# BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

## S.A. No. 17 (VAT) of 2019

(Arising out of order of the learned JCST, Territorial Range, Jajpur, Jajpur Road in First Appeal Case No. AA 885 KJB 17-18 (OVAT) disposed of on dated 10.07.2018)

Present: Shri R.K. Pattanaik,
Chairman

M/s. Everlast Fincon Pvt. Ltd.,
Dubuna, Joda, Dist. Keonjhar ... Appellant

-Versus-

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

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

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Date of hearing: 11.02.2021 ***** Date of order: 10.03.2021

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## O R D E R

Being aggrieved of the impugned order dated 10.07.2018 promulgated in Appeal Case No. AA 885 KJB 17-18 (OVAT) by the learned Joint Commissioner of Sales Tax, Territorial Range, Jajpur, Jajpur Road (in short, 'FAA'), the dealer assessee has preferred the 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 vis-a-vis assessment dated 29.09.2012 passed under Section 43 of the Act by the learned Sales Tax Officer, Barbil Circle, Barbil (in short, 'AA') for the tax periods 01.04.2008 to 31.03.2010 on

the grounds inter alia that the additional demand raised is arbitrary and illegal and therefore, deserves to be set aside.

2. Briefly, the facts are as follows. A Tax Evasion Report (TER) dated 28.03.2012 was received as against the dealer assessee for having allegedly received iron ore of 3937.560 MT and 16031.530 MT during 2008-09 and 2009-10 respectively from M/s. Serajuddin & Co. without obtaining purchase invoices. On receipt of the TER, assessment was reopened under Section 43 of the Act against the dealer assessee. The dealer assessee said to have self assessed under Section 39 of the Act and pursuant to the TER, a notice in Form VAT-307 for assessment on escaped turnover was issued. However, due to non-appearance of the dealer assessee, the AA examined the materials available on record and then, concluded that the alleged claim in the TER appears to be true on the ground that the selling dealer viz. M/s. Serajuddin & Co. did not raise any sale invoices or chalans as regards the quantities of iron ores despatched for the alleged years and ultimately, raised additional demand of ₹57,54,473.00 inclusive of penalty levied under Section 43(2) of the Act. Thereafter, the dealer assessee approached the FAA and challenged the assessment claiming that it suffers from the vice of illegality and arbitrariness for being passed exparte; that a procedural infirmity stands on the way in initiating action under Section 43 of the Act; and the extraneous material collected from the selling dealer M/s. Serajuddin & Co. and utilized was without any opportunity to confront the same. While contending so, the dealer assessee submitted copies of some invoices showing purchases of iron ore from one M/s.

Yazdani International Pvt. Ltd. However, the FAA apparently rejected such evidence with the conclusion that and representative of the selling dealer admitted about the alleged despatches after obtaining permission from the concerned authority in compliance of the provisions of the Mines & Minerals (Development & Regulation) Act, 1957 and the Odisha Minerals (Prevention of Theft, Smuggling and Illegal Mining and Regulation of Possession, Storage, Trading & Transportation) Rules, 2007 and resultantly confirmed the assessment dated 29.09.2012.

3. At present, the dealer assessee would contend that natural justice obligated that before extraneous material could be relied upon, it should have been subjected to scrutiny and an opportunity to cross-examine the representative of the selling dealer, whose statement was received and acted upon, ought to have been allowed. In support of such a contention, a decision of the Hon'ble Apex Court in the case of Andaman Timber Industries Vs. CCE reported in (2016) 38 GSTR 117 (SC) was placed reliance by the learned Counsel for the dealer assessee. The learned Standing Counsel (CT) for the State, however, contended that there was no need for such an exercise, rather, the dealer assessee was at fault for having not participated in the assessment and that apart, the statement of the representative of the selling dealer amply proved the alleged despatches which was failed to be accounted for.

4. The initiation of proceeding under Section 43 of the Act was claimed to be invalid in absence of assessment under Section 39, 40 and 42 thereof. This aspect was dealt with by the FAA and it was concluded that the dealer

assessee had self assessed itself under Section 39 of the Act. Even a reference was made to specific column of the statutory notice issued in Form VAT-307 to indicate that assessment under Section 39 of the Act had by then been completed. Though such a ground was raised by the dealer assessee, it has not been seriously pressed into service, while advancing argument for and on behalf of the dealer assessee. In such a situation, where it is evident from the impugned order dated 10.07.2018 that there was self assessment under Section 39 of the Act, assessment for escaped turnover under Section 43 thereof cannot alleged to be invalid.

5. Admittedly, the proceeding under Section 43 of the Act was disposed of exparte. Was it that the dealer assessee had no real opportunity to defend the allegation of illegal purchases? It is made to appear that the dealer assessee did not produce the relevant books of accounts during the time of investigation and not even participated during the assessment. It is also made to understand that in spite of statutory notice in Form VAT-307 issued and duly served upon, the dealer assessee did not turn up and successive intimations were also sent on number of occasions and finally, the reassessment was accomplished exparte on 29.09.2012. It is not denied by the dealer assessee that the statutory notice was served. No material has been drawn to the attention of the Tribunal to satisfy that there was no service of notice before the action under Section 43 of the Act was brought to an end. Under the above circumstances, such a specious plea of the learned Counsel for the dealer assessee that reasonable opportunity was not

provided and for that matter, there was non-observance of principle of natural justice cannot be entertained.

6. Now, the question is, whether, the alleged despatches received from the selling dealer to have been accounted for by the dealer assessee? According to the State, the books of accounts were not produced by the dealer assessee, whereas, the statement of the Manager (Finance & Accounts) of M/s. Serajuddin & Co., Joda supported the transactions inter se parties for the years 2008-09 and 2009-10. Admittedly, the dealer assessee had produced copies of the invoices indicating purchases of iron ore from M/s. Yazdani International Pvt. Ltd. The details of the purchases effected during the year 2009 find place in the impugned order dated 10.07.2018 itself. In course of argument, the learned Counsel for the dealer assessee also produced a copy of letter dated 10.02.2021 of M/s. Yazdani International Pvt. Ltd. addressed to it confirming the despatches of iron ore with issuance of tax invoices for the years 2008-09 and 2009-10. However, despite production of such invoices, the FAA without rejecting and not by conducting any enquiry straightaway proceeded to consider a statement of the Manager of the selling dealer and held the alleged despatches to have been carried out without proper invoices. Of course, subject to verification, said letter dated 10.02.2021 suggests that despatches had, in fact, been made by M/s. Serajuddin & Co. after obtaining permission from the authority concerned and in that respect, tax was raised against the dealer assessee by M/s. Yazdani International Pvt. Ltd. In other words, as per the claim of the dealer assessee, M/s.

Serajuddin & Co., Joda despatched the iron ore through M/s. Yazdani International Pvt. Ltd. which ultimately raised the tax invoices. The veracity of the alleged claim of the dealer assessee with the production of copies of the invoices issued by M/s. Yazdani International Pvt. Ltd. could have been duly verified by the FAA. From the record, it is also revealed that one M/s. Aliza International Pvt. Ltd. and M/s. Yazdani International Pvt. Ltd. were entrusted to screen iron ore lumps and then to despatch it to different buyers, whereas, extractions being carried out by the authorized raising contractors, a fact which has not been denied by the representative of the selling dealer. The alleged quantity of iron ore i.e. 3937.560 MT and 16031.530 MT were claimed to have been received/purchased from M/s. Yazdani International Pvt. Ltd., a registered dealer under the Act, who said to have raised the tax invoices in favour of the dealer assessee which were duly accounted for in corroboration of which copies of the returns have been produced before the Tribunal. Under such circumstances, considering the claim of the dealer assessee in juxtaposition to the allegation made as per the TER, the FAA was required to examine and verify the alleged despatches claimed to have been accounted for after the iron ore was purchased from the selling dealer through M/s. Yazdani International Pvt. Ltd. At least, an opportunity to confront the concerned representative of the selling dealer with the materials lying at the disposal of the dealer assessee should have been allowed. If tax invoices have been raised for the purchases and some evidence to that effect was produced before the FAA, it ought to have been looked into before confirming the order of assessment dated

29.09.2012. An enquiry was needed by the FAA so as to ascertain the genuineness of the claim of the dealer assessee, but no such exercise was undertaken, which, in the considered view of the Tribunal, was not at all justified. In the final words of the Tribunal, it is never a wise decision to act upon an unverified fact or statement without venturing into an enquiry for discovering the truth before fastening tax liability vis-a-vis a dealer. Having said that and regard being had to the claim of the dealer assessee and the materials produced before the Tribunal, it would be most appropriate to consider and examine the matter afresh in order to do ex debito justitiae. As far as, other grounds of appeal albeit raised but left out by the dealer assessee, it is deemed not to have been pressed.

7. Hence, it is ordered.

8. In the result, the appeal stands allowed. As a logical sequitur, the impugned order dated 10.07.2018 passed in Appeal No. AA 885 KJB 17-18 (OVAT) is hereby set aside. 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 periods 01.04.2008 to 31.03.2010 and to pass appropriate order according to law in the light of the observations of the Tribunal and to complete the exercise, preferably, within a period of three months from the date of receipt of copy 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