

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

S.A. No.213(V) of 16-17

(Arising out of the order of the learned Addl.CST(Appeal),
South Zone, Berhampur in Appeal Case No. AA(VAT)
39/2012-13 disposed of on 30.01.2016)

**Present: Shri G. C. Behera, Chairman
&
Shri B. Bhoi, Accounts Member-I**

M/s Gajalaxmi Bhandar,
Rajsunakhala, Khordha,
TIN-21961104931.

..... Appellant.

-Vrs -

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

..... Respondent.

For the Appellant : : None

For the Respondent : : Mr. S.K. Pradhan, Addl. S.C.(C.T.)

Date of Hearing : 06.03.2024 * Date of Order : 28.03.2024**

O R D E R

The dealer is in appeal against the order dated 30.01.2016 of the Additional Commissioner of Sales Tax (Appeal), South Zone, Berhampur (hereinafter referred to as 'Id. FAA') passed in Appeal Case No. AA(VAT)39/2012-13 confirming the order of assessment passed under Section 42 of the OVAT Act by the Joint Commissioner

of Sales Tax, Puri Range, Bhubaneswar (in brevity, referred to as (ld. Assessing Authority) for the tax period 01.04.2005 to 31.03.2008.

2. The factual matrix of the case is that M/s Gajalaxmi Bhandar, Rajsunakhala, Khordha, TIN-21961104931, a proprietorship concern is engaged in trading of edible oil, vanaspati ghee, coconut oil, battery, pulses and sugar in retail-cum-wholesale basis effecting purchases both from inside and outside the state of Odisha. The status of the proprietorship firm i.e. M/s Gajalaxmi Bhandar got converted to Private limited Company christened as M/s Gajalaxmi Trading Pvt. Ltd by way of a **takeover agreement** w.e.f. from 01.04.2008 as per Section 32(6) of the OVAT Act. The ld. Assessing Authority assessed the dealer-assessee under Section 42 of the OVAT Act for the tax period 01.04.2005 to 31.03.2008. On verification of the books of accounts with reference to the returns filed, the ld. Assessing Authority detected short disclosure of sales to the tune of ₹1,24,520.00 to which, the dealer-assessee admitted the same to have been brought about due to oversight. The ld. Assessing Authority added ₹1,24,520.00 in the GTO and TTO in assessment.

As discussed above, as a result of conversion of status of the firm from proprietorship to private limited company w.e.f. 01.04.2008 by virtue of a takeover agreement, the dealer-assessee has disclosed closing stock at ₹94,75,574.30 in Form VAT-202.

Against such closing stock, goods valuing ₹94,28,904.25 is said to have been sold out to M/s Gajalaxmi Trading Pvt. Ltd and VAT thereon involving ₹3,67,367.00 has been deposited. The balance stock of goods worth ₹46,688.22 has been taken over by the company limited firm as per the terms of the takeover agreement. Pursuant to the provision of sub section (6) of Section 31 of the OVAT Act, the ld. Assessing Authority levied tax on the value of the closing stock of ₹94,75,574.74 calculating VAT to ₹3,77,679.04. The tax due inclusive of ₹3,77,679.04 was determined at ₹37,70,128.85 in assessment against which, the dealer-assessee having paid ₹33,99,820.00 earlier was held liable to pay ₹3,70,308.85. With penalty of ₹7,40,617.70, the total amount of tax and penalty worked out to ₹11,10,927.00 in assessment. The first appeal as preferred by the dealer-assessee having yielded no relief, the dealer-assessee approached this forum for justice. Hence, this second appeal.

3. The dealer-assessee was noticed to appear either in person or through a representative to have a say in defence of the impugned demand in assessment over and above the arguments advanced in the grounds of appeal. Since none has appeared on the date of hearing, the case is adjudicated ex-parte basing on the contentions taken in the grounds of appeal taking, *inter alia*, the legal provisions mandated under the OVAT Act and Rules made thereunder.

4. The dealer-appellant has filed grounds of appeal contending that application of provision of Section 31(6) of the OVAT Act in the present facts and the circumstances of the case is unlawful. It is urged that when the amendment of Registration Certificate is made under the procedure of 'Takeover' under Section 32(6), 67(1) & (2) of the OVAT Act read with Rule 74 of the OVAT Rules, there is no question of sale of closing stock at prevailing market price as applied by the Assessing Authority under Section 31(6) of the OVAT Act. The State has filed cross objection supporting the order of the Id. FAA.

5. The grounds of appeal, cross objection and the materials available on record are gone through. We find it proper to have a look on the provision of sub section (6) of Section 31 of the OVAT Act. It provides as under:

“Every earlier whose certificate of registration is cancelled under this section shall pay in respect of every taxable goods held as stock in trade or as capital goods on the date of cancellation, an amount equal to the tax that would have been payable in respect of those goods if the goods were sold at prevailing market price on that date or the total input tax credit previously claimed in respect of those goods, whichever is higher.”

Sub section (6) of Section 32 of the OVAT Act prescribes as under:

“Notwithstanding anything contained in sub-section (1), where any change alters the basic status of a dealer, such

as, conversion of proprietorship concern to partnership firm or vice versa, dissolution of an existing firm and creation of a new firm, formation of a firm into a company or vice versa, a new certificate of registration shall be issued on application being filed in this behalf in the manner prescribed.”

The Commissioner of Commercial Taxes, Odisha, Cuttack in Circular No.III(I038/2009-15356/CT dated 09.07.2013 has clarified the procedure to be followed in case of amendment of Certificate of Registration under OVAT Act in case of change involving alteration of basic status of a dealer as provided under sub-section (6) of Section 32 of the OVAT Act, 2004. The relevant portion of the above circular is reproduced below:

*“It has come to the notice of the undersigned that quite often the Registering Authorities i.e., DCCT/ACCT of different Circles are insisting on sale of stock-in-trade at the time of disposal of amendment application in form VAT-108 involving change of basis status of a dealer, such as conversion of a proprietorship concern to a partnership firm or vice versa, dissolution of an existing firm and creation of a new firm, formation of a firm into a company or vice versa. Such approach of the registering authority at the time of amendment is causing discontentment among the trading community. There may be occasion of sale of business and on such occasion, there is provision at **column 04** of final return in form VAT-202 to exhibit the value at which the business has been sold. However, mechanically insisting on*

sale of business at the time of disposal of amendment application without its actual sale is not a desirable practice.

The existing procedure in respect of amendment involving change of basic status of a dealer is governed under sub section (6) of Section 32 of the OVAT Act read with sub-rule (4) & (5) of Rule 30 of the OVAT Rules. As per sub-section (6) of Section 32 of the OVAT Act, where any change altering basic status of a dealer as stated above happens, a new Certificate of Registration shall be issued on application being filed in this behalf in the manner prescribed under sub-rule (4) & (5) of Rule 30 of the OVAT Rules. The manner prescribed under sub-rule (4) & (5) of Rule 30 of the OVAT Rules is that on occurrence of the event involving alteration of basic status of a dealer, the fact of occurrence shall be informed by the dealer in writing within 15 days of such occurrence to the registering authority stating the date of such change along with production of evidences in support of such change. The registering authority shall on receipt of such intimation and after due enquiry shall cancel the Certificate of Registration with effect from the specified date and issue a new Certificate of Registration basing on application filed by the dealer by following the manner prescribed under Rule 15 of the OVAT Rules.

(1) STOCK-IN-TRADE OF THE EXISTING LEGAL ENTITY

Sub-rule (10) of Rule 34 of the OVAT Rules, prescribes furnishing of final return due to closure of business or for cancellation of certificate of registration. Sub rule (4) and (5) of Rule 30 of OVAT Rules prescribes that in the event of any change altering the basic status of a dealer, certificate of

registration shall be cancelled and a new certificate of registration shall be issued. Hence in the event of cancellation of certificate of registration the dealer is required to furnish a return in VAT 202. The dealer seeking amendment under sub-section (6) of Section 32 of OVAT Act shall disclose the closing stock at **column 05** of the said form VAT-202 along with a statement separately showing the details of closing stock. In the said closing stock statement, the dealer has to furnish product/item-wise quantity in stock, unit price, amount of purchase, VAT paid on purchase, total value etc. The registering authority shall cause an enquiry as to the genuineness of the declaration made in column 05 by way of field enquiry. After due enquiry, if it is found that the closing stock declared at the time of closure of business is genuine and the stock is physically existing at the time of closure of business is genuine and the stock is physically existing at the place of business/ additional place of business is genuine and the stock is physically existing at the place of business/ additional place of business/godown, the new legal entity consequent upon amendment shall take over the stock. It will be the opening stock for the new legal entity.

(2)INPUT TAX CREDIT

When VAT suffered stock is carried over to the new legal entity, ultimately, the ITC on such stock gets carried over to the new legal entity. The new legal entity at the time of filling of return in form VAT-201 will disclose the ITC at **column 05** of Part-A of form VAT-201. The said ITC is subject to

utilization against output tax generated on sale of goods by the new legal entity.”

6. In the present case, consequent upon alteration of the basic status of the firm from proprietorship to private limited company, the dealer-assessee is found to have duly applied for amendment of Registration certificate in Form VAT-108. As per the provision of Section 32(6) of the OVAT Act read with sub rule (4) and (5) of Rule 30 of OVAT Rules, the certificate of registration has been cancelled and a new certificate issued. The dealer-assessee has also disclosed the closing stock at column 05 in Form VAT-202. But the ld. Assessing Authority has mechanically taxed the closing stock as per the provision of Section 31(6) of the OVAT Act treating the same as deemed sale. It is unwarranted and anti-law in so far the procedure mandated in the stature explained above. The ld. Assessing Authority is required to abide by the provision of sub section (6) of Section 32 of the OVAT Act as clarified in the Circular of the Commissioner of Sales Tax cited above. The order of assessment and the first appeal order are, therefore, liable to be quashed.

7. Under the above premises, the appeal filed by the dealer-assessee is allowed. The order of the ld.FAA is set aside. The impugned case is remitted back to the ld. Assessing Authority to

determine the tax liability of the dealer in the light of the observations imparted above within three months from the date of receipt of this order. Cross objection is disposed of accordingly.

Dictated and corrected by me.

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

I agree,

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

Sd/-
(G.C. Behera)
Chairman