

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 55 (VAT) of 2016-17

(Arising out of order of the learned JCST (Appeal), Ganjam Range, Berhampur in First Appeal No. AAV- 31/2012-13, disposed of on dated 29.02.2016)

Present: **Shri A.K. Das, Chairman**

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

... Appellant

-Versus-

M/s. Gurumurthy Electronics,
Main Road, Phulbani,
Dist. Kandhamal

... Respondent

For the Appellant : Sri D. Behura, S.C. (CT)
For the Respondent : Sri R.P. Sahu, Advocate

Date of hearing: 25.07.2022 *** Date of order: 26.07.2022

ORDER

The State has preferred this second appeal assailing the order dated 29.02.2016 passed by the learned Joint Commissioner of Sales Tax (Appeal), Berhampur Range, Ganjam (hereinafter called as 'first appellate authority') in Appeal No. AAV- 31/2012-13 thereby setting aside the order dated 05.04.2012 passed by the Sales Tax Officer, Phulbani Circle, Phulbani (in short, 'assessing authority') raising an extra demand of ₹21,987.00 including

penalty of ₹14,657.92 for the period 01.04.2005 to 30.06.2011 in the assessment framed u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') remitting the matter back to it (assessing authority) for reassessment.

2. Briefly stated, the facts of the case are that the dealer-assessee deals in purchase and sale of electronics and electrical goods like TV, air coolers, refrigerators, watches, fan and its parts etc. on wholesale-cum-retail sale basis inside the State only. Learned assessing authority basing on the Audit Visit Report (AVR) submitted by the Tax Audit Team after conducting tax audit in the business premises of the dealer, initiated proceeding u/s. 42 of the OVAT Act and issued notice to the dealer in Form VAT-306. The dealer-assessee pursuant to such notice, appeared before the assessing authority and produced the books of account before it. On being confronted with the allegations made in the AVR, the dealer-assessee admitted the allegation of sales return, receipt of credit note and purchase and sale suppression to the tune of ₹8,300.00. The assessing authority on the basis of admission of the dealer-assessee completed the assessment u/s. 42 of the OVAT Act

and raised the tax demand of ₹21,987.00 including penalty of ₹14,657.92.

2(a). The dealer-assessee challenging the demand raised by the assessing authority, preferred appeal before the first appellate authority, who accepting the contention of the learned Advocate for the dealer, set aside the order of assessment dated 05.04.2012 remitting the matter back to the ACST, Phulbani Circle, for fresh adjudication of the matter according to law. It was observed by the first appellate authority that the reasons for which the ITC amounting to ₹9,988.71 was disallowed cannot be treated as valid and legal ground and that the assessing authority at the time of assessment neither verified the periodical returns filed by the dealer-assessee nor gone through the check-sheet attached to the AVR properly.

2(b). The State being aggrieved with the aforesaid order of the first appellate authority setting aside the order of assessment dated 05.04.2012 and remitting the matter back to the ACST, Phulbani Circle, for fresh adjudication in accordance with law, filed the present second appeal. No cross-objection has been filed by the dealer-respondent.

3. I have heard the learned Counsel for the parties, gone through the grounds raised in memorandum of appeal vis-a-vis the impugned orders of the forums below and the materials on record. In course of hearing of the appeal, learned Standing Counsel (CT) for the revenue urged before me that the first appellate authority without assigning any reason has simply set aside the order of assessment and remitted back the matter to the assessing authority for fresh adjudication according to law. He submitted that the first appellate authority while remitting the matter back to the assessing authority did not discuss the different provisions relating to issuance of debit and credit notes and acceptance of the same for the purpose of adjustment of sale price and tax in relation to taxable sale. He vehemently urged that the provisions contained u/r. 7(2) of the OVAT Rules, 2005 specifically provides the credit and debit notes as referred to sub-rule (1) shall be issued within three months following the tax period, during which the original sale had taken place. If it has not been issued within three months following the tax period, such debit note and credit note cannot be accepted. The first appellate authority while remitting the matter back to the assessing authority should

have given clear cut direction for consideration of the claim of the dealer-assessee keeping in view the provisions contained u/r. 7(2) and 7(3)(d) of the OVAT Rules. He submitted to allow the appeal and give specific direction to the assessing authority to consider the claim of the dealer-assessee keeping in view the provisions contained u/r. 7(2) and 7(3)(d) of the OVAT Rules. Per contra, learned Counsel for the dealer-assessee supported the impugned order of the first appellate authority as just, reasonable and in accordance with law.

3(a). On going through the impugned order of the first appellate authority, I find that the first appellate authority has simply set aside the order of the assessing authority with a direction to the assessing authority for fresh adjudication in accordance with law. If the first appellate authority while remitting the matter back to the assessing authority would have given direction for accepting the credit note to the tune of ₹9,988.71 without discussing the provisions contained u/s. 7(2) and 7(3)(d) of the OVAT Rules, certainly the State could be said to have been aggrieved by such direction. When the first appellate authority has simply remitted the matter back to the

assessing authority for fresh adjudication in accordance with law, it cannot be said that the State is aggrieved by such finding of the first appellate authority. The matter having been remitted back to the assessing authority for disposal in accordance with law, it (assessing authority) is quite competent to decide the claim of the dealer-assessee keeping in view the Rules 7(2) and 7(3)(d) of the OVAT Rules. No specific direction is required to be given to the assessing authority to take note of the aforesaid provisions governing the field while adjudicating the matter afresh.

4. In view of the discussions made above, the appeal filed by the State stands dismissed and the impugned order of the first appellate authority is hereby confirmed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman