

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

S.A. No. 295(V) of 2017-18

(Arising out of the order of the 1d. JCST (Appeal), Cuttack II Range,
Cuttack, in First Appeal Case No. AA/49/OVAT/CUIJ/
2016-17/10613171300037, disposed of on dtd.24.08.2017)

P r e s e n t:

**Shri S. Mohanty,
1st Judicial Member**

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

... Appellant

- V e r s u s -

M/s. B.B. Steel,
Bijaychandrapur, Atharbanki,
Paradeep, Dist.- Jagatsinghpur.

... Respondent

For the assessment period: 03.08.2005 to 31.12.2009

For the Appellant ... Mr. M.L. Agarwal, S.C.
For the Respondent ... Mr. H.K. Sahoo, Advocate

Date of hearing: 17.07.2019 ****

Date of order: 17.07.2019

O R D E R

This second appeal is at the instance of Revenue against the reversal order of first appellate authority in an assessment u/s.42 of the Odisha Sales Tax Tribunal (hereinafter referred to as, the OVAT Act) relating to the respondent-dealer for the assessment period 03.08.2005 to 31.12.2009.

2. The dealer M/s. B.B. Steel has subjected to audit assessment u/s.42 of the OVAT Act comprising tax period 03.08.2005 to 31.12.2009 (disputed). The dealer was engaged in dealing with iron & steel, iron bar & rod, iron angle, section, channel, steel sheet and ply wood on wholesale and retail basis. The allegations in the Audit Visit Report (in short, the AVR) against the dealer was stock discrepancy of Rs.6,77,270.00. The assessing authority in consideration of the

opening stock, closing stock, purchase account, sale account and thereafter, taking into consideration the gross profit margin @ 6% determined the GTO and TTO of the dealer. It took the opening balance of the dealer on 03.08.2005 as zero and total purchases in the tax period under assessment was determined at Rs.10,62,82,820.64 consisting goods taxable @ 4% category and @ 12.5% category. The TTO was determined accordingly by allowing the admissible ITC. The sale suppression was determined. Admitted tax paid by the dealer in shape of ITC was adjusted and balance tax due from the dealer was calculated at Rs.87,933.00 upon which penalty of Rs.1,75,866.00 was levied, thereby the total demand was raised to Rs.2,63,799.00.

3. As against that, the dealer knocked the door of the first appellate authority who in turn recalculated the stock discrepancy, purchase suppression leading to sale suppression and then, balance tax liability from the dealer at Rs.58,439.44 and penalty at Rs.1,16,878.00, thereby the total demand from the dealer was assessed at Rs.1,75,317.00.

4. When the matter stood thus, the Revenue challenged the reduction in tax liability in the order of first appellate authority by way of this appeal. The contention of the Revenue is, the first appellate authority has wrongly taken into consideration of the tax period from 03.08.2005 to 31.12.2009 though the tax period under assessment should be considered as 01.04.2005 to 31.08.2009. It is further contended that, the matter should have remanded the matter back to the assessing authority with a direction to reassess the dealer for the period from 01.04.2005 to 31.08.2009 as there was notice of assessment for the said period issued in favour of the dealer.

5. The appeal is heard without Cross Objection but in the hearing, the Counsel for the dealer objected the claim of the appellant.

6. The confusing grounds in appeal advanced by the Revenue as it revealed that, there was mistake by the assessing authority and first appellate authority as well, in taking consideration of the tax

period. Both the authorities below have taken the tax period from 03.08.2005 to 31.12.2009. The AVR available in the LCR as it revealed, the audit team has taken consideration of the tax period from 01.04.2005 to 31.12.2009. The authority below has though taken into consideration of the stock suppression and discrepancies suggested by the audit team for the entire period above, but in the assessment order the period under assessment was written as 03.08.2005 to 31.12.2009. Now, the question is whether in such a belated stage can there be assessment for the period left out. The period left out is necessarily barred by limitation as per Sec.42(6) of the OVAT Act. On the other hand, if the notice is sent for entire period and assessment is taken up for lesser period, then it is nothing but the fault of the taxing authority.

7. With the backdrop of the case as above, when the order of assessment is compared and first appellate authority, it is found that, there are some contradictions between the two with regard to the GTO and TTO. Though it is not raised as a ground in appeal but in the argument of appeal, learned Standing Counsel pointed out the contradictions and argued for remand of the case. In the facts and circumstances above, when there are so many clerical mistake, calculation mistake, arithmetical mistake, it is felt necessary to remand the matter back to the first appellate authority for disposal afresh but in all eventuality, the assessment period cannot go beyond the period from 03.08.2005 to 31.12.2009.

In the result, it is ordered.

8. The appeal is allowed in part. The impugned order is set aside. The matter is remanded back to the first appellate authority for assessment afresh.

Dictated & corrected by me,

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

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