

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

S.A. No. 116(C) of 2013-14

(Arising out of order of the learned Additional CST (Appeal), Central Zone,
Odisha, Cuttack in First Appeal Case No. AA- 65(C)/ACST/J/08-09
disposed of on dated 11.11.2013)

Present: Shri R.K. Pattanaik, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member, and
Shri R.K. Pattanaik, Accounts Member-III

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

-Versus-

M/s. Jajang Iron and Manganese Mines,
Barbil, Keonjhar ... Respondent

For the Appellant : Sri D.Behura, Standing Counsel (CT)
For the Respondent : Sri B.N. Mohanty, Advocate

Date of hearing: 17.11.2020

Date of order: 20.01.2021

ORDER

Instant appeal under Rule 22 of the Central Sales Tax (Orissa) Rules,1957 (in short, 'the Rules') read with Section 78(1) of the Odisha Value Added Tax Act (in short, 'the Act') is at the behest of the State directed against the impugned order dated 11.11.2013 promulgated in Appeal Case No.AA.65(C)/ACST/J/2008-09 by the learned Additional Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack (in short, 'FAA'), who allowed the appeal and annulled the order of assessment passed under Rules 12(3) of the Rules by the learned Assistant Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short, 'AA') with a direction to refund of excess tax, if any, paid by the

dealer assessee on the grounds inter alia that it is not tenable in law and thus, liable to be set aside.

2. The dealer assessee is a mine owner and engaged in extraction of lumps from mines and after converting it into sized ore and fines through crusher selling the same inside and outside the State of Odisha as well as in course of export. The dealer assessee filed returns for 01.06.2006 to 31.03.2007 and said to have paid the tax for the period. As is revealed from the record, the Enforcement Wing, Balasore submitted a Tax Evasion Report (in short, 'TER'), where after, the AA proceeded against the dealer assessee as per Rule 12(3) of the Rules and then, raised additional demand to the tune of ₹ 1858076.00. Being aggrieved of, the dealer assessee filed appeal before the FAA assailing the authority of the Enforcement Wing, Balasore for having not been delegated with the power by the Commissioner of Sales Tax to undertake the tax audit as per Rule 10 of the Rules read with Section 41 of the Act. That apart, the dealer assessee questioned the sustainability of the assessment, since it was not completed within six months but accomplished on 04.06.2008 without obtaining permission of the Commissioner of Sales Tax. The FAA considered the contention of the dealer assessee and without entering into the merits of the case reached at a decision that indeed there has been no delegation of power in favour of the Enforcement Wing, Balasore and officers subordinate to it by the Commissioner of Sales Tax for undertaking tax audit and as the Audit Visit Report (in short, 'AVR') was submitted by the said Wing, it was without the authority and the action of the AA which is

based on the alleged AVR is in excess of jurisdiction. The contention of the dealer assessee regarding the assessment not to have been completed in time but concluded after a period of six months was accepted and thus, it was held to be untenable in law. With the above reasons, the FAA allowed the appeal and annulled the assessment as not sustainable and directed refund of excess tax, if any, paid by the dealer assessee.

3. According to the State, the impugned order dated 11.11.2013 cannot at all be sustained for being erroneous, illegal and bad in law. It is contended that the Enforcement Wing, Balasore had the authority to inspect the place of business of the dealer assessee in view of Section 73(4) of the Act, inasmuch as, any officer appointed under Section 3 thereof, may without prior notice undertake such an exercise and in so far as the present case is concerned, an officer of the Enforcement Wing, Balasore did inspect the alleged premises and ultimately, furnished TER but then, the FAA, on the impression that the action since based on AVR and hence was not authorized, annulled the order of assessment dated 04.06.2008. It is also contended that TER of the Enforcement Wing, Balasore, was wrongly interpreted as AVR by the AA as well as FAA, who as an extended forum of assessment ought to have taken into account Section 98 of the Act which envisages that the assessment proceedings cannot be invalidated on such grounds. Finally, the State contended that the order of assessment dated 04.06.2008 may be set aside for fresh assessment by considering TER submitted by the Enforcement Wing, Balasore in terms of Rule 12(4) of the Rules read with

Section 43 of the Act. However, the dealer assessee justified the decision of the FAA. The said contention of the State is needed to be examined by the Tribunal.

4. From the order of assessment dated 04.06.2008, it is made to understand that the members of the Enforcement Wing, Balasore visited the business premises of the dealer assessee on 03.02.2007 and inspected it and examined the documents, such as, registers, chalans etc. and also the books of accounts and after verification of the same noticed excess quantity of goods despatched and accordingly, submitted a report alleging sales suppression. The said report was confronted to the dealer assessee with the details of the excess stock in juxtaposition to the quantity despatched. The dealer assessee said to have offered an explanation that the excess stock of goods were kept at the Railway siding and to that effect produced transport and mining registers showing despatch of goods and return etc. The dealer assessee also submitted the siding stock registers for the month of October, 2006. The AA on examination of the records maintained by the dealer assessee declined to accept the explanation as also the books of accounts and was convinced about sales suppression of 2481.730 MT of iron ore and determined its value at ₹6204325.00 @ ₹2500/- per MT. With other findings, the AA determined the gross turnover and finally, raised additional demand of ₹1858076.00 against the dealer assessee. But, as earlier discussed, the FAA did not consider the merits of the claims vis-a-vis the dealer assessee and simply held that the action under Rule 12(3) of the Rules and the assessment proceeding that followed suit was having no sanction of law since the

Enforcement Wing, Balasore did not have the authority to inspect and submit the AVR and that apart, the assessment was not concluded within six months and was completed on 04.06.2008 without obtaining approval of the Commissioner of Sales Tax.

5. An action under Section 42 was initiated by the AA by issuing notice to the dealer assessee under Rule 12(3) of the Rules by treating TER as the AVR. Under Section 41 of the Act, on a random basis, tax audit is conducted by identifying individuals or class of dealers and it is being carried out and concluded with the submission of AVR as per sub-Section (4) thereof. A scheme of procedure is prescribed in Section 42 of the Act with respect to audit assessment. In fact, on receipt of AVR, the assessing authority proceeds against a dealer by issuing a notice and in the present case, the AA apparently summoned the dealer assessee in terms of Rule 12(3) of the Rules for an audit assessment. However, from the record, it is clearly evident that a TER was submitted by the Enforcement Wing, Balasore and thereupon, the AA, on being prima facie satisfied about sales suppression, issued a notice under Rule 12(3) of the Rules and for that, treated the said report as AVR, which in the considered view of the Tribunal, was an error by itself as an action in terms of Rule 12(4) of the Rules read with Section 43 of the Act was required to be in place. In other words, the AA treated TER as AVR and initiated the assessment under Rule 12(3) of the Rules. In fact, the AA was to consider TER and then to proceed against the dealer assessee as per and in accordance with Rule 12(4) of the Rules read with Section 43 of the Act. For that

matter, a TER cannot be treated as AVR. The FAA repeated the wrong and treated it as AVR and then, initiated action under Rule 12(3) of the Rules read with Section 42 of the Act. The FAA, since treated TER as AVR, was of the view that the audit inspection and consequent assessment in terms of Section 42 of the Act was unauthorized and beyond jurisdiction of the AA. In the humble opinion of the Tribunal, the authorities below fell into error considering the report of the Enforcement Wing, Balasore and treating the same as AVR and wrongly proceeded for assessment under Rule 12(3) of the Rules when the action ought to have been under Rule 12(4) of the Rules read with Section 43 of the Act. Resultantly, it is to be held that the Enforcement Wing, Balasore and its inspection of the business premises of the dealer assessee had the sanction of law. As a consequent, it is further to be concluded that the FAA as well fell into an error like AA in reaching at a decision that the assessment was to be finished within the stipulated time assuming it to be an action in terms of Section 41 of the Act. In such view of the matter, the Tribunal is also of the view that the dealer assessee is required to be reassessed on the basis of TER as per Rule 12(4) of the Rules read with Section 43 of the Act instead which would rather serve the purpose and meet the ends of justice.

6. Hence, it is ordered.

7. In the result, the appeal stands allowed. As a necessary corollary, the, the impugned order dated 11.11.2013 in Appeal No. AA-65(C)/ACST/J/08-09 for the period of assessment 01.06.2006 to 31.03.2007 vis-a-vis the dealer

assessee is hereby set aside for the reasons discussed herein above. As a consequence, the matter is remitted back and the AA is directed to determine the tax liability with respect to the dealer assessee as per the observations of the Tribunal, preferably, within a period of three months from the date of receipt of a copy of the above order.

Dictated & Corrected by me

(R.K. Pattanaik)
Chairman

(R.K. Pattanaik)
Chairman

I agree,

(A.K.Dalbehera)
1st Judicial Member

I agree,

(R.K. Pattanaik)
Accounts Member-III