BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A.No. 42(C) of 2023

(Arising out of order of the learned Addl. Commissioner of Sales Tax (Appeal), Bhubaneswar, in Appeal No. AA-CST-113/BH-II/2018-2019, disposed of on 15.04.2023)

Present: **Shri G. Sharma, Chairman**

M/s. Shree Jyotee Resources
Pvt. Ltd., Plot No.137G,
1st Floor, Ashok Nagar,
Bhubaneswar … 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. N.K. Rout, Addl. S.C. (CT)

Date of hearing: 10.09.2026 *** Date of order: 08.10.2026

ORDER

Challenging the legality and propriety of order dated 15.04.2023 passed by the learned Addl. Commissioner of sales Tax (Appeal), Bhubaneswar (hereinafter referred to as, 'First Appellate Authority') in Appeal No.AA-CST-113/BH-II/2018-2019, this appeal has been filed by M/s. Shree Jyotee Resources Pvt. Ltd. (hereinafter referred to as 'Dealer').

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

The Dealer, in the instant case, is a private limited company and engaged in business of trading of iron ore and manganese ore. The Dealer has effected purchase of iron ores and manganese ores both from inside and outside the State. Basing upon a Tax Evasion Report (TER) alleging sale suppression, the Deputy Commissioner of Sales Tax, Bhubaneswar-II Circle, Bhubaneswar (for brevity 'Assessing Authority') initiated assessment proceeding U/r. 12(4) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules') against the Dealer for the assessment period 01.07.2006 to 31.03.2009. On verification of the books of account produced by the Dealer, the Assessing Authority found sale suppressions of ₹51,97,910.82 relating to manganese ore and suppressed sale price of ₹44,12,924/- in respect of iron ore by the Dealer and added the same to the GTO of the Dealer. Further, the Dealer has claimed exemption of export sale u/s.5(3) of the CST Act for an amount of ₹1,04,12,603/- against declaration Form 'H', but failed to furnish the copy of order of the foreign buyer and also copy of purchase order placed by the ultimate exporter on the Dealer to the tune of ₹73,50,000/-, for which the Assessing Authority disallowed the same, accordingly, raised a tax demand of ₹4,85,440/- including penalty for the period under assessment. Being aggrieved with the order of assessment, the Dealer preferred first appeal before the First Appellate Authority. The First Appellate Authority set aside the assessment order and remanded the matter to the Assessing Authority for assessment afresh with certain directions, hence this appeal.

3. State filed cross objection and additional cross objection.

4. The learned Counsel appearing on behalf of the Dealer in

terms of appeal memo raised the preliminary issue of maintainability of the assessment completed U/r.12(4) of the CST (O) Rules in absence of communication of completion of assessment under sub-rule (1), (2) or (3) of the CST(O) Rules, which is *peri materia* with the provision of Sec.43 of the OVAT Act and applicable *mutatis mutandis* in view of provision of Rule 22 of the CST (O) Rules. He submitted that record is silent regarding communication of acceptance of self-assessment return to the Dealer before passing the assessment order U/r.12(4) of the CST(O) Rules for the impugned tax period. Accordingly, he urged that the orders of the First Appellate Authority and the Assessing Authority are liable to be set aside in the ends of justice. He relied on the decisions of the Hon'ble High Court of Orissa in case of ***M/s. Keshab Automobiles v. State of Odisha***, **[2023] 111 GSTR 317 (Orissa)**, and affirmed by the Hon'ble Apex Court in case of ***Deputy Commissioner of Sales Tax v. Rathi Steel and Power Ltd.*** (**SLP (Civil) No. 9912 of 2022**, dated 13th July, 2022).

5. Per contra, learned Addl. Standing Counsel (CT) appearing for the State submitted that the provision of Rule 12(4) of the CST (O) Rules cannot be applied *mutatis mutandis* to the provision of Sec.43 of the OVAT Act. He argued that Rule 12(1)(a) of the CST(O) Rules provides that return shall be accepted as self-assessed without further communication to the dealer filing such return and that the Dealer has been self-assessed U/r.12(1)(a) of the said Rules. Learned Addl. Standing Counsel (CT) urged that decision of the Hon'ble Court in ***M/s. Keshab Automobiles*** case as relied on by the Dealer is not applicable to the present assessment passed U/r.12(4) of the CST(O) Rules as the same relates to the assessment u/s.43 of the OVAT Act. That apart, the

Revenue in terms of additional cross objection submitted that the order of the First Appellate Authority is not sustainable on the ground that the First Appellate Authority ought to have decided the issue of limitation basing on the condonation petition filed for delay in preferring the appeal before entering into the merits of the appeal. It is also contended by the Revenue that the First Appellate Authority disposed of the appeal without calling for and examining the assessment record, accordingly, prayed for setting aside the assessment order in the interest of justice.

6. On perusal of the first appeal record made available by the Revenue, it transpires that the Dealer preferred appeal before the First Appellate Authority along with the petition praying for condonation of delay. The order sheet maintained for the first appeal is silent regarding condonation of delay. The First Appellate Authority without condoning delay straight away admit the appeal. As per provision of Sec.77(3) of the OVAT Act, the statute provides that an appeal preferred after a period of 30 days may be admitted by the prescribed authority if he is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period. As it appears, the appeal was filed after a delay of about 7 years accompanied with the application for condonation of delay by the Dealer, which, in fact, has not been considered by the First Appellate Authority before proceeding to dispose of the appeal on merit. Furthermore, as contended by the Revenue, the First Appellate Authority vide letter dtd.01.03.2023 requested the Assessing Authority for transmission of assessment record, whereas the impugned order was passed by the First Appellate Authority on dt.15.04.2023 in absence of assessment record. It is trite law that disposal of appeal without perusal of LCR is vulnerable.

7. Having regard to the above backdrop of the matter, this forum is of the considered opinion that the First Appellate Authority has not discharged the statutory obligation while disposing of the appeal on merit without considering the petition for condonation of delay filed by the Dealer and thus, the impugned order is liable to be set aside and the matter is remanded back to the First Appellate Authority for fresh disposal as per law.

Since the matter is remanded back to the First Appellate Authority for fresh disposal as per law, this forum feels it proper not to render any specific opinion on the preliminary issue of maintainability of the assessment proceeding raised by the Dealer.

8. In the result, the impugned order of the First Appellate Authority is hereby set aside and the matter is remanded back to the First Appellate Authority for disposal afresh as per law.

The appeal as well as cross objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman