

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 135(V)/2018**

(Arising out of order of the ld. JCST (Appeal), Cuttack-II
Range, Cuttack, in First Appeal Case No.
AA/68/OVAT/CUII/2016-17/106131713000056,
disposed of on dtd.23.11.2017)

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

M/s. Mukesh Industries,
Plot No.B/116, N.I.E., Jagatpur,
Dist. Cuttack. Appellant

-Versus-

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

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

(Assessment Period : 08.08.2009 to 31.08.2011)

Date of Hearing: 08.03.2021 *** Date of Order: 09.03.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack (in short, FAA/JCST) in First Appeal No. AA/68/OVAT/CUII/2016-17/106131713000056 dtd.23.11.2017 in confirming the assessment order passed by the learned Assessing Authority/Deputy Commissioner of Sales Tax, Cuttack-II Circle, Cuttack (in short, STO/DCST) for the assessment period from 08.08.2009 to 31.08.2011 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, in the instant case, is a registered dealer, who is engaged in manufacturing of different dals from out of pulses for sale. On receipt of the Audit Visit Report, learned DCST has issued statutory notice for production of books of account for assessment. In response to the statutory notice, the dealer-proprietor appeared and produced the books of account consisting of purchase stock and sales supported with the respective invoices which are examined vis-à-vis the AVR by the Assessing Authority.

During the material period, the dealer has effected purchases of goods worth Rs.7,14,53,517.49, which includes Rs.1,27,52,190/- and Rs.5,18,35,800/- from outside the State and from unregistered sources within the State respectively. Its total purchase also includes the purchases of capital goods, oil and steel etc. for use. While effecting the aforesaid purchases the dealer has paid Rs.2,99,652.41 and has claimed the same as ITC. The AVR has suggested to disallow Rs.57,372.83 as the goods so purchased are stated to be not coming under the definition of capital goods. On being confronted on this issue, the dealer has stated that, the same has happened due to incorrect statements submitted at the time of audit. However, the contentions of the dealer has been examined with reference to the original purchase invoices and it is found that, the dealer while filing the statements for audit has wrongly shown the purchases of machineries as electrical goods. But the contention in respect of availing ITC on account of purchase of oil is not tenable as oil is not reflected in the

registration certificate of the instant dealer. Now considering the same, the dealer is found to be ineligible for credit of input tax worth of Rs.17,615.22 on account of purchase of oil. Besides as the dealer has adjusted ITC of Rs.1,47,492.85 under the CST Act it is now found to be eligible for ITC of Rs.1,34,544.34. In absence of any other discrepancy and adverse report in the AVR the GTO returned at Rs.2,53,29,801.21 is accepted. After allowing deduction of Rs.31,20,208/- and Rs.8,54,212.40 towards sale of exempted goods and collection of VAT respectively, the TTO stands determined at Rs.2,13,55,380.81. VAT @4% on the TTO calculates to Rs.8,54,215.23. After allowing adjustment of Rs.1,34,544.34 and Rs.6,93,974/- towards claim of ITC and payment of admitted tax respectively, the dealer is found to have paid less amount of tax of Rs.25,694/-. As the less payment of tax is without any reasonable cause, the default is considered to be wilful and accordingly the dealer has to pay a penalty of Rs.51,388/- u/s.42(5) of the OVAT Act. Thus, tax and penalty together due calculates to Rs.77,082/- which the dealer is liable to pay at the assessment stage.

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), Cuttack-II Range, Cuttack, who in turn, dismissed the appeal and confirmed the order passed by the learned Assessing Officer for which the demand in dispute remained as it is.

4. Being further aggrieved with the order of the learned FAA/JCST (Appeal), the dealer knocked the door of

this Tribunal by way of filing of second appeal with the contention that, the order passed by the Id.FAA/JCST (Appeal) is illegal, arbitrary and in contravention of law and hence needs to be quashed.

5. State-respondent has filed cross objection 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 appears to be unjust and improper. Leaned Assessing Officer has noticed the appellant u/s.42 of the OVAT Act for the audit assessment. The dealer appeared before the learned AA and submitted books of account along with annual statement of purchase and sales for the period 8.8.2009 to 31.08.2011. The learned AO has completed the assessment on the basis of audit report, which was submitted by the Audit team. But the Audit report says that, ITC may be allowed of Rs.1,47,492.85 and GTO and NTO are same as per return which was filed by the dealer-appellant. The learned FAA without giving proper opportunity of being heard, confirmed the appeal which is illegal and arbitrary. While disposing the appeal, learned FAA should have verified the assessment record in which it is clearly mentioned that, the oil purchased for production of Dal are consumer goods and in that case, the ITC should have been allowed to the dealer-appellant. The allegation made by the AA as well as the FAA as regards payment of ITC on account of purchase of oil is not tenable as oil is not reflected in the Registration Certificate of the dealer-appellant is not correct as

the dealer has already made an application for amendment of registration certificate in VAT-108 for adding of item "oil" from 24.03.2010 and the hard copy of the said application was filed before the learned concerned authority on 29.03.2010 affixing required court fees. The order of the learned FAA is illegal, arbitrary in the eye of law. The order was made without granting sufficient opportunities of being heard. The order is illegal because amendment petition filed by the dealer-appellant has not been taken into consideration. The learned Advocate for the dealer has filed a petition for additional evidence. Copy of the petition was served to the learned Addl. Standing Counsel. The petition was heard from both the sides and the petition was allowed. The learned Advocate for the dealer has prayed to allow the appeal 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 learned AO and FAA have completed the assessment/appeal based on the provision of law and factual position. Accordingly, the same cannot be treated as defective and bad in law in absence of any documentary evidence. Several opportunities were given to the dealer but the dealer did not give any satisfactory explanation in support of his contention. Finding no way out the FAA completed the appeal hearing on ex-parte basis basing on the established facts in the report and merit of the case. 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-appellant which is not sustainable in the eyes of law. So, he has prayed to dismiss the appeal and to confirm the order of the learned FAA.

8. Heard the learned Advocate Mr. S.R. Mishra appearing on behalf of the dealer and learned Addl. Standing Counsel Mr. S.K. Pradhan on behalf of the State. Gone through the grounds of appeal, impugned orders 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, after analysing the points raised in this appeal, I am of the view that, the points raised by the learned Advocate for the dealer is quite satisfactory and this is a fit case where the matter should be remanded back to the learned AO to re-compute the tax liability. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the learned FAA is set-aside. The matter is remanded back to the learned Assessing Officer and he is directed to consider the additional evidence filed by the dealer after verifying the genuineness of the documents thoroughly and accordingly re-compute the tax liability of the dealer giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order. The cross objection filed by the State-Respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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

