BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 101 (VAT) of 2019
&
S.A. No. 100 (VAT) of 2019

(Arising out of orders of the learned Addl. Commissioner of Sales Tax (Appeal), Bhubaneswar in First Appeal Case Nos. AA(VAT)-53/BH-I/2018-19 & AA(VAT)-54/BH-I/2018-19, disposed of on 28.02.2019 & 18.03.2019 respectively)

Present: **Shri G. Sharma, Chairman**

M/s. Shree Bharat Motors Ltd.,
Pahala, Balianta,
Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Mr. B.P. Mohanty, Advocate
For the Respondent : Mr. N.K. Rout, Addl. S.C. (CT)

Date of hearing: 23.09.2026 *** Date of order : 15.10.2026

O R D E R

Challenging the legality and propriety of orders dated 28.02.2019 & 18.03.2019 passed by the Addl. Commissioner of Sales Tax (Appeal), Bhubaneswar (hereinafter referred to as 'First Appellate Authority') in First Appeal Case Nos. AA(VAT)-53/BH-I/2018-19 & AA(VAT)-54/BH-I/2018-19 respectively, these appeals have been filed by M/s. Shree Bharat Motors Ltd. (hereinafter referred to as 'Dealer').

Since the appeals involve similar question of facts and law, this common order shall govern both these appeals.

2. The factual matrix relevant for disposal of these appeals run thus-

The Dealer deals in wholesale-cum-retail trading of four wheelers, motor cycle and accessories. Consequent upon Notification No.3810/CT dtd.03.03.2018 of the Deputy Commissioner of Sales Tax, CT & GST Circle, Bhubaneswar I Circle, Bhubaneswar (hereinafter referred to as 'Assessing Authority') initiated the assessment proceedings u/s. 42A of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') for the tax periods 01.10.2015 to 31.03.2016 and 01.04.2016 to 30.06.2017 by issuing notice in Form VAT-306A. On verification of the Dealer's ledger, the Assessing Authority found that against the availed ITC of ₹21,31,765.00 there was mismatch of ITC of ₹16,122.00 for the tax period 01.10.2015 to 31.03.2016 and for the tax period 01.04.2016 to 30.06.2017 the Dealer availed ITC of ₹69,71,296.00 but there was mismatch of ITC of ₹95,134.00 on account of purchases effected from registered dealers, who had not filed their returns properly. Consequently, the Assessing Authority completed the assessments and raised demand of ₹40,050.00 including penalty and interest for the tax period 01.10.2015 to 31.03.2016 and ₹2,32,178.00 for the period 01.04.2016 to 30.06.2017. Being aggrieved with the orders of assessment, the Dealer preferred first appeals before the learned First Appellate Authority. The First Appellate Authority by deleting the interest reduced the tax demand to ₹20,188.00 including penalty for the tax period 01.10.2015 to 31.03.2016 and ₹1,18,827.00 including interest and penalty for the period 01.04.2016 to 30.06.2017, hence these appeals.

3. The State filed cross-objections.

4. Learned Counsel appearing on behalf of the Dealer submitted that disallowance of ITC as well as levy of penalty thereon by the

authorities below is erroneous on the ground that the selling dealer had collected tax from the Dealer as per tax invoice issued thereof, so, no liability can be fastened on the purchasing dealer for any default committed by the registered selling dealer in not depositing the tax so collected into the Government Treasury. Accordingly, he argued that the demand raised on the Dealer is against the principle of law and liable to be set aside in the ends of justice.

5. Per contra, learned Addl. Standing Counsel (CT) appearing for the State in terms of cross-objections supported the order of the First Appellate Authority to be just and proper. He submitted that the authorities below have rightly disallowed the mismatch ITC keeping in mind the provision of Section 20(3a) of the OVAT Act r/w Rule 11A of the OVAT Rules. He argued that when the statute requires doing certain thing in certain way, the thing must be done in that way and following other course is not permissible. Supporting the submission, learned Addl. Standing Counsel (CT) placed reliance on the decision of Hon'ble Apex Court in the case of ***Commissioner of Customs (Import), Mumbai v. M/s. Dilip Kumar and Co.*** **(2018) 9 SCC 1** and order of this Tribunal passed in the case of **S.A. No. 175 (VAT) of 2019, dt.14.11.2024** ***(M/s. Bajaj Electrical Ltd. v. State of Odisha)*** wherein the ITC claimed against VAT paid on purchases has been reversed owing to the selling dealer having not deposited the collected tax into Govt. Treasury, accordingly pleaded for dismissal of appeals having no merit.

6. Gone through the orders of the forums below vis-à-vis the grounds of appeal and the arguments advanced by both the parties. It is imperative to note here that OVAT Act and Rules have been amended inserting sub-section (3a) in Section 20 of the OVAT Act and Rule 11A in the OVAT Rules which have been brought into force w.e.f.

01.10.2015. In the present case, the assessments relate to the tax periods 01.10.2015 to 31.03.2016 and 01.04.2016 to 30.06.2017. It is, therefore, apposite to reproduce hereunder the above provisions for better appreciation of the case:-

Section 20(3a) of the OVAT Act :

> "Notwithstanding anything contained in this Act, no amount of input tax credit shall be allowed to a registered dealer on any purchase of goods in excess of the amount of such tax actually paid under this Act"

Rule 11A of the OVAT Rules :

> "(1) Subject to sub-section (3a) of Section 20, no input tax credit shall be allowed on purchase of goods against tax invoices in excess of the amount of tax actually paid into the Govt. Treasury"

On a bare reading of the above provisions of law, it is abundantly clear that a purchasing dealer purchasing goods inside the State of Odisha from a registered selling dealer possessing valid TIN on payment of input tax shall not be eligible to ITC unless the input tax paid by the purchasing dealer had been deposited by the selling dealer into the Govt. Treasury. Under sub-Rule (2) of Rule 11A of the OVAT Rules, an opportunity is given to the selling as well as the purchasing dealer to revise their returns within three months from the date of filing returns in case of any mismatch occurs in ITC. There having an explicit legislation without any iota of ambiguity, no ITC shall be allowed on purchases of goods against tax invoices in excess of the amount of tax actually paid into the Govt. Treasury.

7. In the present case, it appears that on verification of the Dealer's ledger, the Assessing Authority found that there was mismatch of ITC of ₹16,122.00 for the tax period 01.10.2015 to 31.03.2016 and ₹95,134.00 for the tax period 01.04.2016 to 30.06.2017 on account of purchases effected from registered dealers, who had not

filed returns for the corresponding periods. Learned Addl. Standing Counsel (CT) rightly argued that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible. This forum is not authorized to break away from the statute as mandated by the legislature. The decision of this forum in **S.A. No. 175 (VAT) of 2019** cited supra endorses a clear enunciation of the issue reversing the ITC claimed on account of non-deposit of the input tax collected by the selling dealer into Govt. exchequer.

The amended provision of Section 20(3a) of the OVAT Act outlying clear prescription to the effect that no amount of ITC shall be allowed to a registered dealer on any purchase of goods in excess of the amount of such tax actually paid, hence this Tribunal is not ready to accept the contentions urged by the Dealer that it is the responsibility of the selling dealer to deposit tax and the purchasing dealer should not be penalized for non-depositing the same. The authorities below are, therefore, justified in disallowing ITC as claimed by the Dealer. Furthermore, levy of penalty not exceeding twenty five per cent of the tax so arrived u/s. 42A(6) of the OVAT Act by the Assessing Authority and confirmed by the First Appellate Authority is based on the statutory provision and the same cannot be called into question.

8. In the result, the appeals filed by the Dealer stand dismissed and the impugned orders of the First Appellate Authority reducing the orders of assessment are hereby confirmed. Cross-objections are disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman