BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 96 (VAT) of 2018

(Arising out of order of the learned JCST, Ganjam Range,
Berhampur in First Appeal Case No. AAV -24/17-18
disposed of on dated 29.12.2017)

Present: Shri R.K. Pattanaik,
Chairman

M/s. Jaya Jagannath Agency,
Goods Shed Road, Gosaninuagam,
Berhampur, Dist. Ganjam ... Appellant

-Versus-

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

For the Appellant : Sri K. Choudhury & Sri R.P. Sahu, Advocates
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 02.03.2021 ***** Date of order: 07.04.2021

O R D E R

The dealer assessee filed the instant appeal under Section 78(1) of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'the Act') assailing the impugned order dated 29.12.2017 promulgated in Appeal Case No. AAV -24/17-18 by the learned Joint Commissioner of Sales Tax, Ganjam Range, Berhampur (in short, 'FAA') confirming the order of assessment dated 09.05.2017 directed under Section 42 of the Act by the learned Sales Tax Officer, Ganjam-II

Circle, Berhampur (hence called 'AA') for tax periods 01.04.2014 to 30.09.2015 on the stated grounds.

2. In fact, the dealer assessee carries on business in trading of cement, iron and steel and other items on wholesale-cum- retail basis. It is revealed from the record that a tax audit was conducted in respect of the business activities of the dealer assessee and finally, an Audit Visit Report (in short, 'AVR') was submitted. On receipt of AVR, a proceeding under Section 42 of the Act was commenced. The dealer assessee appeared before the AA and produced the books of accounts for the purpose of audit assessment. Lastly, the AA, by considering the books of accounts and other documents, raised additional demand of ₹1,17,945.00 which included penalty. The dealer assessee, thereafter, appealed to the FAA against the assessment dated 09.05.2017 alleging it to be arbitrary and unjust. However, the appeal was dismissed thereby confirming the order of assessment dated 09.05.2017. Such dismissal of appeal led to the filing of the present appeal by the dealer assessee by claiming that the impugned order dated 29.12.2017 to be untenable in law.

3. On the contrary, State filed a cross-objection justifying the impugned order dated 29.12.2017 and contended that the alleged suppression was duly established and there was no dispute on gross profit margin @ 11% and in so far as excess payment of ₹10,000.00 is concerned, as is claimed by the dealer assessee, it had not been carried forward in the revised return for the QE 6/2014. It is further contended that penalty at to the twice of the amount tax assessed was

rightly levied which is inevitable and automatic considering the nature of liability. Hence, according to the State, appeal deserves to be dismissed.

4. Adjudication to the lis is presently confined to the grounds, such as, excess payment of ₹10,000.00 made on 30.03.2014 was not accounted for due to a mistake, as it could not be shown in the revised return. It is also contended that said excess payment during the financial year 2013-14 dated 30.03.2014 was disclosed in the quarterly return and was carried forward to the next year i.e. 2014-15, but subsequently, by inadvertence, it failed to be carried forward in the revised return. But, the FAA looking at the data from VATIS and revised return did not approve of and accept excess payment of ₹10,000.00 and rejected the claim of the dealer assessee. A copy of chalan showing payment of ₹10,000.00 on 30.03.2014 is produced by the dealer assessee. Also a copy of the return of the 1st quarter of 2014-15 showing such payment is submitted for perusal of the Tribunal. While contending so, the learned Counsel for the dealer cited an order dated 25.08.2010 of the Tribunal in S.A. No. 84 (C) of 2008-09, wherein, a reference has been made to a decision of the Hon'ble Apex Court in the case of Giridhari Parasmal Vs. The State of Mysore reported in (1967) 20 STC 64 contending that when such excess payment was made but a mistake was committed in the revised return, it ought to have been corrected. In the decision ibid, the Hon'ble Apex Court observed that the duty of the assessing officers is not merely to impose tax that is lawfully exigible but also to give to the assessees the benefit of any reduction or exemption that may become due to them upon facts factually found to be true by the assessing authorities whether or

not the assessees, out of ignorance or by mistake, make a claim thereto and when the mistake is so obvious and the matter is taken up on appeal, it is the duty of the appellate authorities to correct that mistake. Having regard to the ratio of the aforesaid decision, the Tribunal is of the humble view that considering the claim of the dealer assessee regarding excess payment and mistake committed by it in failing to show in revised return, it needs to be examined and verified afresh.

5. One more contention is advanced by the learned Counsel for the dealer assessee which is to the effect that the audit inspection at its business premises was conducted on 22.10.2016 and discrepancies valued at ₹3,28,949.00 were detected and with an added gross profit margin of 11%, suppression was held to be ₹3,65,134.00, but it was made with reference to the assessment period i.e. 01.04.2014 to 30.09.2015 which is impermissible and in this connection, a decision of the Hon'ble High Court in the case of J. Gopal Rao Vs. State of Orissa reported in (1993) 88 STC 488 (Orissa) is placed on reliance. A copy of the AVR is made available to the Tribunal, which on being perused, it is made to realise that physical stock of goods was held at the business premises of the dealer assessee on the date of inspection with respect to the corresponding purchase, sale invoices and books of accounts and then, suppression was allegedly detected. The stock discrepancies and consequential suppression is shown to have been confronted to the dealer assessee on 09.05.2017 which is claimed to have been admitted. But then, except the said admission on behalf of the dealer assessee, it is not discernable from the record, whether, the discrepancies detected on 22.10.2016 were really related to the

assessment period from 01.04.2014 to 30.09.2015. According to the Tribunal, in view of the categorical claim of the dealer assessee and keeping in view the law laid down in J.Gopal Rao case, such aspect as to stock discrepancies and sale suppression is required to be freshly examined in order to ascertain, whether, additional tax amount of ₹3,65,134.00 can be sustained or not. The levy of penalty shall have to be considered only after a decision is made on sale suppression which is left to the discretion of the AA.

6. Hence, it is ordered.

7. In the result, the appeal stands partly allowed. As a logical sequitur, the impugned order dated 29.12.2017 passed in Appeal No. AAV -24/ 17-18 is hereby set aside to the extent indicated above. Consequently, the matter is remitted back to the AA for the purpose of fresh examination and computation of tax liability vis-a-vis the dealer assessee for the tax periods in the light of the observations of the Tribunal and to pass appropriate order in accordance with law, preferably, within a period of three months from the date of receipt of the above order. The cross-objection filed by the State is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman