BEFORE THE DIVISION BENCH-I, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A.No.161(VAT) of 2019
S.A.No.79(C) of 2019
&
S.A.No.88(ET) of 2019

[Arising out of orders of the-

- learned Addl. Commissioner of Sales Tax (Appeal) Central Zone, Odisha, Cuttack in Appeal No.AA-106101910000001/18-19, disposed of on dtd.17.06.2019;
- learned Addl. Commissioner of Sales Tax (Appeal) Central Zone, Odisha, Cuttack in Appeal No.AA-107101810000129/18-19, disposed of on dtd.17.06.2019; &
- learned Addl. Commissioner of Sales Tax (Appeal) Central Zone, Odisha, Cuttack in Appeal No.AA-108101910000002/18-19, disposed of on 17.06.2019**]**

Present: **Shri G. Sharma** **Chairman** **&** **Shri S.S.Roy** **Accounts Member**

M/s. Voltas Limited,
Plot No.B-15, Arihant Tower,
Saheed Nagar, Bhubaneswar,
Dist. Khordha … Appellant

-Versus-

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

For the Appellant : Mr. N.K. Dash, Advocate
Mr. K.R. Mohapatra, Advocate
For the Respondent : Mr. S.K. Pradhan, Addl. S.C. (CT)

Date of hearing: 19.08.2026 *** Date of order: 07.09.2026

ORDER

Challenging the legality and propriety of orders dated 17.06.2019 passed by the learned Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack (hereinafter referred to as 'First Appellate Authority') in Appeal Nos.AA-106101910000001/18-19, AA-107101810000129/18-19 & AA-108101910000002/18-19, these appeals have been filed by M/s. Voltas Ltd. (hereinafter referred to as 'Dealer').

Since all these appeals involve similar question of facts and law, this common order shall govern all these appeals.

2. The brief facts relevant for disposal of this appeal run thus:

The Dealer, in the instant case, carries on business in Air Conditinoer, stabilizer, refrigerator, de-fridger, water cooler, water treatment equipments as well as machinery and spare parts on wholesale basis besides execution of works contract. The Dealer has effected sales of its business goods within the State of Odisha, transferred the goods to outside State branches against Form 'F' and sold goods in course of inter-State trade and commerce as well as export. Basing upon Audit Visit Reports (AVRs), the Joint Commissioner of Sales Tax, Cuttack-I Range, Cuttack (for brevity 'Assessing Authority') initiated assessment proceeding U/s.42 of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'OVAT Act') for the tax period 01.04.2013 to 31.03.2015. On verification of books of account and relevant statutory declaration forms produced by the Dealer, the Assessing Authority found that the Dealer availed inadmissible ITC of ₹4,80,606.30, failed to produce certificate in Form VAT-616 for ₹4,03,55,933/- towards the claim of zero rated sales and also failed to produce declaration in Form 'C' and 'E-1' for an amount of ₹76,04,45,605.31 against claim of transit sale, for which the turnover was added under the OVAT Act and taxed the same at appropriate rate, accordingly raised a tax demand of

₹31,98,02,502/- including penalty for the period under assessment.

Similarly, in the assessment proceeding u/r.12(3) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules') for the period 01.04.2013 to 31.03.2015, the Assessing Authority observed that the Dealer could not produce required declaration in Form 'C' amounting to ₹81,11,004.94 for concessional CST sale and Form 'F' to the tune of Rs.2,37,389.16 towards branch transfer, accordingly, computed tax demand of ₹12,20,691/- including interest for the period under assessment.

Likewise, in the assessment proceeding U/s.9C(3) of the Orissa Entry Tax Act, 1999 (in short, 'OET Act') the Assessing Authority added an amount of ₹3,51,00,260/- towards freight and incidental charges besides computed the purchase value of scheduled goods at ₹51,48,76,096.15 in case of non-submission of Form 'C/E-1' for the claim of 6(2) sales, thereby held the Dealer liable to pay a ET demand of ₹3,25,30,050/- including penalty for the period under assessment.

Being aggrieved with the orders of assessment, the Dealer preferred first appeals before the learned First Appellate Authority. Learned First Appellate Authority considering submission of some Form 'C' and 'E-1' under the CST Act, partly allowed the appeal and reduced the assessment to ₹1,73,34,936/- under the OVAT Act. Similarly, for the appeal under the CST Act, the First Appellate Authority accepting the declaration in Form 'E-1' filed at his level, remanded the matter to the Assessing Authority for verification of Form 'E-1' and recomputation of tax liability along with interest. Also, the First Appellate Authority reduced the assessment to ₹21,90,465/- under the OET Act for the impugned period after considering the purchase value relating to 6(2)

sales supported by Form ‘C’ and ‘E-1’ filed under the CST Act. Hence, these appeals.

3. Learned Advocate appearing for the Dealer advanced the sole argument that the assessment orders are antedated on the ground that the same were purported to have been passed on 30.11.2017 and served on the Dealer on 04.06.2018 after lapse of more than six months, for which no explanation is forthcoming for such delay in issuing the orders by the Revenue, and thus, liable to be set aside in the ends of justice. Supporting the contention, learned Counsel relied on the decision of Hon’ble Supreme Court in ***State of Andhra Pradesh v. M. Ramakishtaiah & Co.***, reported in **[1994] 93 STC 406 (SC**) and decision of Hon’ble High Court of Orissa in the case of ***Chandrika Sao v. Sales Tax Officer, Balasore Range & Another,*** **reported in [2015] 81 VST 86 (Orissa)**.

4. Per contra, learned Addl. Standing Counsel (CT) appearing for the Revenue supported the orders of the fora below to be proper and submitted that the provisions of Section 42(6) of the OVAT Act have been scrupulously followed by the Assessing Authority while passing the assessment orders for the impugned periods in prescribed time and the same cannot be termed as antedated merely on the ground of delay in service.

5. Having regard to the submission of both parties vis-à-vis the orders of the Assessing Authority and First Appellate Authority, this Tribunal formulate the following point for determination:

> **“Whether in the facts and circumstances of the case, the orders of assessment passed by the Assessing Authority are antedated?”**

6. On perusal of record, it transpires that the orders of assessment

relating to the period 01.04.2013 to 31.03.2015 were passed on 30.11.2017. It appears from the acknowledgement slip kept in the assessment record itself that though the orders were issued on 21.12.2017 but the same was received by the Dealer on 04.06.2018, which is after more than 6 months of the date of orders passed and the said fact has not been disputed by the Revenue.

In this context, we are alive of the legal principle as enunciated by the Hon'ble Apex Court in the case of ***M. Ramakishtaiah & Co.*** cited supra wherein their Lordships' held that –

> " …the order of the Deputy Commissioner is said to have been made on January 6, 1973, but it was served upon the assessee on November 21, 1973, i.e. precisely 10½ months later. There is no explanation from the Deputy Commissioner why it was so delayed. If there had been a proper explanation, it would have been a different matter. But, in the absence of any explanation whatsoever, we must presume that the order was not made on the date it purports to have been made…"

7. Notably, in the instant case, the orders of assessment relating to the period 01.04.2013 to 31.03.2015 were passed on 30.11.2017, but the same were issued on 21.12.2017 and received by the Dealer on 04.06.2018, which is after more than 6 months of the date of orders passed. Record is silent about plausible explanation regarding inordinate delay in serving the orders of assessment passed on 30.11.2017. Therefore, it can well be inferred from such belated receipt of assessment orders for the impugned period that the assessments were not made on the date it purports to have been made within the period of limitation as prescribed u/s. 42(6) of the OVAT Act r/w Sec.9C(6) of the OET Act r/w Rule 22 of the CST(O) Rules. As such, the orders of assessment dated 30.11.2017 of the Assessing Authority passed under the OVAT Act/CST Act/OET Act are not sustainable in law and liable to be set aside.

8. In result, the appeals are allowed. The impugned orders of the First Appellate Authority and the orders of assessment are hereby set aside.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman

I agree,

Sd/-
(S.S. Roy)
Accounts Member