BEFORE THE DIVISION BENCH-II: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 118 (V) of 2016-17

(Arising out of the order of the learned JCST (Appeal), Sundargarh Range, Rourkela, in First Appeal Case No. AA V 21 of 2010-11, disposed of on dtd.23.02.2016)

P r e s e n t : Shri A.K. Panda, 1st Judicial Member & Shri P.C. Pathy, Accounts Member-I

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

- V e r s u s -

M/s. B.R. Enterprises, Mandir Road, Vedvyas, Rourkela. ... Respondent

For the Appellant ... Mr. S.K. Pradhan, A.S.C.
For the Respondent ... Mr. D. Pati, Advocate

Date of hearing: 01.12.2018 ******** Date of order: 04.12.2018

O R D E R

This appeal is directed against the order dtd.23.02.2016 passed by the learned Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (hereinafter referred to as, the learned JCST) in First Appeal Case No. AA V 21 of 2010-11, wherein and whereby he has allowed the first appeal in part by reducing the balance tax demand and penalty to Rs.2,697.00 from Rs.2,81,989.00 raised by the learned Sales Tax Officer, Rourkela II Circle, Panposh (hereinafter referred to as, the learned STO) in an assessment u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) in respect of the respondent-dealer for the assessment period from 01.04.2005 to 31.03.2008.

2. The respondent-dealer is a trader of iron and steel goods and in course of business transaction it used to sale the goods both in course of intrastate as well as interstate trade and commerce. Basing upon an Audit

Visit Report (in short, the AVR), the learned STO initiated a proceeding u/s.42 of the OVAT Act against the respondent-dealer for its assessment for the period from 01.04.2005 to 31.03.2008 and issued a notice in form VAT-306 to appear and to produce the books of account and in response to the notice, the respondent-dealer appeared through an Advocate and produced the books of account which were duly been examined. As per the allegation of the AVR, the visiting officials visited the business premises of the respondent-dealer and found out certain discrepancies which are as follows:-

(i) The R.C. of the appellant has been granted w.e.f. 24.06.2005. The appellant has sold goods during July, 2005 but the appellant has not collected VAT on sale of Rs.9,760.00 and VAT @ 4% on the same computed to Rs.390.00.

(ii) The appellant has also claimed and availed inadmissible ITC on cash and credit memo on Rs.21,66,139.00 and ITC availed of Rs.86,644.72 on the strength of improper tax invoice was payable by the appellant.

(iii) Verification of physical stock with reference to the stock account revealed that, there is shortage of 0.399 MTs of iron and steel goods valued Rs.12,722.00 i.e. Rs.31,884.23 per MT. VAT @ 4% was calculated to Rs.509.00.

3. During assessment, though the respondent-dealer put forth its clarification relating to the allegations leveled in the AVR, the learned STO did not accept any of the clarifications, rather accepted the allegations as true and genuine on examination of the books of account and the other relevant documents. However, considering the stock discrepancies to be of a later period and not of the period for which audit has been conducted, he did not take the discrepancies into account and determined the TTO accordingly and levied tax thereon at the appropriate rates which came to be Rs.69,52,911.48. As the respondent-dealer had already paid tax to the tune of Rs.14,920.00 earlier, the learned STO raised the balance tax demand of Rs.87,014.72 and also imposed a penalty of Rs.1,74,069.44, equal to twice of the balance tax demand u/s.42(5) of the OVAT Act and as such both the

balance tax demand and penalty came to be Rs.2,81,989.00 in total, to be paid by the respondent-dealer.

4. After the assessment, being aggrieved with the order of the learned STO, the respondent-dealer preferred an appeal before the learned JCST bearing First Appeal Case No. AA V 21 of 2010-11. On hearing and on consideration of the materials on record, though, the learned JCST rejected the other contentions of the respondent-dealer, accepted its contention relating to the availing of ITC amounting to Rs.86,644.72 by interpreting sec.20(8)(g) of the OVAT Act and as such the same resulted in reduction of the balance tax demand and penalty to Rs.2,697.00 from Rs.2,81,989.00 as raised earlier by the learned STO. Thus, being aggrieved with the order of the learned JCST, the Revenue as appellant has preferred this second appeal.

5. No cross objection has been filed by the respondent-dealer.

6. Heard both the sides. The learned Addl. Standing Counsel appearing for the appellant-Revenue submitted that, the learned JCST has not considered the provisions of law mentioned in sec.20(8)(g) of the OVAT Act properly and has allowed ITC to the respondent-dealer and as the order passed by him is totally erroneous and is not based upon the proper appreciation of the materials available on record, the same is liable to be set aside and the order passed by the learned STO being proper and justified, the same is liable to be restored. On the other hand, the learned Counsel appearing for the respondent-dealer supported the order of the learned JCST and urged for dismissal of the appeal.

7. Perused the materials on record including the orders of both the learned forums below. Sec.20 of the OVAT Act deals with the provision of ITC. As per sub-sec (3) of this section, ITC shall be allowed for purchases made within the State from a registered dealer holding a valid certificate of registration in respect of goods intended for the purpose of sale or resale by him in the State. However, sub-section (8) of this section creates some bar for a dealer to avail ITC and as per clause (g) of this sub-section no ITC shall be claimed by or be allowed to a registered dealer where the tax invoice is not available with him or there is evidence that the same has not been

issued by the selling registered dealer from whom the goods are perpetuated to have been purchased. Here, in the present case, it is not in dispute that, the respondent-dealer has produced some retail invoices instead of tax invoices showing the transactions in question. Similarly, it is also not in dispute that, the transactions has been effected between two registered dealers for the purpose of sale and output tax has properly been collected and has also been deposited in accordance with the provision of law. Therefore, considering the issuance of retail invoice by the selling dealers instead of tax invoices to be a technical lapse, the learned JCST has allowed ITC to the respondent-dealer amounting to Rs.86,644.72. On further scrutiny of the entire materials available on record, this forum is of the firm view that, the order passed by the learned JCST in allowing the ITC is clearly in accordance with law. As the order passed by the learned JCST suffers from no infirmity, the same needs no interference of this forum.

8. In the result, the appeal is dismissed being devoid of merit.

Dictated & corrected by me,

Sd/-
1st Judicial Member,
Odisha Sales Tax Tribunal

Sd/-
1st Judicial Member,
Odisha Sales Tax Tribunal

I agree,

Sd/-
Accounts Member-I,
Odisha Sales Tax Tribunal