BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No. 141(V) OF 2014-15

(Arising out of order of the learned DCST(Appeal), Sambalpur Range, Sambalpur in First Appeal Case No. AA- 50/BGH/VAT/2013-14 disposed of on dated 26.04.2014)

Present: Shri R.K. Pattanaik, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

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

-Versus-

M/s. Shree Krishna Solvent Extraction Pvt. Ltd.,
Nagenpali Chowk, Bargarh ... Respondent

For the Appellant : Sri S.K. Pradhan, Additional Standing Counsel (CT)
For the Respondent : Sri B.B. Panda, Advocate

Date of hearing: 26.11.2020 ***** Date of order: 28.01.2021

O R D E R

State has filed the appeal in terms of Section 78(1) of the Odisha Value Added Tax Act, 2004 (in short, 'the Act') challenging the impugned order dated 26.04.2014 promulgated in Appeal Case No.AA-50/BGH/VAT/2013-14 by the learned Deputy Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in short, 'FAA'), who allowed the claim in part vis-a-vis the dealer assessee as to its tax liability for the relevant period from 01.12.2008 to 31.03.2012

as against the order of assessment dated 12.09.2013 passed under Section 42 of the Act by the learned Sales Tax Officer, Bargarh Circle, Bargarh (in short, 'AA') on the ground that the additional tax paid and adjusted cannot be sustained for being deposited after the audit assessment proceeding was initiated and therefore, it is liable to be set aside.

2. In fact, the respondent dealer assessee was subjected to assessment under Section 42 of the Act for the impugned period being a dealer manufacturer of rice bran oil and other products. The AA considering the report submitted by the Audit Unit arrived at a decision that the dealer assessee effects intra-State and sales in course of inter-State trade of finished goods and by-products and during the audit period, it sold taxable goods and goods exempted from tax but has not reversed the input tax availed on account of sale of exempted goods from tax as per Section 20(9) of the Act and since, there was no reply received or any evidence submitted, additional demand to the tune of ₹11,63,830.00 was raised and penalty was levied with a total amount of ₹34,91,490.00. Against such demand, the respondent dealer assessee approached the FAA in appeal and contended that an amount of ₹11,61,737.00 which was deposited was not credited during the assessment. The FAA accepted the said contention and deducted the said amount and directed the dealer assessee to pay the balance amount of ₹2,093.00 and also penalty as per Section 42(5) of the Act and reduced the demand to ₹6,279.00 with a direction to refund the excess payment, if any, paid as admissible under law. In essence, the State being

aggrieved of the said acceptance of the additional payments preferred the present appeal on the ground that it was not sustainable in law since paid and deposited and later on adjusted despite the fact that it was subsequent to the date after audit assessment proceeding was commenced.

3. Now, the question is, whether, an amount of ₹10,00,000.00 paid on 29.03.2012 and adjusted to be justified or not? According to the learned Counsel for the respondent dealer assessee, the observation in the impugned order dated 26.04.2014 speaks volumes of the payments made not after the date of audit assessment proceeding. It is further contended that the Audit Visit Report was submitted on 31.12.2012 and then, notice in Form VAT-306 dated 05.04.2013 was issued for audit assessment which ultimately led to passing of the order of assessment dated 12.09.2013. From the impugned order dated 24.04.2014, it is made to understand that the alleged deposits of ₹10,00,000.00 were made on 28.03.2012 and 29.03.2012 and a total amount of ₹11,61,737.00 was adjusted with respect to the dealer assessee. It is alleged by the State that such an amount of ₹10,00,000.00 was paid and deposited latter on and allegedly after audit assessment proceeding and therefore, it was not right in accepting the same. The assessment proceeding record is not available in order to find out, whether, said deposits were voluntarily disclosed in compliance of Section 33(5) of the Act, according to which, a dealer may deposit higher amount of tax than the amount of tax due and admitted in the return in the manner prescribed under Section 50 thereof but shall not be accepted, where the disclosure was made or intended to

be made either after receipt of the tax notice, or as a result of such audit. Prima facie, it is established that the alleged deposits have not been made after the audit assessment proceeding was initiated. But, then, any such disclosure and additional tax deposited may or may not be accepted and adjusted as against the tax assessed, if it is not in conformity with Section 33(5) proviso of the Act. In fact, there is no material before the Tribunal to ascertain, whether, such deposits were made in time or deposited only after receipt of notice for tax audit or as a result of such audit. Time and again, the Tribunal has reiterated that additional deposit may be accepted or adjusted, if it is made in accordance with law but may not be permitted for being adjusted against the tax assessed, if there is non-compliance of Section 33(5) of the Act. Under the above circumstances and for non-availability of the assessment record, the Tribunal deems it just and appropriate to send the matter back to the AA to find out if at all the alleged deposits had really been made according to law, which in its humble opinion shall serve the purpose and meet the ends of justice.

4. Hence, it is ordered.

5. In the result, the appeal stands allowed. As a logical sequitur, the impugned order dated 26.04.2014 passed in Appeal Case No. No.AA-50/BGH/VAT/2013-14 vis-a-vis the dealer assessee for the relevant period is hereby set aside to the extent indicated above. Consequently, the matter is remitted back to the AA for ascertaining as to if the deposits in question by the dealer assessee had been made in time and according to law for its adjustment

against the amount of tax assessed, an exercise, which is directed to be accomplished, preferably, within a period of three months from the date of receipt of the above order by providing an opportunity of being heard to the dealer assessee.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(Sri A.K. Dalbehera)
1st Judicial Member

I agree Sd/-
(P.C. Pathy)
Accounts Member-I