BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 76 (VAT) of 2018

(Arising out of order of the learned Joint Commissioner of Sales Tax, Sambalpur Range, Sambalpur in Appeal No. AA82/BGH/VAT/2016-17, disposed of on 30.11.2017)

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

M/s. Shri Krishna Solvent Extraction (P) Ltd.,
At:- N.H.-6, Nagenpali, Dist:- Baragada. ... Appellant

-Versus-

State of Odisha, represented by the
Commissioner of Commercial Taxes, Odisha,
Kataka. ... Respondent

For the Appellant : Mr. N.K. Dash, Advocate &
Mr. K.R. Mohapatra, Advocate
For the Respondent : Mr. D. Behura, S.C. (CT)

Date of hearing : 15.07.2026 *** Date of order : 13.08.2026

O R D E R

Challenging the legality and propriety of order dated 30.11.2017 passed by the Joint Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter referred to as 'First Appellate Authority') in Appeal No. AA82/BGH/VAT/2016-17, this appeal has been filed by M/s. Shri Krishna Solvent Extraction (P) Ltd. (hereinafter referred to as 'Dealer').

2. The brief facts relevant for disposal of this appeal runs thus–

The Dealer is engaged in manufacturing of rice bran oil and de-oiled cake, fatty acid, spent earth, wax, soap stock. Basing on the Tax Evasion Report (TER), the Deputy Commissioner of Sales Tax, Baragada

Circle, Baragada (hereinafter referred to as 'Assessing Authority') initiated the assessment proceedings u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') for the period 01.04.2012 to 31.12.2013. On verification of the books of account with reference to the allegations made in the TER, the Assessing Authority completed the assessment and raised tax demand of ₹12,01,271.73 along with two times penalty of ₹24,02,543.46 u/s.43(2) of the OVAT Act, in toto ₹36,03,815.00, on the Dealer for the period under assessment. Being aggrieved with the order of assessment, the Dealer preferred first appeal before the learned First Appellate Authority. The First Appellate Authority confirmed the assessment and dismissed the appeal, hence this appeal.

3. The State filed cross-objection.

4. The learned Counsel appearing on behalf of the Dealer filed memo not to press the grounds urged on the memo of appal except the additional grounds of appeal raising the preliminary issue of maintainability of initiation of proceedings u/s. 43 of the OVAT Act in absence of communication of completion of assessment u/s. 39, 40, 42 or 44 of the OVAT Act. He submitted that there is no material on record regarding communication of acceptance of self-assessment return to the Dealer before passing assessment order u/s. 43 of the OVAT Act. Accordingly, he urged that the orders of the First Appellate Authority and the Assessing Authority under the OVAT Act are liable to be set aside in the ends of justice. He relied on the decisions of the Hon'ble Court in the case of ***M/s. Keshab Automobiles v. State of Odisha***, reported in **[2023] 111 GSTR 317 (Orissa),** and affirmed by the Hon'ble Apex Court in the 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 Standing Counsel (CT) for the State supported the orders of the Assessing Authority and First Appellate Authority and

submitted that after acceptance of self-assessed returns, the reassessment proceeding was initiated basing on the TER. So, the point of maintainability cannot be raised at this stage on the ground of non-acceptance of self-assessed returns. He contended that the Dealer has not challenged the maintainability of the proceeding at an earliest opportunity, so, he is precluded to raise the same in view of provision of Section 98 of the OVAT Act. He also contended that since there is no time limit for communication of completion of assessment, the Assessing Authority communicated the self-assessment in the notice in Form VAT-307. He further submitted that communication/acknowledgment of the order of acceptance of self-assessed return is a matter of fact and the same cannot be objected at belated stage. He relied on the decision of the Hon'ble High Court of Orissa in case of ***The State of Orissa v. Lakhoo Varjang***, **[1961] 12 STC 162 (Orissa)**.

6. On perusal of record, it transpires that the present reassessment proceeding u/s. 43 of the OVAT Act relates to the period 01.04.2012 to 31.12.2013, which was completed on 30.01.2017.

The Dealer challenged the maintainability of the proceeding u/s. 43 of the OVAT Act as preliminary issue keeping in view the position of law settled by the Hon'ble Court in the case of ***M/s. Keshab Automobiles*** cited supra. State raised objection on the ground of the provision of Section 98 of the OVAT Act.

The relevant provision of Section of 98 of the OVAT Act is reproduced herein below for better appreciation :-

> *"**98. Assessment proceedings, etc. not to be invalid on certain grounds –***
> *(1) xx xx xx*
> *(2) The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication."*

In the case of ***National Thermal Power Company Limited v. Commissioner of Income-Tax,*** reported in **1996 (12) TMI 7 – Supreme Court**, the Hon'ble Apex Court have been pleased to observe that :-

> " ...Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.
>
> The refrained question, therefore, is answered in the affirmative, i.e. the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee..."

The above being the position of law, this Tribunal is of the considered view that the question of law raised by the Dealer arises from the facts, touches the root of the case, hence the objection raised on behalf of the State merits no consideration.

7. The Hon'ble High Court of Orissa in the case of ***M/s. Keshab Automobiles*** cited supra have been pleased to observe in para-22 as follows:-

> "22. From the above discussion, the picture that emerges is that if the self-assessment under Section 39 of the OVAT Act for tax periods prior to 1st October, 2015 are not 'accepted' either by a formal communication or an acknowledgement by the Department, then such assessment cannot be sought to be re-opened under Section 43(1) of the OVAT Act and further subject to the fulfilment of other requirements of that provision as it stood prior to 1st October, 2015."

In view of the ratio laid down by the Hon'ble Court, the Department is required to communicate a formal communication or acknowledgment regarding the acceptance of the self-assessment u/s. 39 of the OVAT Act. The Hon'ble Apex Court were also pleased to affirm aforesaid view of the Hon'ble Court.

8. In view of such backdrop of the matter and settled position of law, the assessment proceeding u/s. 43 of the OVAT Act is without jurisdiction

in absence of any assessment u/s. 39, 40, 42 or 44 of the OVAT Act. In this case, the State has not filed any materials to show that the acceptance of the self-assessment has been communicated to the Dealer under the Act. Therefore, the orders of the Assessing Authority and the First Appellate Authority under the OVAT Act for the period under dispute are not sustainable in the eyes of law being without jurisdiction and liable to be set aside.

9. In the result, the appeal of the Dealer stands allowed and the impugned order of the First Appellate Authority confirming the order of assessment is hereby set aside. Cross objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman