

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.**

**S.A. No. 19(V)/08-09**

(Arising out of the order of the learned ACST, Cuttack-I Range, Cuttack in first Appeal Case No. AA(OVAT)19/CICIC/07-08, disposed of on 30.01.2008)

**Present :- Shri A.K. Das, Shri.S.K. Rout, & Shri S. Mishra,**  
**Chairman 2<sup>nd</sup> Judicial Member Accounts Member-II.**

M/s. Parle Products (P) Ltd.,  
Mahatab Road, Cuttack.

-Vrs.-

... Appellant.

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

... Respondent.

For the Appellant:

: None.

For the Respondent:

: Mr. D. Behura, SC (C.T.)

: Mr. S.K. Pradhan, ASC(C.T.)

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**Date of Hearing : 15.03.2022**

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**Date of Order :22.03.2022**  
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**ORDER**

This second appeal has been filed by the dealer-assessee against the order dtd.30.01.2008 passed by the learned Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack (in short, ld. FAA) in Sales Tax Appeal No. AA(OVAT)19/CICIC/07-08, dismissing the appeal and thereby confirming the order of assessment in which a demand of Rs.9,30,075.00 was raised by the Sales Tax Officer, Cuttack-I Central Circle, Cuttack (in short, LAO) under Section 42 of the Odisha Value Added Tax Act (in short, OVAT Act) for the tax period from 01.04.2005 to 30.09.2006.

2. Being aggrieved by the aforesaid order of Id. FAA, the dealer-assessee has preferred second appeal before this Tribunal challenging the orders passed by the Id. Authorities of fora below as illegal, arbitrary, without jurisdiction, against natural justice and contrary to facts and decided law.

3. The brief fact of the case is that the dealer-assessee is carrying on business of trading biscuits and confectionary after effecting stock transfer from outside the State against form 'F' and Govt. waybills and sales the same through its marketing network inside the State. During the material period, it is stated in the assessment order that the assessee has received stock of goods from outside the State and has effected sale of goods to the tune of Rs.9,13,64,360.62 during the year 2005-06 and has paid VAT of Rs.1,14,50,258.00. Similarly, during the year 2006-07(upto 30.09.2006), the assessee has sold goods of Rs.4,59,21,337.85 and has paid VAT of Rs.57,40,168.32. The place of business of the assessee was visited by the audit Party on 27.10.2006 who found that the assessee has not paid tax after adding an amount of Rs.24,80,199.84 paid towards ET and accordingly suggested to add the above amount in the sale price shown by the dealer to be taxed @12.5%. Taking into consideration the above allegation and after due examination of the books of account and other relevant documents produced, the LAO added the above amount in the gross turnover that resulted in an extra demand of Rs.9,30,075.00 against which the dealer preferred first appeal

before the Ld. FAA. After examining the case in detail, the ld. FAA confirmed the assessment order passed by the LAO for the impugned period.

4. Being further aggrieved by the aforesaid order of the ld. FAA, the assessee has preferred second appeal before this Tribunal challenging both the orders of forum below as wrong and perverse on fact as well as erroneous in law mainly on following grounds:-

- i. The appellant being TIN dealer, the ld. STO, Cuttack-I Central Circle had no jurisdiction during the period of passing the assessment order.
- ii. The sale price is defined and nowhere it is said that OET should be included or collected separately and then VAT should be charged. The LAO has erred in adding entry tax paid from 01.04.2005 to 30.09.2006 amounting to Rs.24,80,190.84 to the sale price and taxed @12.5%.
- iii. The sales are made to this stockists as per the price list and there is no favored buyer.
- iv. The ld. STO has not given any reason for addition of OET and hence it is not a speaking order. He has blindly repeated the letters of the audit party.

5. However, when the matter was called on for hearing, none appeared on behalf of the dealer-assessee in spite of valid service of notice. Moreover, since, the instant appeal relates to the period from 01.04.2005 to 30.09.2006, which is more than 15 years, it

was taken up for ex-parte hearing in presence of Id. Standing Counsel (C.T.) representing the State.

6. During the course of hearing, the Id. SC(C.T.) vehemently argued in favour of the orders passed by the forums below, claiming these as just, proper and in accordance with the provisions of the Statute that don't warrant any further interference by this Tribunal.

We, now, felt necessitated to address primarily ground no.i stated above that speaks about deciding jurisdictional issue on which the assessment order has been scripted by the LAO of the Circle.

It is observed that the LAO, Cuttack-I Central Circle, Cuttack has passed the assessment order relating to the period 01.04.2005 to 30.09.2006 in case of this assessee having TIN No.21671200102 based on an audit visit report submitted against him. However, the assessee has challenged the said assessment order on the ground that the LAO, Cuttack-I Central Circle, Cuttack lacks jurisdiction to assess him as he is a TIN dealer to be assessed in the respective range and not in the Circle. In this connection, we observe that the assessee who is a registered dealer under the OVAT Act, 2004 and has been granted a TIN No. has challenged the order of assessment dtd.25.05.2007 passed by the LAO, Cuttack-I Central Circle, Cuttack. It will now be profitable to quote the relevant provisions of the OVAT Act which are applicable to the instant case.

**Section-2(4):** “assessing authority means any officer appointed under sub-section(2) of section 3 who is authorized by the Commissioner to make assessment under this Act.

The provisions of Rule 34(8) and Rule 34(12) of the Orissa Value Added Tax Rules, 2005 being relevant the same are reproduced below:

**Rule 34(8) :** The return under sub-rule (1) shall be filed in the range and the return under sub-rule (6) shall be filed in the Circle, where the dealer is registered :

Provided that for the convenience of the dealer, a return under sub-rule (1) may be furnished to the assessment unit or circle under whose jurisdiction the place of business of the dealer is situated, and the concerned assessment unit or circle, on receipt of such return, and after preliminary processing shall submit it to the range.

**Rule 34(12):** For the purpose of this rule, the assessing authority shall mean-

- (a) the assessing authority of the circle in respect of dealers, who have been granted registration under sub-rule (1) of rule 18 and assigned with SRIN under sub-rule(4) of rule 19,
- (b) the assessing authority of the range in respect of dealers, who have been granted registration under sub-rule (1) of rule 18 and assigned with TIN under sub-rule (1) of rule 19.

**Rule 4(4):** (prior to amendment on 25.02.2009):

The Govt. may, by notification, constitute several Circles into Ranges over which an Assistant Commissioner or a Deputy Commissioner of Sales Tax, appointed as such to those Ranges, shall exercise jurisdiction.

A cumulative reading of the aforesaid provisions therefore speaks in no uncertain term that the assessment in respect of the present assessee can only be done by the Assessing Authority of the Range as per Rule 34(12) (b) of the OVAT Rules and not by the Assessing Authority of the Circle. Therefore, the order dtd.25.05.2007 passed by the LAO, Cuttack-I Central Circle, Cuttack is without jurisdiction and is accordingly liable to be quashed.

It would be most relevant to take note of Rule 34(12) (b) of the OVAT Rules, 2005 which is reproduced below:

“(12) for the purpose of this Rule, the Assessing Authority shall mean-

(a).....

(b)the Assessing Authority of the Range in respect of dealers, who have been granted registration under sub-Rule (1) of rule 18 and assigned with TIN under sub-rule (1) of Rule19”.

In view of Rule 34(12)(b) of the OVAT Rules as noted herein above, it is clear that dealers who have been granted registration under the OVAT Act/Rules and have been assigned with TIN numbers, in terms of the aforesaid rule, such dealers can only be assessed by the “assessing authority of the Range”.

In this connection, we also relied on the following judgments of the Hon'ble Orissa High Court:

A. Dash agency Vrs. Sales Tax Officer, Assessment Unit, Jagatsinghpur and Others reported in (2007) 9 VST 482 (Orissa) in which it is held as under:

“Held, allowing the petition, that in view of rule 34(12)(b) of the Orissa Value Added Tax Rules, 2005, it was clear that dealers who had been granted registration under the Act or Rules and had been assigned TIN numbers, in terms of the rule, could only be assessed by the “assessing authority of the Range, and not by the assessing authority of the assessment unit. The Sales Tax Officer, Assessment Unit, Jagatsinghpur who had passed the order of assessment in question, was admittedly not “the assessing authority of the range” as required under rule 34(12)(b). The order of assessment was without jurisdiction not being in conformity with rule 34(12)(b). The order of assessment was without jurisdiction not being in conformity with rule 34(12)(b) and was to be set aside.

B. Madras Cement Ltd. Vrs. State of Orissa and Others reported in (2007) 10 VST 187 (Orissa) in which it is held as under:

“in view of rule 34(12) (b) of OVAT Rule,2005, dealers who have been granted registration under the Act and have been

assigned with TIN numbers, in terms of the Rule, can be assessed only by the “assessing authority of the Range”.

C. BP Enterprises Vrs. State of Orissa and Others reported in (2008) 18VST 405(Orissa) in which it is held as under:

“VALUE ADDED TAX-ASSESSMENT-TIN DEALERS-SALES TAX AUTHORITIES-JURISDICTION-WRITS UNDER CONSTITUTION-ALTERNATIVE REMEDY-DEALER NEITHER CHALLENGING JURISDICTION OF ASSESSING AUTHORITY, NOR RAISING OBJECTIONS-WRIT PETITION CHALLENGING ASSESSMENT ORDERS-HOW DEALER PREJUDICED NOT POINTED OUT-HOWEVER ASSESSMENT ORDER PASSED BY AUTHORITY LACKING INHERENT JURISDICTION-A NULLITY-SET ASIDE-ORISSA VALUE ADDED TAX ACT, 2004 (4 of 2005)-ORISSA VALUE ADDED TAX RULES, 2005”

Since, the present assessment order has been passed by the Sales Tax Officer of the Circle and not by the Assessing Authority of the concerned Range, the said order of assessment cannot withstand judicial scrutiny and is held to be without jurisdiction not being in conformity with rule 34(12)(b) of OVAT Rules, 2005.

7. Accordingly, it is ordered.

Without forming any opinion on the factual dispute involved in this case, we set-aside the impugned assessment order passed by the LAO of the Circle.

Let the assessee appear before the Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack within 15 days of receipt of this order. On his appearance, the Assistant Commissioner of the said Range may serve a statutory notice on him and proceed with the matter in accordance with the law. The LAO, Cuttack-I Central Circle, Cuttack is directed to transmit the records of the assessee to the said Assistant Commissioner of the Range.

This case is disposed of accordingly.

Dictated & corrected by me,

Sd/-  
**(Srichandan Mishra)**  
Accounts Member-II

Sd/-  
**(Srichandan Mishra)**  
Accounts Member-II

I agree,

Sd/-  
**(A.K. Das)**  
Chairman

I agree,

Sd/-  
**(S. K. Rout)**  
2<sup>nd</sup> Judicial Member