BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 299 (VAT) of 2018

(Arising out of order of the learned Additional CST (Appeal),
Bhubaneswar in Appeal Case No. AA (VAT) 14/PU/2018-19
disposed of on dated 17.09.2018)

Present: Shri R.K. Pattanaik,
Chairman

M/s. Nanda Brothers,
Nabakalebar Road, Puri ... Appellant

-Versus-

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

For the Appellant : Sri B.B. Panda, Advocate
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 03.02.2021 ***** Date of order: 01.03.2021

O R D E R

Present appeal under Section 78(1) of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'the Act') read with Rule 93 of the Odisha Value Added Tax Rules, 2005 has been preferred by the dealer assessee assailing the impugned order dated 17.09.2018 promulgated in Appeal Case No. AA (VAT) 14/PU/2018-19 by the learned Additional Commissioner of Sales Tax (Appeal), Bhubaneswar (in short, 'FAA') confirming assessment dated 20.01.2018 directed under Section 43 of the Act by the learned Deputy Commissioner of Sales Tax, Puri

Circle, Puri (hence called 'AA') for the tax periods 01.04.2014 to 20.05.2017 principally on the grounds, such as, whether, in the facts and circumstances of the case, escaped turnover assessment under Section 43 of the Act vis-a-vis a part of the tax period to be tenable?; was it right and proper to reject sale bills for the period 01.06.2015 to 30.06.2015 amounting to ₹16,13,742.00 without ascertaining its truthfulness or otherwise?; and whether, the decision on stock discrepancy and to include ₹2,49,320.00 in the GTO is justified?

2. As against the dealer assessee, the Tax Evasion Report (in short, 'TER') dated 23.09.2017 concerning the tax periods from 01.04.2014 to 20.05.2017 was furnished. In fact, the dealer assessee is engaged in trading of sanitary items and other goods and was assessed under Section 39 of the Act. Later to the receipt of the TER, the proceeding under Section 43 of the Act was initiated. As per the TER, purchase suppression was for ₹6,88,34,332.00; sale suppression was of ₹6,77,73,349.00; unaccounted stock and unaccounted bill were of ₹2,49,320.00 and ₹70,09,599.00 respectively and with the above allegations, proceeding under Section 43 of the Act was commenced. The AA finally calculated the TTO at ₹6,99,45,477.00 and held the dealer assessee liable to pay VAT of ₹1,42,113.00 and levied penalty under Section 43(2) of the Act and demanded a total amount of ₹2,84,226.00. Against which appeal was carried to the FAA, who, however, confirmed the assessment. The dealer assessee has, thereafter, knocked the doors of the Tribunal by filing the instant appeal on the stated grounds.

3. According to the learned Counsel for the dealer assessee, the purchases and sales for the tax period ending on 30.06.2017 have not been taken into account and apprised the Tribunal that the original return for the months of April, May and June, 2017 was filed on 06.12.2017 vide e-filing in juxtaposition to the total purchases and sales earmarked up to 20.05.2017 and for that matter, the very initiation of action under Section 43 of the Act not to be tenable as due opinion according to law was not formed. It is also contended that assessment for a part of the tax period is not envisaged under the Act. In other words, according to the dealer assessee, such assessment for a part of the tax period on verification of the return for the full period is totally impermissible. It is further contended that the authorities below without properly examining the alleged purchases and sales and by not providing due opportunity to reconcile it raised the additional demand and added ₹16,13,742.00 in the GTO for the period 01.06.2015 to 30.06.2015 and that apart, the finding on stock discrepancy cannot be sustained. Per contra, the respondent State by way of a cross-objection urged that no illegality has been committed by the authorities below in raising additional demand and that apart, proceeding under Section 43 of the Act was perfectly maintainable, inasmuch as, though the due date of return filing was 21.06.2017 for the month ending May, 2017 but the inspection was conducted on 20.05.2017 and the available closing stock was recorded as on the said date and cross-examined with books of accounts maintained by the dealer assessee and furthermore, the TER was not finalized on

the aforesaid date, but was framed after verification of the accounts. The rival contentions of the parties are to be examined and appreciated by the Tribunal.

4. The jurisdiction of the AA to initiate action under Section 43 of the Act is challenged by the dealer assessee on the ground that the assessment in question to be a part of quarter ending June, 2017. Admittedly, the inspection of the business premises of the dealer assessee was held on 20.05.2017. There is no denial to the fact that the dealer assessee self assessed itself under Section 39 of the Act for the alleged period. It is revealed from the record that the TER was framed and received on 08.11.2017. In the instant case, the dealer assessee had been found to have self assessed under Section 39 of the Act. The ground of challenge is that such an assessment under Section 43 of the Act could not have been in respect of a part of the tax period. No any statutory provision or authority could be shown or brought to the attention of the Tribunal to satisfy that an assessment under Section 43 of the Act respecting a part of the tax period is not permitted. Till the arrival of the Odisha Value Added Tax (Amendment) Act, 2015, the requirement of Section 43 was that the concerned dealer assessee must have been assessed under Section 39, 40, 42 or 44 of the Act. Since in the case of the dealer assessee, it is admitted that there was self assessment under Section 39 of the Act, the Tribunal does not find any reason to hold that the action under Section 43 could not have been entertained by the authorities below.

5. With respect to the bills for the period 01.06.2015 to 30.06.2015, an amount of ₹16,13,742.00 was added to the GTO solely on the ground that there was overwriting of dates in the invoices. According to the AA, for the above reason, the alleged invoices could not be accepted and had to be treated as fabricated ones. As a counter, the learned Counsel for the dealer assessee contended that there was no proper examination of the alleged purchases and sales to treat them as false and in that respect, the AA failed to conduct an enquiry. Further contended that the sale bills were produced but without ascertaining its genuineness, the AA deemed it proper to treat as fabricated documents and that too, without examining and verifying the documents of other registered dealers. In support of such contention, a decision of the Hon'ble Apex Court in the case of Juharmal Vs. Commissioner of Income Tax reported in (1988) 172 ITR 250 (SC) was relied upon. Also alleging that principle of natural justice was not observed, the dealer assessee contended that due opportunity was not provided while discarding the alleged bills and contending so, one more ruling of the Hon'ble Apex Court in the case of Kisanlal Agarwalla Vs. Collector of Land Customs reported in AIR 1967 SC 80 was referred to. Again by citing another decision of the Hon'ble Supreme Court in the case of Krishna Chand Chela Ram Vs. CIT reported in 125 ITR 713 (SC), the learned Counsel for the dealer assessee contended that the AA could have cross examined and properly verified by taking down the versions of other parties before rejecting the alleged bills. On a perusal of the order of assessment dated 20.01.2018, it is

made to realize that due to overwriting of the dates in the invoices produced by the dealer assessee, the same were treated as fabricated documents. Considering the contention of the dealer assessee and having regard to the cited decisions and the law laid down by the Hon'ble Apex Court, the Tribunal reaches at a conclusion that simply on such a ground the alleged sale bills for the period 01.06.2015 to 30.06.2015 could not have been rejected and branded as fabricated documents without further conducting an enquiry vis-a-vis the veracity and genuineness of the invoices. It is also not discernible from the record as to if reasonable opportunity was provided to the dealer assessee to defend the said charge before claiming the bills as fabricated documents. It is again not revealed if the AA did conduct any enquiry regarding the alleged invoices and in that respect, called for the records any other registered dealers. Without an elaborate examination and verification of all such materials, in the considered view of the Tribunal, the authorities below could not have straight away rejected and declined to accept the alleged sale bills and treated the same as fabricated. Mere overwriting of dates and non-production or failure to submit the alleged sale bills at the time of inspection would not ipso facto lead to a conclusion that the invoices were not worthy of acceptance for being fabricated documents. A decision that a particular document is fabricated one requires a detailed enquiry and cannot be held as fake for some kind of an overwriting. In fact, the dealer assessee ought to have been provided an opportunity to satisfy that the alleged bills as genuine and that apart, the AA

should have conducted an enquiry, if felt necessary, to find out and ascertain whether the alleged invoices were to be accepted or not before rejecting and adding it up in the GTO.

6. Regarding the stock discrepancy, as per the AA, the dealer assessee failed to produce supporting documents or evidence but defended it only with a claim that it might have been due to no proper maintenance of books of accounts as on the date of inspection. The FAA also found the explanation of the dealer assessee vis-a-vis the stock discrepancy as not convincing. According to the learned Counsel for the dealer assessee, such discrepancy in stock should not only be confined to purchases or sales. It appears that at the time of inspection, no explanation was offered when stock discrepancy of ₹2,49,320.00 was pointed out. The alleged discrepancy, as it seems, was met with an explanation simpliciter that it could be on account of improper maintenance of books of accounts as on the date of inspection visit. Under the above circumstances, since the claim was that the stock discrepancy at the relevant point of time might be due to non-maintenance of books of accounts properly, the Tribunal is of the humble opinion that a further opportunity should be provided to the dealer assessee to defend the charge before accepting and including the deficit of ₹2,49,320.00 in the GTO.

7. Any other grounds which have not been attended to by the dealer assessee are deemed to have been not pressed. Hence, it is ordered.

8. In the result, the appeal stands partly allowed. As a logical sequitur, the impugned order dated 17.09.2018 passed in Appeal No. AA (VAT) 14/PU/2018-19 is hereby set aside to the extent indicated above. Consequently, the matter is remitted back to the AA with a direction to reassess and determine the tax liability of the dealer assessee vis-a-vis the tax period 01.04.2014 to 20.05.2017 and thereafter, to pass appropriate order according to law and in the light of the observations of the Tribunal and to complete the whole exercise, preferably, within a period of three months from the date of receipt of copy of the above order. Furthermore, the cross-objection is disposed of.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman