

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 324(V)/2014-15**

(Arising out of order of the Id. DCST, Jajpur Range, Jajpur
Road, in First Appeal Case No. AA-466 KJ 2013-2014,
disposed of on dtd.27.10.2014)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

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

-Versus-

M/s. Guddy Motors,
Salapada, Anandapur,
Dist. Keonjhar. Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)
For the Respondent : None

(Assessment Period : 06.04.2007 to 31.03.2012)

Date of Hearing: 02.03.2021 *** Date of Order: 02.03.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/Deputy Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short, FAA/DCST) in First Appeal No. AA-466 KJ 2013-2014 dtd.27.10.2014 in modifying the assessment order passed by the learned Sales Tax Officer, Keonjhar Circle, Keonjhar (in short, STO) for the assessment period from 06.04.2007 to 31.03.2012 u/s. 42(3) of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The brief facts of the case is that :

The dealer-respondent in the instant case is proprietorship concern engaged in trading business of automobile parts and accessories of moped, motor cycle of Hero Company on retail-cum-wholesale basis. Consequent upon the receipt of an Audit Visit Report, the Id.STO basing on the discrepancies in the books of accounts of the dealer-respondent as reported by the Audit Visit Team for the material period initiated assessment proceedings u/s.42 of the OVAT Act by issuing the statutory notice, but the dealer did not respond to the notice of the Id.STO. So thereafter giving three number of opportunities to the dealer-respondent, the Id.STO passed the assessment order ex-parte basing on the discrepancies reported in the Audit Visit Report. Accordingly, the Id.STO has determined the gross turnover and taxable turnover at Rs.7,90,34,985/- and Rs.7,01,16,763/- respectively. The output tax has been determined at Rs.89,20,005/-, against which a sum of Rs.88,25,292/- has been allowed towards input tax credit and therefore the output tax net of input tax credit has been determined at Rs.94,713/-. Further, taking the payment of admitted tax to the tune of Rs.91,098/-, the Id.STO has finally assessed the tax to the extent of Rs.3,615/-. The dealer has also been imposed penalty of Rs.1,89,426/- u/s.42(5) of the OVAT Act. So tax together with penalty due to be paid by the dealer-respondent has been calculated at Rs.1,93,041/-, which the dealer was liable to pay at the time of assessment stage.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate

Authority/DCST, Jajpur Range, Jajpur Road, who in turn, allowed the appeal and reduced the tax demand to Rs.29,519/-. The dealer has already paid a sum of Rs.9,527/- towards interest therefore after adjusting the same against Rs.29,519/-, the balance amount due to be paid by the dealer-respondent is determined at Rs.19,992/-.

4. Being dis-satisfied with the order of the learned FAA/DCST, State knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the learned FAA/JCST is unjust, improper and not based on the facts and law.

5. No cross objection has been filed by the dealer-respondent in this case.

6. The dealer refused to receive the notice of hearing. The dealer neither engaged a counsel nor anybody on his behalf remained present before this Tribunal. This Tribunal, therefore, left with no other alternative except to hear the arguments of Mr. S.K. Pradhan, learned Addl. Standing Counsel appearing for the State-appellant and disposed of the matter on ex-parte basis.

7. Perused the assessment order as well as the first appeal order, all the materials available in the record, grounds of appeal submitted by the State-appellant. During the course of hearing, Mr. Pradhan, learned Addl. Standing Counsel argued that, the order of the learned FAA is illegal, arbitrary, unjust and improper. Despite reasonable opportunities offered, the dealer failed to appear before this Tribunal. He has vehemently argued that, in this case, the dealer had not filed

returns for the tax period 01.04.2011 to 31.03.2012 till the receipt of audit visit notice. After audit visit, the dealer filed return and made payment of tax of Rs.91,098/- on different dates, i.e. on dt.28.07.2012 & dt.09.05.2013. The Assessing Authority levied penalty on the tax due of Rs.94,713/- amounting to Rs.1,89,426/- by following provisions contained in Sec.33(5) of the OVAT Act and the principle of law decided by Orissa High Court in case of **JSPL, Guljag Industries & Dharmendra Textiles** by the Apex Court. However, the learned FAA reduced the penalty of Rs.1,89,426/- to Rs.7,230/- which is against the statutory provisions and principle of law decided by the court. The learned Addl. Standing Counsel has cited one order of the Full Bench of this Tribunal bearing S.A.No. 209(V)2014-15. Perused the order. He has prayed to allow the appeal filed by the State and to set-aside the order of the learned FAA.

8. Heard the learned Addl. Standing Counsel in absence of participation of the dealer in hearing of this appeal. Gone through the grounds of appeal, the impugned orders of appeal and assessment, argument of the learned Addl. Standing Counsel at the time of hearing and the relevant records of appeal and assessment. The dealer-respondent has not adduced any evidence on his behalf nor he has defended himself against the grounds of appeal filed by the State. The dealer-respondent has also not submitted cross objection with reference to the grounds of appeal filed by the State.

9. Sec.33 of the OVAT Act, 2004 deals with periodical returns and payment of tax. Sec.33(5) says :

“If any dealer, after furnishing a return under sub-section (1) or sub-section (2), discovers that a higher amount of tax was due than the amount of tax admitted by him in the original return for any reason, he may voluntarily disclose the same by filing a revised return for the purpose and pay the higher amount of tax as due at any time, in the manner provided under Section 50 :

Provided that no such voluntary disclosure shall be accepted where the disclosure is made or intended to be made after receipt of the notice for tax audit under this Act, or as a result of such audit”.

10. In view of the facts and in the circumstances of the case, I am of the opinion that, the points raised by the learned Addl. Standing Counsel is quite satisfactory. Hence, the order passed by the learned FAA is set-aside. Accordingly, it is ordered.

11. The appeal filed by the State is allowed and the order of the learned FAA is hereby set-aside.

Dictated and Corrected by me,

Sd/-
(S. Mishra)
2nd Judicial Member

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