15, these appeals have been filed by M/s. Rabi Metallicks Ltd. (hereinafter referred to as 'Dealer').

Since the appeals involve similar question of facts and law, this common order shall govern both these appeals.

2. The brief facts relevant for disposal of these appeals run thus–

The Dealer carries on business in trading of coal, iron ore, iron & steel and sponge iron. Basing on Fraud Case Report (FCR), the Sales Tax Officer, Rourkela II Circle, Panposh (hereinafter referred to as 'Assessing Authority') initiated the assessment proceedings u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') and u/s. 10(1) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') for the period 01.04.2006 to 31.12.2007. The Assessing Authority completed the assessment u/s. 43 of the OVAT Act taking into consideration the allegations made in the FCR and determined the tax along with penalty at ₹62,80,392.00 on the Dealer. Similarly, the assessment u/s. 10(1) of the OET Act for the period under dispute was completed, accordingly tax along with penalty of ₹1,55,751.00 was raised on the Dealer. Being aggrieved with the orders of assessment, the Dealer preferred first appeals before the learned First Appellate Authority. The First Appellate Authority reduced the tax demand along with penalty to ₹31,40,196.00 under the OVAT Act, but confirmed the assessment under the OET Act, hence these appeals.

3. The State filed cross-objections.

4. The learned Counsel appearing on behalf of the Dealer in course of argument pressed only ground Nos. 1 and 2 of the additional grounds of appeal and not pressed other grounds as per memo filed. He raised the preliminary issue of maintainability of initiation of proceedings u/s. 43 of the OVAT Act and u/s. 10(1) of the OET Act in absence of communication of completion of assessment u/s. 39, 40, 42 or 44 of the OVAT Act and without completion of assessment u/s. 9(1) and (2) of the OET Act respectively. He submitted that there is no material on record regarding communication of acceptance of self-assessment return to the Dealer before passing assessment orders u/s. 43 of the OVAT Act and u/s. 10(1) of the OET Act. Accordingly, he urged that the orders of the First Appellate

Authority and the Assessing Authority under the OVAT Act and OET Act are liable to be set aside in the ends of justice. He relied on the decisions of the Hon'ble Court in the case of ***M/s. Keshab Automobiles v. State of Odisha***, reported in **[2023] 111 GSTR 317 (Orissa),** and affirmed by the Hon'ble Apex Court in the case of ***Deputy Commissioner of Sales Tax v. Rathi Steel and Power Ltd.*** (**SLP (Civil) No. 9912 of 2022,** dated 13th July, 2022)**;** and ***M/s. ECMAS Resins Pvt. Ltd. and other v. State of Odisha & others***, reported in **[2023] 112 GSTR 333 (Orissa**).

5. Per contra, learned Addl. Standing Counsel (CT) for the State supported the orders of the Assessing Authority and First Appellate Authority and submitted that after acceptance of self-assessed returns, the reassessment proceedings were initiated basing on the FCR. So, the point of maintainability cannot be raised at this stage on the ground of non-acceptance of self-assessed returns. He contended that the Dealer has not challenged the maintainability of the proceeding at an earliest opportunity, so, he is precluded to raise the same in view of provision of Section 98 of the OVAT Act. He also contended that since there is no time limit for communication of completion of assessment, the Assessing Authority communicated the self-assessment in the notices in Form VAT-307 & E-32. He further submitted that communication/acknowledgment of the order of acceptance of self-assessed return is a matter of fact and the same cannot be objected at belated stage. He relied on the decision of the Hon'ble High Court of Orissa in case of ***The State of Orissa v. Lakhoo Varjang***, **[1961] 12 STC 162 (Orissa)**.

6. On perusal of records, it transpires that the present reassessment proceedings u/s. 43 of the OVAT Act & u/s. 10(1) of the OET Act relate to the period 01.04.2006 to 31.12.2007, which were completed on 14.02.2014.

The Dealer challenged the maintainability of the proceedings u/s. 43 of the OVAT Act and u/s. 10(1) of the OET Act as preliminary issue

keeping in view the position of law settled by the Hon'ble Court in the cases of ***M/s. Keshab Automobiles & M/s. ECMAS Resins Pvt. Ltd.*** cited supra. State raised objection on the ground of the provision of Section 98 of the OVAT Act.

The relevant provision of Section of 98 of the OVAT Act is reproduced herein below for better appreciation :-

> *"**98. Assessment proceedings, etc. not to be invalid on certain grounds –***
> *(1) xx xx xx*
> *(2) The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication."*

In the case of ***National Thermal Power Company Limited v. Commissioner of Income-Tax,*** reported in **1996 (12) TMI 7 – Supreme Court**, the Hon'ble Apex Court have been pleased to observe that :-

> " ...Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.
>
> The refrained question, therefore, is answered in the affirmative, i.e. the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee..."

The above being the position of law, this Tribunal is of the considered view that the question of law raised by the dealer arises from the facts, touches the root of the case, hence the objection raised on behalf of the State merits no consideration.

7. The Hon'ble High Court of Orissa in the case of ***M/s. Keshab Automobiles*** cited supra have been pleased to observe in para-22 as follows:-

> "22. From the above discussion, the picture that emerges is that if the self-assessment under Section 39 of the OVAT Act for tax periods prior to 1st October, 2015 are not 'accepted' either by a formal communication or an acknowledgement by the Department, then such assessment cannot be sought to be re-opened under Section 43(1) of the OVAT Act and further subject to the fulfilment of other requirements of that provision as it stood prior to 1st October, 2015."

In view of the ratio laid down by the Hon'ble Court, the Department is required to communicate a formal communication or acknowledgment regarding the acceptance of the self-assessment u/s. 39 of the OVAT Act. The Hon'ble Apex Court were also pleased to affirm aforesaid view of the Hon'ble Court.

8. In the case of ***M/s. ECMAS Resins Pvt. Ltd.*** cited supra, Hon'ble High Court of Orissa have been pleased to observe that unless the self assessment is accepted by the Department by a formal communication to the dealer, it cannot trigger a notice for reassessment u/s. 10(1) of the OET Act r/w. Rule 15B of the OET Rules. The relevant portion of the order of the Hon'ble Court is reproduced herein below for better appreciation :-

> "43. The sum total of the above discussion is that as far as a return filed by way of self assessment under Section 9(1) read with Section 9(2) of the OET Act is concerned, unless it is 'accepted' by the Department by a formal communication to the dealer, it cannot be said to be an assessment that has been accepted and without such acceptance, it cannot trigger a notice for re-assessment under Section 10(1) of the OET Act read with 15 B of the OET Rules. This answers the question posed to the Court."

9. In view of such backdrop of the matter and settled position of law, the assessment proceedings u/s. 43 of the OVAT Act and u/s. 10(1) of the OET Act are without jurisdiction in absence of any assessment u/s. 39, 40, 42 or 44 of the OVAT Act & u/s. 9(1) r/w Section 9(2) of the OET Act respectively. In this case, the State has not filed any materials to show that the acceptance of the self-assessment has been communicated to the Dealer under both the Acts. Therefore, the orders of the Assessing Authority and the First Appellate Authority under the OVAT Act and OET Act for the

period under dispute are not sustainable in the eyes of law being without jurisdiction and liable to be set aside.

10. In the result, both the second appeals filed under the OVAT Act and OET Act stand allowed and the impugned orders of the fora below are hereby set aside. The cross-objections are disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman