

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 122(V)/2019**

(Arising out of order of the ld. JCST (Appeal), Territorial
Range, Cuttack-II, Cuttack, in First Appeal Case No.
AA/53/OVAT/CUII-K/2018-19,
disposed of on dtd.29.04.2019)

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

M/s. R.K. Industries, Marshaghai,
Dist. Kendrapara. Appellant

-Versus-

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

For the Appellant : Mr. S.K. Lalkrushna, Advocate
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.04.2012 to 31.03.2014)

Date of Hearing: 26.02.2021 *** Date of Order: 26.02.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Territorial Range, Cuttack-II, Cuttack (in short, FAA/JCST) in First Appeal No. AA/53/OVAT/CUII-K/2018-19 dtd.29.04.2019 in setting aside the assessment order passed by the learned Assesising Authority/Addl. Sales Tax Officer, Kendrapara Circle, Kendrapara (in short, AA/Addl.CST) for the assessment period from 01.04.2012 to 31.03.2014 u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The brief facts of the case is that: the dealer-appellant M/s. R.K. Industries is a proprietorship concern, which is engaged in manufacturing of ground nut oil and de-oiled cake using raw ground nuts. The dealer was earlier assessed by the Asst. Commissioner of Sales Tax, Kendrapra Circle, Kendrapara dtd.02.12.2015 u/s.42(4) of the OVAT Act, 2004 for the tax period 01.04.2012 to 31.03.2014 raising demand of Rs.2,120/- towards tax and penalty. The Assessing Officer did not calculate any VAT on the sale proceeds of the de-oiled cakes because it is VAT free.

The AG (E&RSA), Odisha while scrutinising the above assessment order, noticed that the dealer had purchased ground pod and ground karnel from unregistered dealers worth Rs.16,12,07,779/- and sold de-oiled cake of Rs.59,39,067/-, which was exempted from VAT. But while finalising the assessment, the Assessing Authority did not levy purchase tax on the proportionate purchase value of ground nuts used in the manufacture of de-oiled cake. The AG(Audit) calculated the proportionate purchase values corresponding to the exempted sales of de-oiled cake to be Rs.15,69,014/- and suggested to levy purchase tax @5% of Rs.78,450/- u/s.12 of the OVAT Act, 2004 along with penalty of Rs.1,56,901/- totalling to Rs.2,35,352/-.

After being satisfied with the AG objection, the learned Addl. Sales Tax Officer initiated proceedings and issued notice in Form VAT-307 vide Letter No.1637/CT dtd.8.8.2018 for assessment of escaped turnover. In response to the said notice, the dealer represented by the learned Advocate appeared and contested the case. The Assessing Officer rejecting the

contentions of the dealer passed the order and imposed tax and penalty amounting to Rs.2,35,352/- in the light of the AG objection.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Territorial Range, Cuttack-II, Cuttack, who in turn, allowed the appeal in part and remanded the matter back to the Assessing Officer with a direction to complete the assessment afresh within three months from the date of receipt of the order giving the dealer a reasonable opportunity of being heard.

4. Being further aggrieved with the order of the learned FAA/JCST, the dealer 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. Cross objection has been filed by the State-respondent in this case.

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned FAA. He has vehemently argued that, the order of the learned FAA is quite improper and prejudice to the very principle of natural justice. Assessment u/s.42 of the OVAT Act completed earlier and no second assessment u/s.42 under OVAT Act for the same period can be made and no audit under OVAT Act has been made in second time. So, the assessment made is against the provision of law and natural justice. Addl. Sales Tax Officer is not a registered post u/s.3 of the OVAT Act. In no time the

Commission of Sales Tax has authorised the Addl. Sales Tax Officer as a assessing authority under OVAT Act and Rules. So order passed by the learned Addl. Sales Tax Officer is null and void. The order passed by the Assessing Officer having no jurisdiction, there was no question of going into the merits of the matter. The AG Audit cannot detect the Assessing Authority to re-assess the assessee and change of opinion cannot be the basis for re-assessment (148 STC 61 (Orissa) and W.P.(C) No.11055/2017 of Delhi High Court). The Assessing Officer should have determined himself the allegations raised by the AG is correct, then notice for assessment should have been made and no such determination by the learned Assessing Officer has been made and only simple notice issued. So, assessment should be quashed. No description has been made by the Assessing Authority to tax de-oiled cake, when de-oiled cake is a tax free item under OVAT Act and Rules. So, assessment is against provision of law and natural justice. Sales Tax Officer and Addl. STO are of different cadres. So, both the cadres cannot be treated as one cadre. So, he has prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing, learned Addl. Standing Counsel, Mr. Pradhan for the State argued that, the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer, which is not sustainable in the eyes of law. The appellant-

dealer in the instant case is engaged in manufacturing and trading of groundnut oil and de-oiled cake. The appellant was assessed basing on the audit objection raised by AG(O) and the FAA has set-aside the order taking into consideration of the grounds taken by the dealer-appellant on the assessment provision and assessing authority, hence, there is no reasonable merit in the second appeal filed by the dealer. The dealer was given sufficient opportunity. Demand raised by the learned AA u/s.12 of the OVAT Act is justified as per the statutory provision. The order of the learned FAA is crystal clear with respect to other points raised by the dealer. He has dealt each and every item, which is self-explanatory in nature and requires no further interference by this Tribunal. No natural justice has been violated in the instant case. The learned FAA has observed in his order at Page No.4:

“But on perusal of the assessment record, it is noticed that the assessing officer has issued notice in Form VAT-307 to the dealer appellant for assessment of tax on escaped turnover for the tax period 01.04.2012 to 31.03.2014 but completed assessment u/s.42 of the OVAT Act, 2004 for the above period which is contradictory. Further on perusal of the order sheet maintained by the assessing officer, it is noticed that the A.O. has not recorded any reason for initiation of the proceeding for re-assessment either in the order sheet or in the notice issued in Form VAT-307. The A.O. has simply accepted the objection of AG (Audit) and issued notice in Form VAT-307. She has to form her own opinion whether the objection raised by AG (Audit) is correct or not. If she is satisfied with the AG objection, she has to record it in the order sheet before reopening of the case. Further the dealer was earlier assessed by the Asst. Commissioner of Sales Tax, Kendrapara Circle, Kendrapara on dated 02.12.2015 U/s.42(4) of the OVAT Act, 2004 for the tax period 01.04.2012 to 31.03.2014 and again on the basis of objection of AG (Audit), re-assessment cannot be made under the same Act and for the same period. The A.O. has to reopen the case for assessment of tax on escaped turnover/under-assessment u/s.43 of the OVAT Act, 2004. Further there is no post of Addl. Sales Tax Officer U/s.3 of the OVAT Act, 2004 read with Rule-3 of the

OVAT Rules, 2005. The A.O. has to pass assessment order in the capacity of Sales Tax Officer”.

So, he has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

8. Heard the learned Advocate, Mr. S.K. Lalkrushna appearing on behalf of the dealer and learned Addl. Standing Counsel, Mr. Pradhan on behalf of the State. Gone through the grounds of appeal, impugned order of appeal and assessment and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion that, the points raised by the learned Addl. Standing Counsel is quite satisfactory and the order of the learned FAA is self-explanatory in nature and requires no further interference by this Tribunal. Accordingly, it is ordered.

9. The appeal filed by the dealer is dismissed on contest. The order of the learned FAA is hereby confirmed. The cross objection filed by the State-Respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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