BEFORE THE ACCOUNTS MEMBER-I: ODISHA SALES TAX TRIBUNAL: KATAKA.

S.A. No. 12(VAT) of 2021

(Arising out of the order of Learned Additional Commissioner of Sales Tax, Puri Range, Puri, in Appeal Case No.106112011000012/2020-21 disposed of on dated 29.10.2020)

P r e s e n t: Shri A. Bhoi, Accounts Member-I

M/s. Bhawani Motors,
Saradhabali, Khaki Matha Lane,
Puri. … Appellant

- V e r s u s –

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

For the Appellant: : None
For the Respondent: : Mr.N.K. Rout, Addl. S.C. (C.T.)

Date of hearing :19.09.2026 * Date of order : 14.10.2026**

O R D E R

The appellant-dealer has preferred this appeal challenging the order dated 29.10.2020 passed by the Learned Additional Commissioner of Sale Tax, Puri Range, Puri, (herein after referred to as Learned First Appellate Authority/ FAA) bearing First Appeal Case No. 106112011000012/2020-21, wherein dismissing the appeal petition of the dealer.

2. The brief facts of the case is that M/s. Bhawani Motors, is a proprietorship concern carrying on business whole sale/retail trade of automobile parts and accessories, tyres and tubes etc. The dealer has effected purchase of goods within the State. On receipt of Audit Visit Report the Assessing Authority initiated the proceedings U/s. 42 of the OVAT Act for the tax period from 1.4.2013 to 31.3.2015. The dealer failed to appear in the assessment proceedings despite giving sufficient opportunities. Thus, the Assessing Authority completed the assessment exparte basing on the materials available on record and determined tax and penalty of ₹2,02,656.00 for the material period.

3. On being aggrieved by the ex-parte assessment order, the dealer has preferred appeal before the Learned Additional Commissioner of Sales Tax, Puri Range, Puri, who being the First Appellate Authority has not condoned the delay in filing of appeal and dismissed the appeal filed by the appellant dealer.

4. The Dealer Appellant being further dissatisfied by the order of Ld. FAA, has preferred the second appeal before this Tribunal.

5. Memorandum of Cross Objection has been filed by the State Respondent against the appeal preferred by the dealer.

6. The dealer appellant has not appeared before this Tribunal despite availing of sufficient opportunities. The Additional Standing Counsel has appeared for hearing of the case for the State and submits that the present second appeal filed by the appellant dealer U/s.78 of the OVAT Act is not maintainable as the order impugned dated 29.10.2020 not being an order passed U/s.77(7) of the OVAT Act and the first appeal has been dismissed on the preliminary ground alone. Further he submits that a second appeal under the taxing statute is maintainable only against an order passed on merits under the specific merit adjudicating provision of the first appeal section and not against an order which merely refuses to condone the delay and dismissed the first appeal as time barred without entering in to its merits.

7. Heard the case in absence of the dealer taking into account of grounds of appeal filed by the dealer and submission of the respondent State.

8. On perusal of the impugned order, it is revealed that the First Appellate Authority has found that the concerned appeal

has been preferred after a long gap of three years. As per provision of the OVAT Act, an appeal before the first appellate authority should be made within thirty days from the date of communication of the order of assessment. So, the First Appellate Authority has not condoned the delay in filing of appeal and dismissed the same being not preferred within time.

9. Now the issue remains that whether the appeal preferred by the dealer against such dismissal of first appeal is maintainable before this forum under 78 of the OVAT Act or revisionable under Section 79 of the OVAT Act?

10. Before answering the point that emerges for consideration in the present second appeal, it would be profitable to quote as under the relevant provisions of OVAT Act and OVAT Rules.

Section 77(7) of the OVAT Act: Appeals

(7) In disposing of an appeal, the appellate authority may, within a period of three years from the date of such appeal or as the case may be, after giving the appellant a reasonable opportunity of being heard and after causing such inquiry as he may deemed necessary-

a) confirm, reduce or anull the assessment of tax or the imposition of interest or levy of penalty if any or

b) enhance the assessment including any part thereof whether or not such part is the subject matter in the appeal or

c) set-aside the assessment and direct the assessing authority to make fresh assessment after such further inquiry as may be directed.

(8) Every order passed in an appeal under this Section shall, subject to the provisions of Section 79, be final.

Rule 88 of the OVAT Rules 2005- Summary rejection of appeal

(1) If the memorandum of appeal is not in the specified form or if all the requirements of the form are not fully complied with, the appellate authority may reject the appeal summarily, after giving the appellant such opportunity, as it may think necessary, to rectify the defects.

(2) The appeal may also be summarily rejected on other grounds for which an order in writing shall be passed by the appellate authority;

Provided that before an order rejecting an appeal is passed, the appellant shall be given a reasonable opportunity of being heard.

Section 78 of the OVAT Act – Appeal to Tribunal

(1) Any dealer or, as the case may be, the Government, if not satisfied with an order passed under sub-Section (7) of Section 77 may, within sixty days from the date of receipt of such order prefer an appeal in the prescribed manner to the Tribunal.

11. On a conjoint reading of the above provisions, it is crystal clear that against the first appeal order passed U/s.77(7) of the OVAT Act, a dealer can prefer second appeal before the Tribunal. In the instant case, the impugned order passed by the First Appellate Authority being dismissed the appeal petition due to non preferring the appeal within time prescribed. Thus, the appeal preferred by the dealer appellant is not maintainable before this forum as the same does not arise from the order passed U/s.77 (7) of the OVAT Act, 2004. However, the dealer appellant is at liberty to redress grievance at the appropriate forum under the provisions of law.

12. In the result, the appeal is not maintainable and hence stands dismissed. Cross objection is disposed of accordingly.

Dictated and corrected by me.

Sd/-
(A. Bhoi)
Accounts Member-I

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