BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No. 209(V) of 2014-15

(Arising out of order of the learned Additional CST (Central Zone), Odisha, Cuttack in First Appeal Case No. AA-Angul-11/2010-11, disposed of on dated 18.08.2014)

Present: Shri R.K. Pattanaik, Chairman,
Smt. S. Mishra, 2nd Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

M/s. NTPC Limited,
AT-Talcher Super Thermal Power Station,
P.O. Deepshikha, Kaniha, Dist-Angul ... Appellant

-Versus-

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

For the Appellant : Sri A.K. Panda, Advocate
For the Respondent : Sri M.S. Raman, Additional Standing Counsel (CT)

Date of hearing: 19.11.2020 ***** Date of order: 27.01.2021

O R D E R

Following is the principal relief sought for by the appellant dealer assessee, such as, an amount of ₹9,23,619.00 deposited as tax prior to the completion of the assessment proceeding ought to have been taken into account and which has been disallowed on a pure misinterpretation of the statute and decision in that respect is, thus, liable to be interfered with.

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2. In fact, the dealer assessee filed the instant appeal under Section 78(1) of the Odisha Value Added Tax Act, 2004 (in short, 'the Act') assailing the impugned order dated 18.08.2014 promulgated in Appeal Case No.AA-Angul-11/2010-11 by the learned Additional Commissioner of Sales Tax, (Central Zone) (in short, 'FAA'), who partly allowed the claims but disallowed the additional tax deposited vis-a-vis order of assessment for the period 01.04.2005 to 31.12.2008 passed under Section 42 of the Act by the learned Deputy Commissioner of Commercial Taxes (LTU), Angul Range, Angul (in short, 'AA') on the ground that such disallowance of ₹9,23,619.00 is bad in law and not in accordance with the provisions of the Act.

3. As per the dealer assessee, the FAA failed to consider the relevant facts and misinterpreted the law in not considering the deposits made at the time of determination of balance tax to be paid, inasmuch as, an amount of ₹9,23,619.00 as tax was admittedly deposited before completion of the assessment proceeding. By way of cross-objection, the respondent State justified the impugned order dated 18.08.2014 and it is contended that the additional tax deposited by the dealer assessee was rightly not taken into consideration and could not have been accepted in view of the restriction contained in Section 33(5) of the Act and proviso thereunder.

4. As is made apparent from impugned order dated 18.08.2014, the real controversy inter se parties is with regard to adjustment of tax deposits made against the dues vis-a-vis the dealer assessee. The AA allowed adjustment of

₹57,13,353.00 as deposit against the tax dues, a decision against which, the FAA declined to accept the balance amount of ₹9,23,691.00 in spite of the fact that a total amount of ₹66,37,044.00 was paid. In other words, the FAA, since found the additional tax of ₹9,23,691.00 deposited subsequent to the receipt of audit notice, was not inclined to allow it, while determining the balance of tax payable by the dealer assessee. According to the dealer assessee, as the aforesaid amount was deposited prior to the completion of assessment, the FAA should have allowed it.

5. It is not denied by the dealer assessee that the balance amount of ₹923,691.00 was deposited not in time. Apparently, for delay in deposit of additional tax by the dealer assessee, the FAA declined to credit the said amount of ₹9,23,691.00 on the ground that a voluntarily disclosure of tax later to the receipt of the audit notice shall not be accepted considering the bar contained in the proviso to sub-Section (5) of Section 33 of the Act.

6. As per Section 42(4) of the Act, the assessing authority, after examining all the materials as available on record and the books of account and other documents produced by the dealer assessee and causing such enquiry, as it is deemed necessary, shall proceed to assess the tax due from that dealer. On the tax so assessed, penalty may be imposed in view of sub-Section (5) thereof. In the instant case, a penalty has been levied besides interest for delayed payments made by the dealer assessee. For now, the question is, whether, the additional tax is to be credited or not? The learned Counsel for the dealer assessee contends that the said amount of ₹9,23,691.00 since paid prior to the completion of the assessment,

it should be allowed. The learned Additional Standing Counsel, on the other hand, contends that as the bar is provided in the proviso to Section 33(5) of the Act, the additional tax deposited after receipt of the audit notice could not have been credited to. It is the view of the Tribunal that the later payments cannot be credited. The balance of ₹9,23,691.00 as deposited subsequent to the receipt of the audit notice, it could not have been credited, while assessing the tax due vis-a-vis the dealer assessee. In the case at hand, no dispute is raised over levy of penalty. It has been the consistent view of the Tribunal at least till recently that non-acceptance of the additional tax is distinct of discretion to levy penalty which depends on the conduct of the dealer assessee. Having said that, the Tribunal is of the considered opinion that the additional tax of ₹9,23,691.00 even though paid and deposited on account of voluntary disclosure made by the dealer assessee but since, it has been accomplished after receipt of the audit notice, the FAA was statutorily prohibited to credit the same at the time of determination of tax due. In absence of a bonafide conduct, a dealer assessee might escape simply by paying additional tax on the resumption of audit assessment and at any time later but before its completion. In such view of the matter and having regard to the clear interdiction as contained in proviso to Section 33(5) of the Act, there is no escape from the conclusion that notwithstanding additional deposit of tax to the tune of ₹9,23,691.00 to have been voluntarily disclosed by the dealer assessee, as it was ensured and accomplished after receiving the audit notice, the FAA, rightly denied to credit the same. Thus, the Tribunal reaches at a final decision that the impugned

order dated 18.08.2014 cannot be said to be erroneous with regard to credit or otherwise of additional tax of ₹9,23,691.00 deposited by the dealer assessee. As it was the only question involved, there is no other issue left for the determination of the Tribunal.

7. Hence, it is ordered.

8. In the result, the appeal stands dismissed. As a necessary corollary, the impugned order dated 18.08.2014 passed in Appeal No. AA-Angul-11/2010-11 is hereby confirmed. The cross-objection filed by the respondent State is accordingly disposed of.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(Smt. S. Mishra)
2nd Judicial Member

I agree, Sd/-
(P.C. Pathy)
Accounts Member-I