

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 392 (VAT) of 2016-17

(Arising out of order of the learned JCST (Appeal), Ganjam Range, Berhampur in Appeal No. AAV- 63/2010-11, disposed of on dated 12.01.2017)

Present: **Shri A.K. Das, Chairman**

M/s. Ram Ratan,
At- Hatapada, PO- Phulbani,
Dist. Kandhamal ... Appellant

-Versus-

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

For the Appellant : Sri R.P. Sahu, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing: 25.07.2022 *** Date of order: 28.07.2022

ORDER

Instant appeal is directed at the behest of the dealer-assessee against the order dated 12.01.2017 passed by the learned Joint Commissioner of Sales Tax (Appeal), Ganjam Range, Berhampur (hereinafter called as 'first appellate authority') in Appeal No. AAV- 63/2010-11 thereby confirming the order of assessment passed by the Asst. Commissioner of Sales Tax, Phulbani Circle, Phulbani (in short, 'assessing authority') raising demand of

₹76,305.00 for the tax period 01.04.2005 to 30.06.2007 in the assessment framed u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act').

2. The factual matrix of the case leading to the filing of the present second appeal are that the dealer-assessee carries on business in biscuits, confectionery, baby food, coconut oil etc. on wholesale basis. On receipt of the Audit Visit Report (AVR), proceeding u/s. 42 of the OVAT Act was initiated against it and notice was issued in Form VAT-306. It was alleged in the AVR that the dealer had shown less output VAT of ₹793.00 and the coconut oil amounting to ₹3,84,346.00 was sold calculating VAT @ 4% instead of 12.5%. The Audit Team suggested realization of differential tax of ₹32,669.00.

2(a). The Learned assessing authority on verification of books of account found that the dealer-assessee had sold coconut oil worth ₹1,23,968.23 and had calculated VAT @ 4% instead of 12.5%. So, it added additional profit margin @ 3% and arrived at the sale value of coconut oil at ₹1,27,687.27 and demanded differential tax of ₹10,853.41. Further, the dealer-assessee also received credit notes worth ₹79,718.88 and ₹79,096.52 for the years

2005-06 and 2006-07 respectively, which were not accounted for in the books of account. So, he suggested for realizing tax on the said amount. Accordingly, the assessing authority determined the GTO and TTO at ₹1,78,70,465.84 and ₹1,57,22,473.52 respectively and raised tax demand of ₹76,305.00 including penalty of ₹50,870.16.

2(b). The dealer-assessee challenging the aforesaid demand raised by the assessing authority filed appeal before the first appellate authority, which was disposed of exparte confirming the order of assessment. The dealer-assessee being further aggrieved with the order of the first appellate authority, preferred second appeal before this forum, which was allowed and the matter was remitted back to the first appellate authority for fresh adjudication in accordance with law giving the dealer-assessee an opportunity of hearing. Pursuant to such direction of this forum, the first appellate authority heard the matter afresh giving an opportunity of hearing to the dealer-assessee and dismissed the appeal thereby confirming the order of assessment.

2(c). The dealer-assessee again being dissatisfied with the order of the first appellate authority, has preferred

this second appeal mainly challenging the impugned order on two grounds, i.e levy of tax @ 12.5% against sale of coconut oil is contrary to law and realizing tax on the credit notes is unjust and illegal. The State has filed cross-objection supporting the impugned orders of the forums below.

3. It was vehemently urged by the learned Counsel for the dealer-assessee that the dealer has collected VAT @ 4% in view of entry No. 27 of Part-II of the Schedule-B under the OVAT Act. The finding of the Audit Team basing on which the assessment order was passed for realization of the VAT @ 12.5% on sale value of coconut oil is contrary to law. The forums below neither discussed the relevant provisions governing the field nor considered the materials on record while passing the impugned orders. Both the fora below committed serious illegality in accepting the AVR for realization of tax @ 12.5% on sale value of coconut oil and credit notes worth ₹79,718.88 and ₹79,096.52 for the years 2005-06 and 2006-07 respectively. Therefore, the orders of the forums below are unsustainable in the eyes of law and are liable to be set aside.

4. Per contra, learned Standing Counsel (CT) for the State supporting the impugned orders of the forums below vehemently urged that the tax has been levied on sale of coconut oil and on credit notes according to law and there is no illegality or impropriety in the same. He further urged that in Odisha 'coconut oil' is never used as 'edible oil' to attract the tax rate @ 4%. Entry No. 27 only relates to edible oil, which asks for collection of tax @ 4%, which has no application to the coconut oil sold by the dealer. The orders of the forums below are legal, reasonable and the same do not warrant interference of this Tribunal. He submitted to dismiss the appeal and confirm the impugned orders.

5. In view of the aforesaid rival contention of the parties, the main issue that emerges for consideration before me is whether coconut oil sold by the dealer-assessee is exigible to tax @ 4% or @ 12.5% as held by the forums below.

5(a). There is no dispute in the present case that the dealer-assessee deals in biscuits, confectionery, baby food, coconut oil etc. on wholesale basis and it collected tax @ 4% on the sale value of the coconut oil. The Audit Team on verification of the books of account opined that the dealer

having collected less VAT @ 4% instead of 12.5%, it is liable to pay differential tax amount. Both the forums below accepted the finding of the Audit Team and levied tax accordingly. The dealer-assessee challenging the impugned orders of the forums below claimed that in view of entry No. 27 of Part-II of the Schedule-B, it is liable to pay tax @ 4% as the coconut oil comes under the ambit of edible oil. Entry No. 47 of List of goods subject to VAT on turnover of sales or purchases as per Schedule-B, Part-II which was introduced on 01.07.2005, provides before amendment of the said entry w.e.f. 08.12.2011, "Edible oils other than coconut oil" is taxable @ 4%. Prior to 01.07.2005, 'edible oil' was coming under entry No. 27 of Part-II of Schedule-B. In Odisha 'coconut oil' is not used as edible oil. Therefore, in the absence of any specific entry with regard to 'coconut oil' in Part-II of the Schedule-B prior to amendment of the said entry w.e.f 08.12.2011, 'coconut oil' was taxable @ 12.5% as per Part-III of the Schedule as unspecified goods. Therefore, the forums below rightly levied tax @ 12.5% instead of 4% as claimed by the dealer-assessee. Tax having been levied @ 12.5% by the forums below on sale value of 'coconut oil' as

unspecified goods under Part-III of the Schedule-B to the OVAT Act, there is no illegality or impropriety in the same.

5(b). So far as credit notes are concerned, the forums below have also rightly levied tax on it. The dealer-assessee before the assessing authority claimed that Company makes adjustment of credit notes amount by supply of goods on subsequent stage and the credit notes are only meant for dealer's reference, later the selling dealers issue fresh sale memo in every occasion, which is adjusted in the books of account. But, the dealer-assessee before the first appellate authority claimed that credit notes were received by way of cash/quantity discount for which there was no justification to bring them to tax net. The dealer-assessee having taken two different pleas at two different forums and having failed to substantiate the pleas taken before the forums below, levy of tax on credit notes amounting to ₹79,718.88 and ₹79,096.52 for the years 2005-06 and 2006-07 respectively are justified and according to law. It was argued by the learned Counsel for the dealer-assessee before this forum that in view of provisions contained u/s. 23(1) of the OVAT Act, there should be reversal of tax by the selling dealer in the credit

notes given by him and if the credit notes are not adjusted by the purchasing dealer, the same will put to tax. This contention raised by the learned Counsel for the dealer-assessee is not acceptable to me as the same is not in accordance with law. The dealer-assessee has taken two different pleas explaining the reason for not accounting for the credit notes in the books of account. Section 23 of the OVAT Act provides different circumstances when credit notes shall be issued. If the dealer-assessee would have accounted for the same in the books of account, the matter would have been different. Neither the dealer-assessee accounted for the credit notes in the books of account, nor during the assessment proceeding properly explained the reason for not accounting for the same and in the appellate forum below, it took contradictory plea than the plea taken before the assessing authority. Therefore, the forums below did not commit any illegality in rejecting the claim of the dealer-assessee for not levying tax on credit notes amount. Levy of tax by the forums below on the credit notes amount is just, proper and legal and the same does not warrant any interference of this Tribunal.

6. In view of the discussions made above, the appeal filed by the dealer-assessee being devoid of any merit stands dismissed and the impugned orders of the forums below are hereby confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman