BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 26(V) of 2017-18

(Arising out of the order of the ld. JCST, Cuttack II Range, Cuttack, in First Appeal Case No. AA/46/OVAT/CUII/15-16/ 106131613000008, disposed of on dtd.28.02.2017)

P r e s e n t: **Shri S. Mohanty, 1st Judicial Member**

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

- V e r s u s -

M/s. Oxyweld Engineers, Plot No.88/E, Gopabandhu Nagar, Jagatpur, Cuttack. ... Respondent

For the assessment period: 01.04.2012 to 31.03.2014

For the Appellant ... Mr. M.L. Agarwal, S.C.
For the Respondent ... N o n e

Date of hearing: 17.08.2019 ******** Date of order: 17.08.2019

O R D E R

A reversing order of audit assessment u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) is under challenge in this second appeal by the Revenue as appellant with a prayer to set aside the impugned order and to reinforce the order of assessing authority, thereby raising demand of tax and penalty of the dealer.

2. M/s. Oxyweld Engineers, Jagatpur, Cuttack, a registered TIN dealer engaged in trading of Electrodes (Welding Rod) of different sizes on wholesale and retail basis was faced audit assessment on the basis of Audit Visit Report (in short, the AVR) with the allegation that,

it has issued credit notes amounting to Rs.3,54,893.00 during the period 2012-13 on sale return of goods but had failed to produced the relevant documents such as, original sale invoice with reference to goods return. Ld. assessing officer in the assessment covering period from 01.04.2012 to 31.03.2014 basing on the AVR as above, found the dealer has disclosed sale return supported with supported by necessary credit notes, debit notes, sale invoice etc. Further , the C.A. audit report was found silent about such sale return during period 2012-13 and 2013-14. As a result, the assessing authority accepted the suggestions in AVR that, the claim of the dealer is not qualified u/s 23 of the OVAT act and u/r.7 of the OVAT Rules and then rejected the claim of decrease in the output tax payable by the dealer. In consequence thereof, the assessing authority raised balance tax due at Rs.15,869.25, penalty u/s.42(5) of the OVAT Act of Rs.31,738.50 i.e. twice of the tax due and thereby the total demand raised at Rs.47,608.00 in total.

3. Felt aggrieved by such demand, the dealer preferred appeal before the first appellate authority. Learned Joint Commissioner of Sales Tax (Appeal), Cuttack II Range, Cuttack as first appellate authority in turn reversed the order of assessing authority and held that, the C.A. audit report is actually not silent but as there was no provision to show the details of sale return in the return, the C.A. report only contain the net sale of the year. Accordingly, he deleted the demand towards tax and penalty raised by the assessing authority .

4. When the matter stood thus, Revenue being aggrieved, preferred this second appeal. The main contention of the Revenue is, when the audit report is mute in respect of the sale return and when the dealer failed to produce the debit note and credit note even after completion of one year of assessment period, then the production of said debit note and credit note only before first appellate authority is afterthought, hence the reduction of demand by the first appellate

authority biased, detrimental to the Revenue. It is prayed to set aside the order of first appellate authority and to restore the order of assessing authority.

5. The appeal is heard without Cross Objection. The dealer is also found remain absent in the hearing, as such the appeal is heard setting the dealer exparte.

6. As mentioned hereinabove, the present one is a case relating to the sale return and benefit to the dealer for reduction of output tax as against the sale return. The provisions relevant to appreciate the aforesaid question of law are reproduced as follows.

Sec.23(3) of the OVAT Act

> (3) In case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchaser and a debit note shall be issued by the purchaser to the selling dealer containing the requisite particulars as may be prescribed."

Rule 7 of the OVAT Act

> "7. Adjustment of sale price or tax in relation to a taxable sale, issue of credit note and debit note.-
> (1) Where there is requirement for adjustment of the sale price or tax in relation to a taxable sale, the dealer making such adjustment may issue a credit note or debit note, as the case may be.
> (2) Credit note or debit note as referred to in sub-rule (1) shall be issued within three months folwoing the tax period, during which the original sale had taken place.
> (3) An adjustment of the sale price and tax in relation to a taxable sale can be made, where-
> (a) the sale is cancelled; or
> (b) the nature of the sale is fundamentally altered; or
> (c) the previously agreed consideration or the sale is altered by agreement with the buyer, whether due to reasons of quality or any other reason, consistent with the normal trade practice; or
> ***(d)*** the goods or part thereof are returned to the seller and, the seller accepts the return of the

goods subject to the condition that such return of goods is made within three months from the date of sale:

Provided that-

(i) a tax invoice in relation to the sale and the amount shown therein as tax charged on the sale are incorrect as a result of occurrence of any one or more of the events specified above; and

(ii) a return has been filed for the tax period in which the sale took place and an incorrect amount of tax on that sale has been accounted for as a result of the occurrence of any one or more of the events specified above.

(4) xxx xxx xxx
(5) xxx xxx xxx
(6) xxx xxx xxx
(7) xxx xxx xxx"

From the provisions under law as mentioned above, there should not be any ambiguity and confusion so far as the sale return being supported by credit note and debit note and decrease in output tax in the calculation by a dealer.

7. Adverting to the case in hand, it is found that, the dealer had not produced the credit notes before the assessing authority. The assessing authority found the C.A. audit report is silent regarding sale return. So, he disbelieved the claim of the dealer, whereas the first appellate authority has held that, when the dealer could produce the credit note and debit note before him, then there is no reason to deny the claim. The first appellate authority has also further held that, the C.A. return contain the net sale of the year as submitted by the dealer before him. So, in consequence thereof, he has accepted the claim of the dealer. The grounds in appeal mentioned herein-above, *prima facie* intended to cast aspiration on the integrity of the first appellate authority. In the grounds of appeal it is stated that, the credit notes were not produced in the assessment or even one year thereafter. It only produced before the first appellate authority. These are manufactured or concocted documents. So far as the acceptance of

credit note and debit notes by the first appellate authority is concerned, it cannot be said that, these documents were not verified by the first appellate authority. If the documents are forged, then the Revenue should have taken action against the dealer under criminal law. On the other hand if the first appellate authority has acted malafide upon the manufactured documents, then the Revenue should have taken up the matter in administrative side departmentally. But, the sleeping statement like the first appellate authority has accepted or acted upon manufactured documents never can be a ground in appeal to be considered by this Tribunal.

8. Learned Standing Counsel has further submitted that, even if the credit notes and debit notes are accepted, then also in some cases the dealer is not entitled to the decrease in payment of output tax because the credit notes and debit notes and sale returns were not made within the stipulated period of three monthes as per Rule 7(3)(d) of the OVAT Rules. The submission of the learned Standing Counsel is a question of fact. It has not been taken in the grounds of appeal. No additional ground on this score is filed. It is in the hearing this plea is raised not supported by any document. However in the facts and circumstances of the case it is felt necessary to remand the natter back to the ld. AA for the limited purpose of verification documents in the light of rule 7 (3)of OVAT rules but in no case genuinity of the documents can be questioned before the learned assessing authority.

9. The matter is remitted back to the learned assessing authority for assessment afresh. The learned assessing authority will do well to ascertain if there was sale return within the stipulated period of three months or not. Any sale return beyond the period of three months will not qualify for reduction of output tax liability.

Accordingly, it is ordered.

The appeal is allowed in part. The impugned order is set aside. The matter is remitted back to the assessing authority for assessment afresh as per the observation above.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

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