BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No. 407 (V) of 2014-15

(From the order of the ld. DCST, Balasore Range, Balasore, in First Appeal Case No. AA-76-BA-2010-2011 (VAT), disposed of on dtd.27.10.2014)

Present: Sri S. Mohanty
2nd Judicial Member

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

- V e r s u s -

M/s. Shree Ganesh Store, Utareswar, Soro, Balasore. ... Respondent

For the Appellant : Mr. M.S. Raman, ASC
For the Respondent : N o n e

Date of hearing: 25.01.2019 ******** Date of order: 25.01.2019

O R D E R

Felt aggrieved by the allowance of ITC in the impugned by First Appellate Authority, Balasore Range, Balasore (hereinafter referred as, the FAA), Revenue has preferred this second appeal claiming thereby the allowance of ITC is not in compliance with the Sec.20(11) of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act).

2. A short question raised by the Revenue-appellant for decision in this appeal is whether the first appellate authority has committed wrong in allowing the dealer to avail ITC for the goods available with the dealer on the date of conversion of the registration from SRIN to TIN dealer.

3. The dealer was subjected to audit assessment u/s.42 of the OVAT Act for the tax period 01.04.2005 to 12.10.2009 on the basis of the Audit Visit Report (in short, the AVR) alleging thereby wrong claim of ITC by the dealer in absence of proof of the payment of tax by necessary documents including retail invoices. The assessing authority in confrontation of the report in AVR to the dealer and on consideration of the dealer's explanation with the books of account and connected documents produced denied the ITC as claimed on the basis of retail invoices. As a result, the dealer was assessed to pay the tax amount of Rs.17,717.65 and penalty of Rs.36,435.30.

4. The assessment was carried in appeal by the dealer before the first appellate authority who in turn re-determined the tax liability after giving ITC allowable to dealer on the capital stock i.e. purchases made by the dealer on the date of conversion of registration from SRIN to TIN. In consequence thereof, the demand raised by the assessing authority was set aside and direction was given to raise demand for refund in accordance to the determination by the first appellate authority in the impugned order. On this backdrop, Revenue has filed this second appeal on a short question i.e. if the first appellate authority has followed the provision u/s.20(11) of the OVAT Act while allowing the ITC. To appreciate the essential question raised by the Revenue, it is pertinent to reproduced the provision u/s.20(11) of the OVAT, which reproduced below:-

> "(11) Subject to the restrictions specified in sub-section (8) input tax credit shall be allowed to a registered dealer in respect of the amount of tax paid or payable on purchase of taxable goods from a registered dealer, which the dealer holds on the date of registration, if such purchases were made within three months prior to the date of his registration."

The provision as above mandates the taxing authority to allow ITC against the purchases made by the dealer to the extent of the goods purchased within three months preceding to the date of conversion of the

registration. Learned Addl. Counsel, Mr. Raman appearing for the Revenue argued that, the impugned order is not explicit the first appellate authority who is extended forum of assessment though empowered under law, if has followed the aforesaid provision. The impugned order does not reveal the first appellate authority has determined the admissible ITC by taking account of the stock of goods in the hands of the dealer which were purchased within three months preceding to the date of conversion i.e. 07.06.2006. In that view of the matter, to avoid further discussion and repetitions it is held that this is a fit case where the matter should be remitted back to the assessing authority with following directions.

The assessing authority will do well to assess afresh the dealer on application of the Sec.20(11) of the OVAT Act and to that extent the order of the first appellate authority if found required be modified only.

It is made clear that if the first appellate authority has taken due consideration of the provision and thereby has taken into account of the goods purchased within three months preceding to the date above, then the determination of tax liability in the impugned order need to be reaffirmed. It is further made clear that, the assessing authority while going for reassessment should not take consideration of the provision u/r.11(4) of the OVAT Rules since the Rule had not came into force on the date of conversion from SRIN to TIN. In the wake of above, it is ordered.

5. The appeal is allowed on contest. The impugned order is set aside. The matter is remitted back to the assessing authority for assessment afresh in the light of observation made hereinabove giving proper opportunity of being heard to the dealer.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member