BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A.No. 43(VAT) of 2023

(Arising out of order of the learned Addl. Commissioner of Sales Tax (Appeal) Central Zone-I, Commissionerate of CT & GST, Odisha in Appeal No. AA-106101810000122/2018-19, disposed of on 30.11.2022)

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

M/s. Linde India Ltd.,
At: Plot No.756, First Floor,
Jaydev Vihar, Bhubaneswar,
751013 … Appellant

-Versus-

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

For the Appellant : Mr. B.B. Panda, Advocate
For the Respondent : Mr. N.K. Rout, Addl. S.C. (CT)

Date of hearing: 03.09.2026 *** Date of order: 01.10.2026

ORDER

Challenging the legality and propriety of order dated 30.11.2022 passed by the learned Addl. Commissioner of Sales Tax (Appeal), Central Zone-I, Commissionerate of CT & GST, Cuttack (hereinafter referred to as, 'First Appellate Authority') in Appeal No. AA-106101810000122/2018-19, this appeal has been filed by M/s. Linde India Ltd. (hereinafter referred to as 'Dealer').

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

The Dealer, in the instant case, engaged in manufacturing and

trading of different types of gases including industrial oxygen, medical oxygen, nitrogen and argon etc. through its manufacturing plant and also by purchasing from other gas manufacturing units. Pursuant to the receipt of the application filed by the Dealer for refund, audit was ordered to be conducted by the audit team of the Circle in consonance with Sec.58(4) of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'OVAT Act') r/w Rule 66(5) of the OVAT Rules. Basing on the audit report, audit assessment u/s.42 of the OVAT Act for the period 01.04.2011 to 31.03.2013 was initiated by the Deputy Commissioner of Sales Tax, Cuttack-I East Circle, Cuttack (for brevity 'Assessing Authority'). On examination of the allegation made in the Audit Visit Report (AVR) vis-à-vis the books of account, the Assessing Authority computed the tax liability and allowed refund of an amount of ₹1,38,10,570/- in audit assessment vide order dtd.25.10.2014. The order of assessment was challenged before the First Appellate Authority in Appeal No.AA/DCST/CUIE/228/2014-15, who in turn, vide order dtd.27.07.2016 set-aside the assessment order and remanded the matter to the Assessing Authority for reassessment. Pursuant to the order of the First Appellate Authority, the Assessing Authority completed the reassessment by entitling the Dealer to get refund of ₹40,27,413/- vide order dtd.10.11.2016. Thereafter, suo motu revision was initiated u/s.79(1) of the OVAT Act r/w Rule 119 of the OVAT Rules for the impugned period by the Addl. Commissioner of Sales Tax (Appeal), Odisha, Cuttack, wherein, demand of ₹4,51,59,137/- was made against the Dealer on the ground that the amount found refundable in the reassessment order dtd.10.11.2016 had been determined wrongly. Being aggrieved by the said refund order, the Dealer preferred appeal before the Commissioner of Sales Tax, Odisha, who vide order dtd.28.08.2018 remanded the matter back to the Assessing Officer for assessment afresh

with certain direction. Pursuant to such direction of the learned Commissioner of Sales Tax, the Assessing Authority completed the reassessment proceeding against the Dealer by raising a demand of ₹48,91,898/- for the impugned period vide order dtd.31.10.2018.

Being aggrieved with the reassessment order, the Dealer preferred appeal before the First Appellate Authority and the First Appellate Authority confirmed the order of reassessment, hence this appeal.

3. In course of hearing, learned Addl. Standing Counsel (CT) appearing on behalf of the State raised preliminary objection and submitted that the Dealer has preferred second appeal against the refund order framed u/s.58 of the OVAT Act, which is not appealable order, accordingly, submitted that the second appeal filed by the Dealer is not maintainable and without jurisdiction.

4. Learned Counsel appearing for the Dealer did not oppose such preliminary objection raised by the Revenue and fairly submitted that under good faith the Dealer filed first appeal as well as the present second appeal.

5. On perusal of record, it transpires that basing on the application for refund of excess ITC carried over 24 months as claimed by the Dealer in Form VAT-234, the matter was referred for tax audit and consequent upon receipt of tax audit report u/s. 58(4) of the OVAT Act r/w 66(5) of the OVAT Rules, the Assessing Authority allowed refund for the period under assessment. Basically, this forum finds that the assessment for the period under dispute was completed basing on the application for refund of tax under special circumstances, and as such, the impugned assessment is not appealable under the provision of Section 77 of the OVAT Act and consequently, the present second appeal is also not maintainable. Under such premises, I am of the humble

opinion that the second appeal filed by the Dealer is without jurisdiction and thus, require no adjudication.

6. In the result, the appeal filed by the Dealer is dismissed being not maintainable. However, the Dealer is at liberty to approach the appropriate authority for redressal of his grievance as per provisions of law, for which he is allowed to get back the impugned order by substituting the xerox copy thereof.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman