BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A.No. 29 (VAT) of 2021

(Arising out of order of the learned Joint Commissioner of CT & GST (Appeal), Sundargarh Territorial Range, Rourkela in Appeal No.AA V 32 of 2016-17, disposed of on 31.12.2020)

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

M/s. ISGEC Heavy Engineering Ltd.,
Inside OCL Ltd., Rajgangpur,
Dist. Sundaragada … Appellant

-Versus-

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

For the Appellant : Mr. C.R. Das, Advocate
For the Respondent : Mr. N.K. Rout, Addl. S.C. (CT)

Date of hearing: 05.10.2026 *** Date of order: 03.11.2026

ORDER

Challenging the legality and propriety of order dated 31.12.2020 passed by the learned Joint Commissioner of CT & GST (Appeal), Sundargarh Territorial Range, Rourkela (hereinafter referred to as 'First Appellate Authority') in Appeal No. AA V 32 of 2016-17, this second appeal has been filed by M/s. ISGEC Heavy Engineering Ltd. (hereinafter referred to as 'Dealer').

2. The brief facts relevant for disposal of this appeal run thus–

The Dealer, in the instant case, is engaged in execution of works contract of unloading, storage, watch and fabrication, erection, testing and commissioning of boiler machineries and equipment for

power plant. Basing upon an Audit Visit Report (AVR), the Sales Tax Officer, Rourkela-I Circle, Uditnagar (for brevity, 'Assessing Authority') initiated assessment proceeding u/s.42 of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'OVAT Act') against the Dealer for the period from 01.04.2009 to 31.03.2014. In the assessment proceeding, the Assessing Authority on verification of books of account with reference to the AVR, determined the GTO at ₹57,12,02,147/- and TTO at ₹2,96,14,261/- of the Dealer after allowing deduction of ₹53,93,93,189/- towards labour and service charges, thereby calculated the output tax at ₹21,94,697/- and allowed deduction ITC of ₹7,71,966/- and TDS of ₹11,76,842/-, accordingly, raised tax demand of ₹8,08,975/- including two times penalty along with interest thereon for the period under assessment. Being aggrieved with the order of assessment, the Dealer preferred first appeal before the learned First Appellate Authority. The First Appellate Authority finding irregularities in allowing ITC by the Assessing Authority, recomputed the tax liability of the Dealer at ₹18,30,240/- including penalty, but deleted the interest, hence this appeal.

3. The State filed cross objection.

4. The learned Counsel appearing for the Dealer in terms of additional grounds of appeal pressed the sole ground that the AVR was not submitted to the Assessing Authority within the stipulated period of seven days as per the provision of Sec.41(4) of the OVAT Act. It is specifically submitted that the audit was completed on 31.03.2015 and the same was submitted much beyond the statutory period of limitation. He further submitted that initiation of assessment proceedings basing on such invalidated AVR is vitiated in law. In support of his contention, learned Counsel placed reliance on the decision of the Hon'ble High Court of Orissa in the case of ***Jindal Stainless Steel v. State of Orissa and Others,***

[2012] 54 VST 1 (Orissa) and submitted that the assessment proceeding for the impugned period is not sustainable in the eye of law and liable to be set aside.

5. On the contrary, the learned Addl. Standing Counsel (CT) for the State submitted that there is no violation of statutory provisions in completion of audit assessment under the OVAT Act by the Assessing Authority basing on the AVR which was submitted in the prescribed time. He argued that the Dealer has not challenged the maintainability of the proceeding at an earliest opportunity, therefore, the Dealer is precluded to raise the same before this forum. In order to support his argument, the learned Addl. Standing Counsel (CT) cited the decision passed by the Hon'ble Apex Court in case of ***K. Chelliah v. P. Muthuswami Servai*** **[1993] SC 1005 in** Civil Appeal No.2423/1987, accordingly, pleaded that the submission of the Dealer does not merit for consideration in absence of any material evidence, as such the appeal is liable to be dismissed.

6. Having regard to the submissions put forth by both parties *vis-a-vis* the orders of the fora below, it is incumbent upon the Tribunal to address the following preliminary issue raised by the Dealer :-

> "**Whether in the facts and circumstances of the case, there was any delay in submission of AVR, for which the consequent assessment proceeding basing on such AVR is vitiated in law?"**

7. The Dealer challenged the maintainability of the assessment proceeding initiated u/s. 42(4) of the OVAT Act basing on the delayed submission of AVR as preliminary issue in view of settled position of law of the Hon'ble High Court of Orissa. On the contrary, the State raised objection the ground of belated stand.

In the case of ***National Thermal Power Co. Ltd. v. Commissioner of Income Tax***, **(1997) 7 SCC 489 (SC),** the Hon'ble Apex Court have been pleased to observe that-

> " ...Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.
>
> The refrained question, therefore, is answered in the affirmative, i.e. the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee..."

The above being the position of law, this Tribunal is of the considered view that the question of law raised by the Dealer arising from the facts touches the root of the case, hence, the objection raised on behalf of the State merits no consideration.

8. As regards the issue of delay in submission of the AVR, on perusal of the LCR made available by the Revenue, it transpires from the record that the Sales Tax Officer, Rourkela-I Circle, Uditnagar completed the audit and prepared the AVR on 31.01.2015 and thereafter the DCST transmitted the AVR to JCCT, Sundargarh Range, Rourkela for e-allotment on the same day. Further, the order sheet maintained for the relevant assessment record reveals that the Assessing Authority initiated the assessment proceeding on 20.01.2016 by issuing statutory notice in Form VAT-306 to the Dealer fixing the date to 26.02.2016 for appearance and production of books of account. There is nothing on record that the AVR was submitted to the Assessing Authority within seven days from the date of its completion. In such circumstances, this Tribunal is of the humble opinion that it violates the mandatory period of seven days as prescribed u/s. 41(4) of the OVAT Act.

9. In this context, I am alive of the legal principles as enunciated by the Hon'ble High Court of Orissa in the case of ***Jindal Stainless Ltd.*** cited supra, wherein their Lordship's have held that –

> "It is unfortunate that while under OVAT Act Section 41(4) provides for submission of audit visit report within seven days from the date of audit and audit assessment is to be completed within six months from the date of receipt of AVR by the assessing authority, the action of the authorized officer in submitting the AVR to the assessing authority after six months from the date of audit visit not only violates the statutory provisions contained in section 41(4) but also is against the scheme and spirit of audit visit and audit assessment provided under the OVAT Act."

Having regard to the aforesaid settled law of the Hon'ble Court *vis-a-vis* the issue involved in the present case, this forum is of the humble opinion that since there is delay in submission of the AVR, all the proceedings consequent to the said AVR including the assessment order as well as order of the First Appellate Authority are unsustainable in law and thus, liable to be set aside in the ends of justice.

Hence, it is ordered.

10. In the result, the appeal filed by the Dealer stands allowed. The impugned order passed by the First Appellate Authority and the order of assessment are hereby set aside. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman