BEFORE THE DIVISION BENCH-III: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 36 (V) of 2018

(From the order of the learned Addl.CST (Appeal), South Zone, Berhampur, in Appeal Case No. AA (VAT) 106221622000101, disposed of on dtd.30.12.2017)

P r e s e n t : Shri S. Mohanty & Shri R.K. Pattnaik,
2nd Judicial Member Accounts Member-III

M/s. Pal Automotives Pvt. Ltd.,
At/P.O.- Plot No.96A, Cuttack Road,
Bhubaneswar. ... Appellant

- V e r s u s -

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

(Assessment period : 01.04.2013 to 31.03.2015)

For the Appellant ... Mr. P. Mohapatra, Advocate
For the Respondent ... Mr. S.K. Pradhan, A.S.C.

Date of hearing: 29.12.2018 ******** Date of order: 10.01.2019

O R D E R

The assessee-dealer has preferred this second appeal against the order of the First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, ACST) in Appeal Case No. AA (VAT) 106221622000101, whereby he confirmed the order of the Assessing Authority/Deputy Commissioner of Sales Tax, Bhubaneswar I Circle, Bhubaneswar (in short, DCST) raising the tax demand including penalty of Rs.1,01,16,039.00 assessed u/s.42 of the Orissa Value Added Tax Act, 2004 (in short, the OVAT Act).

2. A common question raises time to time before this Tribunal is raised once again for adjudication in this appeal is -: What should be the amount of sale price relatable to sale turnover, purchase price relatable to purchase turnover in the event trade discount/cash

discount/commission incentives etc. received from manufacturer/ the selling dealer and its effect on the sale turnover of assessee- dealer on sale to consumer/customer.

3. To understand the disputed question and to appreciate the argument advanced by the sides it is pertinent to reproduce the relevant provisions under the statute as follows:-

Sec.2(46)OVAT act as it was before the amendment w.e.f. 01.06.2008 reads as follows:

> [(46) **"SALE PRICE"** means the amount of valuable consideration received or receivable by a dealer as consideration for the sale of any goods less any sum allowed as cash discount or trade discount according to the practice normally prevailing in the trade but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof, and the expression 'purchase price' shall be construed accordingly.
>
> **Explanations.-**
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> xxx xxx xxx xxx

Post amendment of the provision reads as follows:-

> "(46) ***"SALE PRICE"*** means the amount of valuable consideration received or receivable by a dealer as consideration for the sale of any goods less any sum allowed as cash discount or trade discount at the time of delivery or before delivery of such goods but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof and the expression **'PURCHASE PRICE'** shall be construed accordingly;
>
> **Explanation.-**
>
> (a) Where any sum charged for freight, delivery, distribution, installation or insurance at the time of delivery or before delivery of such goods it shall be included in the sale price.
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> (b) In case of sale by hire-purchase agreement, the prevailing market price of the goods on the date on which such goods are delivered to the purchaser under such agreement shall be deemed to be the sale price.

(c) In relation to transfer of right to use any goods for any purpose (whether or not for a specified period) the consideration or the hire-charges received or receivable for such transfer shall be the sale price.
(d) Any amount of duties, charges, taxes levied or leviable under any Act (other than tax levied or leviable under this Act) in respect of such goods shall be included in the sale price.
(e) Amount received or receivable by the seller by way of deposit, warranty (whether refundable or not) which has been received or is receivable whether by way of separate agreement or not, in connection with, or incidental or ancillary to, the sale of goods shall be deemed to be included in the sale price."

Taxable turnover of purchase as per Sec.2(56) reads as follows:

"(56) ***"TAXABLE TURNOVER"*** means the turnover on which a dealer is liable to pay tax as determined after making such deduction from his gross turnover and in such manner as may be prescribed."

Turnover of purchase as per Sec.2(59) reads as follows:-

"(59) ***"TURNOVER OF PURCHASES"*** means the aggregate of the amounts of purchase price paid and payable by a dealer in respect of the purchase or receipt of goods liable to tax under Section 12 during a given period;"

Turnover of sale as per Sec.2(60) reads as follows:

"(60) ***"TURNOVER OF SALES"*** means the aggregate of the amounts of sale price received or receivable by a dealer in respect of sale or supply of goods effected or made during a given period;"

'Rule 6' of the OVAT Rules speaks the method of determining the taxable turnover. Similarly, the provision u/s 22 and 23 of the OVAT Act contemplates the entitlement and adjustment of ITC, credit notes and debit notes with specific time limit within which these can be entertained.

If we look at the provision under section 2 (46), the definition of sale price as amended w.e.f. 01.06.2008 it excludes the cash discount or trade discount etc up to the time of delivery or before delivery of such

goods. This provision as per the statute of different states is found not exact to the statute under OVAT Act of our State. However, the principle is now well settled by the different authorities including the Hon'ble Apex Court that, the sale price cannot be treated as an amount more than the amount what was actually, directly or indirectly, payable to the dealer.

4. In **Southern Motors v State of Karnataka (2017) 3 SCC 467**, the Court expressed that,

> "if taxable turnover is to be comprised of sale/purchase price, it is beyond one's comprehension as to why the trade discount should be disallowed, subject to the proof thereof, only because it was effectuated subsequent to the original sale but evidenced by contemporaneous documents and reflected in the relevant accounts. It was also observed therein that to insist on the quantification of trade discount for deduction at the time of sale itself, by incorporating the same in the tax invoice/bill of sale, would be to demand the impossible for all practical purposes and thus would be illogical, irrational and absurd."

In consonance to the view taken by the apex court in **Southern Motors v State of Karnataka(2017)3SCC467 (supra)**, the apex court in a later period in **M/s. Maya Appliances (P) Ltd. Vrs. Addl. Commissioner Of Commercial Tax (2018) 2 SCC 756** has held as follows.

> The liability to pay tax is on the taxable turnover. Taxable turnover is arrived at after making permissible deductions from the total turnover. Among them are "all amounts allowed as discounts." Such a discount must, however, be in accord with the regular trade practice of the dealer or the contract or agreement entered into in a particular case. The expression "the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as such discount" is not happily worded. The words "in respect of the sales relating to such discount" cannot be construed to mean that the discount would be inadmissible as a deduction unless the tax invoice pertaining to the goods originally issued shows the discount. This is a matter of ascertainment. The assessee must establish from its accounts that the discount relates specifically to the sales with reference to which it is allowed. In the first part of the proviso,

> Rule 3(2)(c) recognizes trade practice or, as the case may be, the contact or agreement of the dealer. The latter part which provides a methodology for ascertainment does not override the earlier part. Both must be construed together. Above all, it must be remembered that taxable turnover is turnover net of deductions. All trade discounts are allowable as permissible deductions.*(underlined by me*)

5. To understand the disputed question it will be beneficial to take a hypothetical situation such as :- 'A' is the manufacturer or first seller, 'B' is the dealer before the taxing authority and 'C' is the purchaser from the dealer-B. If B, dealer purchases certain goods from manufacturer/his selling dealer-A at a particular price i.e. the purchase price for the dealer -B. When the dealer-B sells the goods to consumer/customer-C, the amount from the consumer is the sale price for him. Under Value Added Tax system in the event the dealer purchases and when the purchase value determined ITC accrued to the balance of dealer and thereafter when the dealer sells it to other dealer or consumer and collects sale price, he collects output tax. ITC balance in his hand which accrued on purchase is first adjusted from out of output tax and the balance tax amount became the revenue of the State. When dealer-B purchases a goods on paying certain price but in a later period in view of the agreement between B & A, any discount is given to the dealer-B at any point, it effects/reduces his purchase value. To put it in another way, the selling dealer/manufacturer-A when gives discount or incentive to dealer-B, then it effects the sale price of the selling dealer/manufacturer-A but not the sale price of the dealer-B whereas as stated above, it effects the purchase price of the dealer-B. Similarly, when dealer-B sells the goods to consumer-C and collects output tax, it never can be said that any kind of discount availed by the selling dealer-B from his selling dealer-A will affect the sale price at which the consumer-C has purchased. Once the goods is sold and delivered to the consumer/ultimate consumer-C, any discount thereafter from the manufacturer dealer-A may not flow to the hands of ultimate purchaser-C, the discount will culminate at the hands of the dealer-B the

penultimate dealer in such case. Thus, the discount/incentive as above is relatable to the sale price of the selling dealer/manufacturer 'A' only. In consequence thereof, it is found that, the ultimate sale price i.e. minus discounts will necessitate reversal of ITC by the selling dealer is proportionate to tax on discount.

6. With the observation above, when we delve into the case in hand it is found that, two numbers of allegations are brought by the audit visit team basing which the instant dealer was subjected to audit assessment u/s.42 of the OVAT Act comprising tax period from 01.04.2013 to 31.03.2015. Allegation No.1 was irregular deduction from sale turnover on account of sales return and the second allegation is under assessment of sale price due to reimbursement of VAT and ET and discount from selling dealer. The assessing authority in analysis of the definition of "sale price" as per Sec.2(46) explanation (e) read with the provision u/s.101-A came to a conclusion that the discount incentive whatever received by the instant dealer should be added to his sale turnover.

If the hypothetical example mentioned above is applied to the present case, then the dealer before the taxing authority in this case is the dealer-B as per the example mentioned above. So, any discount or incentive/cash discount whatever, received by the instant dealer/dealer - B no way affects the sale price up to the point the goods are sold to ultimate purchaser but once the goods are sold and delivered to the ultimate consumer/purchaser, thereafter whatever price collected from the consumer is the sale price for the purpose of determining the sale turnover of the instant dealer and any discount received thereafter or prior to it, which does not go to the hands of the purchaser/consumer affects the purchase turnover only of the instant dealer.

In view of the above, it is found that the authorities below have gone wrong in interpreting the explanation (e) to Sec. 2(46) and also gone wrong in application of Sec.101-A to the case in hand. Enhancement of

the sale price or sale turnover by adding the discounts to it as done in the case in hand is found to be erroneous.

7. From the authorities discussed in preceding paragraph herein above, we can summarise as follows:- Discount given **after** the supply has been effected; these discounts are generally of the nature of periodical turnover/volume discounts or incentives, allowed for buying a particular value of goods/services during a period. Such discounts will be allowed as deduction from the value of supply only if the following conditions are satisfied:-

a. There must be scheme or agreement between the supplier (seller) and the receiver (buyer), prior to the time of supply, mentioning the discount that will be allowed. Further, such discount must be mapped to the the relevant invoices against which such discount is being given now.
b. The receiver (buyer) must have reversed the Input Tax Credit pertaining to the discount he is now receiving.

In the result, keeping view the discussion above in the light of the ratio laid down by the authorities, the impugned order in hand can't withstand in law and facts. It should be remitted back to the AA for redetermination of the sale price, purchase turnover, sale turnover and taxable turnover and thereafter to calculate the exact amount of tax liability and ITC reversal unerringly. Accordingly it is ordered.

The appeal is allowed on contest. The impugned order is set-aside. The matter is remanded to ld. AA for assessment a fresh as per the observation above. All endeavor should be made to complete the remand assessment within a period of four months hence.

Dictated & corrected by me,

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

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

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III