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

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

S.A. No. 366(V) of 2017-18

(From the order of the ld. Addl. CST (Appeal) Odisha, Cuttack, in Appeal Case No. AA-JCST/JR/145/2014-15, disposed of on 20.07.2017)

M/s. Nilachal Carbo Metalicks Pvt. Ltd.,
At/P.O.- Baramana, Purunabaulamala,
Jajpur, Dist.- Jajpur. ... Appellant

- V e r s u s -

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

S.A. No. 217(V) of 2017-18

(From the order of the ld. Addl. CST (Appeal) Odisha, Cuttack, in Appeal Case No. AA-JCST/JR/145/2014-15, disposed of on 20.07.2017)

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

- V e r s u s -

M/s. Nilachal Carbo Metalicks Pvt. Ltd.,
At/P.O.- Baramana, Purunabaulamala,
Jajpur, Dist.- Jajpur. ... Respondent

For the assessment period: 01.04.2011 to 31.03.2013

For the Dealer ... Mr. B.B. Panda, Advocate
For the Revenue ... Mr. M.L. Agarwal, S.C.

Date of hearing: 21.08.2019 ******** Date of order: 27.08.2019

O R D E R

The appeal and cross appeal above arised out of self-same order of first appellate authority, whereby and wherein, demand raised against the dealer in an assessment u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) is modified but not to the satisfaction of either of the parties. When the assessee-dealer has prayed for recalculation of the liability with the allegation that, the first appellate authority has omitted to consider the dealer's grounds in appeal regarding the assessment period 2012-13. Conversely, Revenue has claimed that, the calculation of reversal of ITC on application of Sec.20(3)(d) of the OVAT Act in the case in hand by the first appellate authority is erroneous, hence to that effect the order of the assessing authority should be restored by setting aside the order of first appellate authority.

2. The instant dealer M/s. Nilachal Carbo Metalicks Pvt. Ltd. is a trader of coal and LAM coke. It manufactures LAM coke and sells it both inside and outside the State. For the purpose of manufacturing, if effects purchases from inside and outside State dealers as well as effect import of the goods like, coking coal. The import purchases goods stores at the Paradeep stockyards and later brought to the manufacturing side on piecemeal basis as per the requirement of the manufacturing unit. As per the Audit Visit Report (in short, the AVR), the dealer has disclosed shortage of goods of 3720.600 MT of coking coal. The discrepancy was also detected to the tune of 4276.646 MT of LAM coke and 32.760 MT of dust during the year 2011-12. In the assessment, the assessing authority determined the suppression by confrontation of the report of the audit team to the dealer and thereafter also determined the reversal of ITC proportionate to the CST sale effected on application of provision u/s.20(3)(d) of the OVAT Act. The ITC reversal for the year 2011-12 was computed at Rs.1518,851.00 relating to interstate sale of coking

coal i.e. proportionate to purchase of goods made inside the State and sold in course of interstate trade. Further, there was reversal of ITC relating to interstate sale of manufactured coke dust and traded LAM coke was calculated at Rs.16,811.00 and Rs.54,363.00 respectively. Similarly, for the tax period 2012-13 there was reversal of ITC relating to coking coal for Rs.21,263.00, for sale of LAM coke at Rs.1,87,353.00 totaling to Rs.2,08,616.00. On the basis of suppression as established and reversal of ITC as determined in the ultimate analysis the assessing authority found the dealer liable for balance tax of Rs.18,66,278.31. Besides tax due, he imposed penalty i.e. twice of the tax due calculated at Rs.37,32,556.62. Thus, the total demand against the dealer was raised at Rs.55,98,835.00.

3. Being aggrieved, the dealer carried the matter before the first appellate authority. Learned Addl. Commissioner of Sales Tax (Appeal) Odisha, Cuttack as first appellate authority recomputed the liability of the dealer and in the result he allowed the dealer's appeal in part and thereby reduced the liability towards tax at Rs.3,47,427.31 and penalty at Rs.6,94,854.62, totaling to Rs.10,42,282.00.

4. When the demand towards demand and penalty reduced, Revenue being aggrieved preferred S.A. No.217(V) of 2017-18 questioning the calculation of ITC as wrong, whereas the dealer has preferred S.A. No.366(V) of 2017-18 with the allegation that, the first appellate authority has though reconsidered the tax liability for the tax period 2011-12 but failed to take consideration of the tax liability for the tax period 2012-13.

5. I have carefully gone through the order of assessing authority and thereafter, the order of first appellate authority. The impugned order as it revealed, the first appellate authority has though taken into consideration of the alleged suppression and wrong claim of ITC regarding the tax period 2011-12, but has not considered the alleged suppression in comparison to the plea of the dealer

regarding the tax period 2012-13. This mistake is apparent on the face of record. So, without detailed discussion into the details of the allegation and the suppression established, it only can be said that, on this score only the matter should be remitted back to the assessing authority for assessment afresh. Regarding calculation of ITC on application of provision u/s.20(3)(d) of the OVAT Act as disputed by the Revenue, the learned Counsel for the dealer placed reliance on a decision rendered in S.A. No.18(V)/2017-18 dtd.27.08.2018. The order in S.A. No.18(V)/2017-18 dtd.27.08.2018 is authored by me, I have no difference of opinion so far as the application of the provision u/s.20(3) and u/s.21 of the OVAT Act read with Rule7(3)(c) of the CST(O) Rules as discussed and applied in the said case.

6. Reverting to the case in hand, when the questions relates to reconsideration of the suppressions relating to period 2012-13 and calculation of ITC afresh, it only can be said that, the first appellate authority in the remand assessment will do well to follow the principles laid down by the Bench earlier in S.A. No.18(V)/2017-18 and will further investigate into the suppression as against the allegations for the entire assessment period.

Thus, it is ordered.

The appeal and cross appeal both are allowed on contest against each other. The impugned order is set aside. The matter is remitted back to the first appellate authority for assessment afresh.

Dictated & corrected by me,

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

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