

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 69(V)/2012-13

(From the order of the Id. DCST (Appeal), Sambalpur Range,
Sambalpur, in Appeal No. AA.60/SAI/VAT/2010-11, dtd.28.02.2011,
summarily rejecting the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

M/s. Anand World, V.S.S. Marg,
Dist. Sambalpur

.... Appellant

-Versus-

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

.... Respondent

For the Appellant : None
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment period : 01.04.2005 to 30.09.2008)

Date of Hearing: 23.02.2019 *** Date of Order: 23.02.2019

ORDER

When the appeal before the learned First Appellate Authority/Deputy Commissioner of Sales Tax, (Appeal), Sambalpur Range, Sambalpur (in short, FAA/DCST) dismissed as barred by limitation, the dealer feeling aggrieved knocked the door of this forum by way of this second appeal challenging the sustainability of the impugned order by the FAA as illegal. The instant dealer faced audit assessment u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) for the tax period from 01.04.2005 to 30.09.2008 on the basis of Audit Visit Report (AVR), which was ultimately ended with the demand of tax at Rs.3,338.62 and penalty at Rs.6,677.24.

2. The appeal before the learned FAA at the behest of the dealer was dismissed, as the dealer failed to comply the provision u/s.77(3) of the OVAT Act, which mandates the appeal should be preferred within a stipulated period of 30 days from the date on which the order is served on the dealer. The provision appended to the Sec.77(3) of the OVAT Act reads as follows :

“77. Appeals. –

(1) ****

(2) ***

(3) ***

[Provided that an appeal preferred after a period of thirty days may be admitted by the prescribed authority if he is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.]”

3. The impugned order as it revealed, the dealer has not made any attempt to condone the delay. On the other hand, the dealer even remained absent in the hearing of the first appeal. So, in conclusion the learned FAA dismissed the appeal as barred by limitation but captioned the same as “Therefore the said appeal is hereby summarily rejected”.

4. Feeling aggrieved, the dealer preferred this second appeal. It is contended by the dealer that, the dismissal of the appeal by the learned FAA is illegal and cannot withstand in law. It is the dealer for the first time came to know about the delay filing of first appeal only from the impugned order. The assessment order passed by the Sales Tax Officer, Sambalpur-I Circle, Sambalpur (in short, STO), is without jurisdiction, the calculation of ITC admissibility to the dealer by the AA is also illegal. So, the order of the learned FAA should be reversed.

5. At the outset, it is pertinent to mention here that, the dealer was not only remained absent before the learned FAA but also did not turn up for hearing before this Tribunal in spite of receipt of

notice of hearing. Perused the impugned order before the learned FAA. It has discussed the delay in preferring appeal before him. The order of assessment was passed on dtd.08.06.2009, which was received by the dealer on dtd.12.02.2010. However, the dealer had preferred the first appeal on dtd.13.12.2010 i.e. 10 months after receipt of the assessment order. The appeal was required to be preferred within one month and no reasonable explanation was given by the dealer before the FAA for delay in preferring appeal. So at the stage of removal of defect, the appeal was dismissed as per Sec.77(3) of the OVAT Act.

6. Provision u/s.78 of the OVAT Act speaks of the jurisdiction of the Tribunal to hear the appeal against any order passed by the FAA as per Sec.77(7) of the OVAT Act. For better appreciation, provision u/s.78(1) of the OVAT Act is produced below :

“78. Appeal to Tribunal and stay of recovery of dues during pendency of appeal. –

(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.

Provided that an appeal preferred after a period of sixty days may be admitted by the Tribunal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period”

Once the appeal before the learned FAA was not disposed of as per Sec.77(7) of the OVAT Act, appeal before this Tribunal is not maintainable.

7. Further, it is apt to mention here that, there is no illegality in the order of learned FAA, particularly when the dealer did not appear and removed the defect in explaining delay to the satisfaction of the learned FAA. Needless to repeat here that, the appellant-dealer is also found absent here before this Tribunal in the hearing.

Resultantly, it is held that, the present appeal is bad both in law and facts, hence dismissed.

Dictated and Corrected by me,

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

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