

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

**Review Petition No. 26 of 2019
(S.A. No. 113 (VAT) of 2011-12)**

(Arising out of Hon'ble Court's order dated 27.11.2019 passed in STREV No. 36 of 2018 & order of the learned DCST (Appeal), Angul Range, Angul in First Appeal Case No. AA-44/VAT/AL/2010-11, disposed of on dated 25.04.2011)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri S. Mishra, Accounts Member-II

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

... Appellant

-Versus-

M/s. Subhadra Enterprises,
Talcher

... Respondent

For the Appellant : Sri D. Behura, S.C. (CT) &
Sri M.S. Raman, Addl.SC (CT)

For the Respondent : Sri J.B. Sahoo, Sr. Advocate &
Mrs. Kajol Sahoo, Advocate

Date of hearing: 07.12.2021 *** Date of order: 20.12.2021

O R D E R

The present Review Petition arose pursuant to the order dated 27.11.2019 of the Hon'ble High Court of Orissa in STREV No. 36 of 2018 filed u/s. 80(1) of the

Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'OVAT Act').

2. The brief facts of the case are that the dealer- M/s. Subhadra Enterprises is a proprietorship concern which deals in pan masala, gutkha, confectionaries on wholesale and retail basis at Netaji Subhash Chandra Marg, Talcher. Learned Sales Tax Officer, Assessment Unit, Talcher (in short, 'assessing authority') upon receipt of Fraud Case Report (FCR) No. 8 dated 16.02.2009 submitted by the STO, Vigilance Wing, Bhubaneswar, initiated proceeding u/s. 43 of the OVAT Act for the tax period 01.01.2009 to 31.01.2009 by issuing statutory notice in Form VAT-307 for confrontation of the allegations made in the FCR. It was alleged in the FCR that the visiting officials found 123 bags of gutkha lying in the platform against which there was no claimant. After three days Sri Dilip Kumar Sahoo appeared on 19.01.2009 and claimed the abandoned goods on the basis of consignment note No. 223 dated 14.01.2009 of Taj Trading Corporation, invoice No. 00782 dated 14.01.2009 of M/s. Kay Pan Masala (P) Ltd., Ghaziabad for 100 bags of 'safal' gutkha, way bill No. AH-

3220944 of M/s. Subhadra Enterprises for 25,700 packets of gutkha, consignment No. 222 dated 11.01.2009 of Taj Trading Corporation, invoice No. 00756 dated 11.01.2009 of M/s. Kay Pan Masala (P) Ltd., Ghaziabad for 100 bags of 'Range' gutkha, way bill No. AH-3220943 of M/s. Subhadra Enterprises, Talcher for 30,800 packets of gutkha. The STO (Vigilance) recorded the statement of Sri Dilip Kumar Sahoo, who stated that out of 123 nos. of bag of gutkha, 100 nos. of 'safal' gutkha booked from Railway Parcel Office, Khurda Road under RR in the name of Subhadra Enterprises, Talcher and the balance 23 nos. of bag of 'Range' gutkha booked in the name of Sri Dilip Kumar Sahoo against which he offered to pay tax and penalty as per Section 74(5) of the OVAT Act. Accordingly, he paid tax and penalty of ₹2,57,196.00 vide MR No. 381059 dated 19.01.2009. The assessing authority on verification of documents produced and considering the explanation offered by Sri Dilip Kumar Sahoo concluded that the goods in question lying in the platform were carried in Hirakud Express through M/s. Taj Trading Corporation from Visakhapatnam to Khurda Road vide Manifest No. 1872 dated 15.01.2009 where the

consignor is SMR and the consignee is Sri Dilip Kumar Sahoo. The assessing authority found from the manifest that 123 bags of gutkha were transported out of 207 bags of gutkha as 'over carry' goods and the balance 84 bags out of the same had been taken delivery by Sri Dilip Kumar Sahoo. As 123 bags were 'over carry' goods, the same were subsequently transported for taking delivery by Sri Sahoo. The assessing authority on going through the allegations made in the FCR and the objection raised by the dealer-assessee came to the conclusion that the explanation offered against the allegation was afterthought and the FCR was established. Taking into account the value of 'safal' gutkha @ ₹14,500.00 per bag, value of 207 bags was estimated at ₹30,01,500.00 and by adding 1% ET on it amounting to ₹30,015.00, the suppression had been derived at ₹30,31,515.00 which was taxed @ 12.5%, on calculation came to ₹3,78,939.00. The assessing authority also imposed two times penalty u/s. 43(2) of the OVAT Act which on calculation came to ₹7,57,878.00. Total tax and penalty was raised at ₹11,36,817.00.

2(a). The dealer-respondent being aggrieved with the aforesaid findings of the assessing authority preferred appeal before the first appellate authority, who allowed the appeal in full and reduced the assessment to returned figures. The State being aggrieved with the order of the first appellate authority preferred S.A. No. 113 (VAT) of 2011-12 which was allowed setting aside the order of the first appellate authority and restoring the order of assessing authority. The dealer-assessee, challenging the said order of the Tribunal, preferred STREV No. 36 of 2018 before the Hon'ble High Court of Orissa, which was disposed of on 27.11.2019 giving liberty to the dealer to approach the Tribunal by filing review application and accordingly, the present review petition was filed. The order dated 27.11.2019 passed by the Hon'ble Court in STREV No. 36 of 2018 is quoted below :-

“By way of this revision application, the petitioner has challenged the order dated 17.01.2018 passed by the Orissa Sales Tax Tribunal, Cuttack in S.A. No. 113 (V) of 2011-12 under the Orissa Value Added Tax Act, 2004.

The main allegation of the petitioner is that the petitioner while appearing before the learned Tribunal

has filed a detailed note of submission for his due consideration along with various documents which are matter of record for the consideration of the learned Tribunal but the learned Tribunal has apparently overlooked the same while passing the order, which is illegal, arbitrary and in violation of natural justice.

Since the proper remedy for the petitioner to approach the learned Tribunal for review, this revision stands disposed of with a direction that if the petitioner approaches the learned Tribunal by filing a review application within a period of 30 days from today, the tax period from 01.01.2009 to 31.01.2009 shall be taken into consideration by the learned Tribunal.”

3. It is pertinent to mention here that this Tribunal assumed the jurisdiction to review its own order by virtue of the direction of the Hon’ble Court dated 27.11.2019 passed in STREV No. 36 of 2018. Therefore, the power of review is to be exercised in a restricted manner strictly in accordance with the direction of the Hon’ble Court in STREV No. 36 of 2018. The Hon’ble Apex Court in the case of **N. Anantha Reddy Vs. Anshu Kathuria and others, reported in 2014 OLR (1) 642** while considering the application for review filed under Order 47, Rule 1 of CPC, at Para-9 observed that the review jurisdiction is extremely limited

and unless there is mistake apparent on the face of record, the order/judgment does not call for review. The mistake apparent on the face of record means that the mistake is self evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits. This judgment though was rendered under a different factual background, the principle laid down by the Hon'ble Apex Court in the said judgment squarely applies to the present case also. The power of review conferred on this Tribunal by virtue of the order of the Hon'ble High Court is to be examined keeping in view the aforesaid settled principles of law.

4. It is worthwhile to mention here that the main grievance of the dealer before the Hon'ble Court was that the documents filed by it were not taken into consideration and the order was rendered in a very cryptic manner. On perusal of the order of this Tribunal passed in S.A. No. 113 (VAT) of 2011-12, we also find that the documents annexed to the review petition were not discussed and the order was passed basing on the other

materials on record. Therefore, the documents filed by the dealer along with the review petition should be scrutinized meticulously to find out whether the assessing authority was correct in its approach in raising tax demand against the present dealer-assessee. The record reveals that on 16.01.2009, the STO, Vigilance Wing, Bhubaneswar while performing duty at Khurda Road Railway Station found unclaimed 123 bags of gutkha. On 19.01.2009 Sri Dilip Kumar Sahoo, who is the husband of Rina Sahoo, proprietor of M/s. Subhadra Enterprises, Talcher, appeared before the STO, Vigilance Wing and claimed the goods on the basis of consignment note No. 223 dated 14.01.2009 of Taj Trading Corporation, photocopy of invoice No. 00782 dated 14.01.2009 of M/s. Kay Pan Masala (P) Ltd., Ghaziabad, way bill No. AH-3220944 of M/s. Subhadra Enterprises amounting to ₹14,15,556.00 and consignment No. 222 dated 11.01.2009 of Taj Trading Corporation, photocopy of invoice No. 00756 dated 11.01.2009 of M/s. Kay Pan Masala (P) Ltd., Ghaziabad, way bill No. AH-3220943 of M/s. Subhadra Enterprises, Talcher. The STO (Vigilance) on verification of the documents produced by Sri Sahoo and

considering his statement opined that 207 bags of gutkha transported from the consignor SMR and brought in the name of Sri Dilip Kumar Sahoo are different consignments and suggested for assessing the dealer in respect of 207 bags of gutkha for the tax period January, 2009. The dealer-assessee produced the documents annexed to the review petition which were disbelieved and tax demand of ₹11,36,817.00 was raised. The main grievance of the dealer is that 123 bags found in the platform were over carried goods which were transported from Visakhapatnam to Khurda Road and out of these goods, 100 bags of gutkha were supported by valid documents, which he annexed to the review petition and for the rest 23 bags of gutkha he paid tax and penalty. On going through these documents, we find that vide Annexure-2 Taj Trading Corporation sent 207 bags of over carried goods from Visakhapatnam to Khurda on 16.01.2009 through Hirakud Express. The excise invoice No. 00782, way bill No. AH-3220944, consignment note No. 223 dated 14.01.2009 and consignment note No. 222 dated 14.01.2009, invoice No. 00756 dated 11.01.2009, way bill No. AH- 3220943 do not show that 207 bags of over

carried goods were brought under these documents. It is pertinent to mention here that the dealer himself, admitting that there is no document for 23 bags of gutkha, has paid tax and penalty of ₹2,57,196.00 vide M.R. No. 381059 dated 19.01.2009. The dealer in the review petition filed by him in para-3(d) clearly admitted that 123 bags found at the platform were over carried goods which were again rebooked from Visakhapatnam to Khurda. In view of this admission, the dealer cannot dispute the documents vide Annexure-2 i.e. manifest to Taj Trading Corporation showing despatch of 207 bags of over carried goods from Visakhapatnam to Khurda. It is worthwhile to mention here that the excise invoice No. 00782 shows that 25,700 packets of 'safal' brand gutkha were despatched on 14.01.2009 at about 10.10 pm night from Ghaziabad by M/s. Kay Pan Masala (P) Ltd. The distance between Ghaziabad to Khurda is about 1766 Kms. and the goods in question were recovered on 16.01.2009. It is highly improbable that goods sent from Ghaziabad reached Khurda Road Station before 16.01.2009 and again over carried to Visakhapatnam to Khurda and reached Khurda again on 16.01.2009. So, from this, the only

inference can be drawn is that the way bill and excise invoice in question have been manufactured for the purpose of this case or it related to some other goods. The dealer having admitted and paid tax and penalty in respect of 23 bags of 'safal' gutkha out of 123 bags, the documents filed by him cannot be believed and accepted. The dealer also could not explain about other over carried bags. When 207 bags were over carried goods to Visakhapatnam, how 123 bags were found in the platform and whereabouts of rest 84 bags were not known. So, under these circumstances, the plea of the dealer that 100 bags of gutkha found in the platform were supported by valid documents cannot be accepted. So, the assessing authority cannot be faulted with for assessing the dealer-assessee in respect of 207 over carried bags vide manifest dated 15.01.2009 under Annexure-2 to the review petition. It was forcefully contended by the learned Counsel for the dealer that when Dilip Kumar Sahoo claimed the goods in question and the authorities were not satisfied with the documents produced by him, the assessment proceeding should have been initiated against him instead of M/s. Subhadra Enterprises

of which Rina Sahoo is the owner. The assessing authority committed serious illegality in proceeding against M/s. Subhadra Enterprises, Talcher without any valid ground. This contention raised by the learned Counsel for the dealer must fall to the ground as Dilip Kumar Sahoo claimed the bags lying in the platform on the basis of the documents standing in the name of M/s. Subhadra Enterprises of which Rina Sahoo, his wife is the owner. When unclaimed goods were claimed by Sri Sahoo representing his wife Rina Sahoo, Proprietor of M/s. Subhadra Enterprises, the assessing authority did not commit any illegality in proceeding against M/s. Subhadra Enterprises. It was fully justified in initiating the assessment proceeding u/s. 43 of the OVAT Act on the basis of the FCR of STO, Vigilance Wing, Bhubaneswar. The explanation offered by the dealer-assessee has rightly been disbelieved by the assessing authority who correctly raised a demand of ₹11,36,817.00 against him including penalty. This Tribunal also rightly restored the order of the assessing authority and set aside the order of the first appeal authority basing on the materials on record. There is no error apparent on the face

of the record warranting interference of this Tribunal and review its own order dated 17.01.2018.

5. In view of the aforementioned discussions, the review petition filed by the dealer-assessee being devoid of merit stands rejected.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(S. Mishra)
Accounts Member-II