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

S.A.No. 206(V)/2017-18

(From the order of the ld.Addl.CST (Appeal), South Zone, Berhampur, in Appeal No. AA(VAT)-01/2016-17, dtd.30.06.2017, setting aside the assessment order of the Assessing Officer)

Present: Sri S. Mohanty
2nd Judicial Member

M/s. Dubey Perfumers,
Agraharam, Via- Chatrapur,
Dist. Ganjam. .... Appellant

-Versus-

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

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

(Assessment period : 01.04.2006 to 31.03.2007)

Date of Hearing: 16.02.2019 *** Date of Order: 16.02.2019

ORDER

This present second appeal has been directed against the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, FAA/Addl.CST) passed in First Appeal Case No. AA(VAT)-01/2016-17, dtd.30.06.2017 in setting-aside the order of the learned Assessing Authority/Joint Commissioner of Sales Tax, Ganjam Range, Berhampur (in short, AA/JCST) for the assessment period 01.04.2006 to 31.03.2007 u/s.43 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The facts of the case in brief is that :

Consequent upon receipt of the Audit report submitted by STO, Vigilance Unit dtd.27.11.2006, assessment u/s.43 comprising the tax period from 01.04.2006 to 31.03.2007 relating to the assessee-dealer was taken up, the dealer carries on business in processing of Kewada rooh, Kewada Attar, Kewada scented oil etc.. The assessment was complete on dt.10.12.2007 with a demand of Rs.24,37,499/-. Thereafter, the dealer challenged the assessment before the Hon'ble Court in W.P.(C) No.5031/2008 challenging the jurisdiction of the AA. The Hon'ble High Court while allowing the dealer's prayer, quashed the assessment order and directed for assessment afresh. Thereafter, the AA again assessed the dealer u/s.43 of the OVAT Act in accordance with the direction of the Hon'ble Court. The AA accepted the report of the Vigilance Wing regarding suppression of 368 grams of Kewada Rooh sold to Sri. Satish Kumar Suri. The AA also found the dealer guilty of suppression of having stock of 6 drums X 1/25 Kgs. each and 12 pots X 6 Kgs. each = 222 Kgs. of Kewada essence whose worth was estimated at Rs.1,11,00,000/-. The dealer was found not paid VAT @12.5% on purchase of Kewada flower. Similarly on verification of the stock transfer of Kewada flower, the dealer was found to have paid tax to the tune of Rs.8,41,607/- @4% against the total value of stock transfer of Rs.2,10,40,168/-. The dealer's books of account was rejected, the tax due was calculated on determination of GTO and TTO and in the result, the dealer was asked to pay balance tax due at Rs.24,52,791.63 and penalty at Rs.49,05,583.26.

3. Felt aggrieved, the dealer carried the matter before the FAA, who in turn, vide impugned order, partially allowed the appeal and set-aside the assessment. Thereafter, the dealer has preferred this second appeal. The contention of the dealer before this Tribunal is, the

assessment order was not based on the date it was shown to have passed and because the impugned order was an ante-dated one, the entire assessment order should be quashed. The next contention of the dealer is, no notice was given to the dealer. As such the assessment order being defective also cannot withstand in the eye of law. The dealer also challenged the very initiation of proceeding is not maintainable on the plea that, re-assessment u/s.43 of the OVAT Act here in this case was not proceeded by any assessment u/s.39, 40, 42 or 44 of the OVAT Act, besides the dealer has challenged the enhanced tax rate as levied to be not as per law.

4. The appeal is heard without cross objection from the side of the Revenue.

5. At the outset, it is pertinent to mention here that, on perusal of the impugned order, it is found that, ld.FAA has remanded the matter to the AA but he has written the order as follows :

"In the result, the appeal is allowed and the assessment is set-aside".

The order written as above creates a confusion. However, the reading of the entire judgment reveals the AA has remanded the matter for fresh adjudication. Further, it is not known how far the remand assessment has been proceeded with by now in the circumstance above it is hereby ordered. So all these questions raised by the dealer in this second appeal can be dealt with in presence of the dealer in the remand assessment save and except the grounds like ante-dating the final order and intention of the assessment without statutory notice. It is not disputed that, the assessment order was shown to have passed on 06.01.2010 but the endorsement of the Memo No. and date of dispatch of the order to the dealer shows it was

sent on 30.10.2010 or 31.01.2011 i.e. long after the date shown as date of order. Sec.43 of the OVAT Act as it was prevalent by then mandates the assessment should be completed within a period of five years. The date of dispatch of the assessment order as pointed out by the learned Counsel for the dealer if considered as the date of order in that case also the order is not a time barred one. However, the fact remains keeping in view the delay in dispatch of the order though presumption can be drawn that, the order was not prepared on the date it was shown to have passed but in any case, the order cannot be treated to be as time barred one. The LCR as it revealed the AA had abruptly closed the case on dt.06.01.2010 and passed the order on the same date. In that case, it is believed that, proper opportunity of being heard was not provided to the dealer and thereby there was violation of principle of natural justice in the case in hand. So far as the statutory notice on the dealer under Form VAT-307 is concerned, it was argued by the learned Addl. Standing Counsel that, re-assessment was done as per the order of the Hon'ble Court. The Hon'ble Court had directed the AA to fix a date of hearing and to complete the assessment within a period of fortnight, whereas the dealer was directed to co-operate the authority in completing the proceeding. In that view of the matter, it is held that, notice in Form VAT-307 was not mandatory since it was direction of the Hon'ble Court to take up the assessment proceeding.

6. With the observation above, I am of the considered view that, when the matter is already remanded by the FAA back to the AA, the dealer should be given opportunity to raise all these questions of law and facts before the AA during the hearing of the remand assessment proceeding like maintainability of the proceeding.

The appeal sans merit is dismissed on contest. With the observation that the dealer is at liberty to raise all these pleas before the AA.

Dictated and Corrected by me,

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

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