BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 107 (VAT) of 2014-15

(Arising out of order of the learned DCST (Appeal), Balasore Range, Balasore in Appeal No. AA- 67/BD-2009-10 (VAT), disposed of on 28.04.2014)

Present: **Shri G. Sharma, Chairman**

State of Odisha, represented by the Commissioner of Sales Tax, Odisha, Kataka ... Appellant

-Versus-

M/s. Anil Trading Co., Charampa, Bhadrak ... Respondent

For the Appellant : Sri D. Behura, S.C. (CT)
For the Respondent : N o n e

Date of hearing: 08.09.2026 *** Date of order : 06.10.2026

O R D E R

Challenging the legality and propriety of order dated 28.04.2014 passed by the Deputy Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (hereinafter referred to as 'First Appellate Authority') in Appeal No. AA- 67/BD-2009-10 (VAT), this appeal has been filed by the State.

2. The brief facts relevant for disposal of this appeal run thus–

M/s. Anil Trading Co. (hereinafter referred to as 'Dealer') deals in grocery items on wholesale-cum-retail basis. Basing on the Audit Visit Report (AVR), the Asst. Commissioner of Sales Tax,

Bhadrak Circle, Bhadrak, (in short, 'Assessing Authority') initiated the assessment proceeding u/s. 42 of the Odisha Valued Added Tax Act, 2004 (for brevity, 'OVAT Act') for the period 01.04.2005 to 02.10.2008. Due to non-production of books of account by the Dealer, the Assessing Authority considering the suggestion made by the Audit Officer in the AVR calculated the VAT suppression at ₹11,817.00 and also levied with penalty of ₹23,634.00, which resulted in demand of ₹35,451.00 for the period under assessment. Being aggrieved with the order of assessment, the Dealer preferred first appeal before the learned First Appellate Authority. The First Appellate Authority considering the VAT suppression detected at ₹807.00 reduced the demand to ₹2,421.00 towards tax and penalty, hence this appeal.

3. The Dealer filed no cross-objection.

4. None appeared for the Dealer despite service of notice. Learned Standing Counsel (CT) for the State was present. Hence, the matter is taken up for disposal *ex parte* on merits basing on the materials on record.

5. The learned Standing Counsel (CT) appearing for the State assailed the impugned order to be bad in law on the ground that the Assessing Authority explained the VAT suppression in the assessment order and calculated such suppression at ₹11,817.00, whereas the First Appellate Authority without explaining properly held an imaginary figure of suppression at ₹807.00 and reduced the demand, which is baseless, accordingly, prayed for restoration of the assessment order as lawful.

6. On perusal of record, it transpires that the Assessing Authority initiated the assessment proceeding for the impugned period basing on the AVR. On examination of the VAT suppression suggested

by the Audit Officer in the AVR, the Assessing Authority held that the mark up calculation made by the Audit Officer was incorrect, accordingly, computed fresh calculation with reference to purchase, sale and closing stock, thereby arrived at the VAT suppression at ₹11,817.00 and determined the liability of the Dealer as detailed in the assessment order. The First Appellate Authority, as it appears, in the impugned order observed that in case of VAT suppression detected by the Assessing Authority of ₹807.00 at the time of assessment after taking 5% gross profit was justified, which is not at all a fact borne out in the assessment order. Thus, it amply clear that the First Appellate Authority has gone wrong in reducing the demand at his level by holding the VAT suppression at ₹807.00 instead of ₹11,817.00 determined by the Assessing Authority, without explaining any cogent reason thereof. In view of such backdrop of the matter, this Tribunal is of the considered opinion that the order of the First Appellate Authority suffers from infirmity and is liable to be set aside, thereby restoring the order of the Assessing Authority as lawful in absence of any rebuttal material documents on record.

Hence, it is ordered.

7. In the result, the appeal filed by the State stands allowed and the impugned order of the First Appellate Authority is hereby set aside by restoring the order of the Assessing Authority.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman