

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

S.A.No.51(V) of 2018

(From the order of the learned JCST, Bhubaneswar Range,
Bhubaneswar in Appeal No.AA.001/VAT/BH-II/2017-18
dated 28.12.2017)

P r e s e n t :

**Shri Subrat Mohanty,
Judicial Member.**

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

... Appellant

- V e r s u s -

M/s.Dalema, Bhubaneswar. .

... Respondent

For the Appellant

... Mr.M.L.Agarwal, S.C.(CT).

For the Respondent

... Mr.R.C.Panda, Advocate.

Period of Assessment: 17.10.2012 to 23.11.2012

Date of hearing: 10.09.2019 * * * Date of Order:10.09.2019

O R D E R

This is an appeal at the instance of the revenue preferred against the order of the First Appellate Authority passed in assessment under Section-44 of the OVAT Act with a prayer to restore the order of the Assessing Authority raising tax liability on the dealer.

2. Factual Backdrop:

The case of the revenue is one Mr. Subrat Mishra is the proprietor of dealer M/s.Dalema, an unregistered firm carrying on hotel business with the brand name Dalema. On the basis of audit report dated 01.12.2012 submitted by Sales Tax Officer, Vigilance Wing, Bhubaneswar division Shri Subrat Mishra is a proprietor of the business concern in the name and styled of M/s.Dalema was subjected to assessment

under Section-44 of the OVAT Act. The dealer's plea of innocence was not accepted and he being treated as proprietor of an un-registered firm was assessed to pay tax at Rs.1,54,846.00 and penalty for the said amount of Rs.1,54,846.00 totalling the demand at Rs.3,09,692.00.

3. The matter was carried in appeal before first appellate authority by the alleged dealer Mr. Subrat Mishra. Learned JCST, Bhubaneswar Range, as first appellate authority vide impugned order dated 28.12.2017 deleted the demand with the finding that the dealer is not established as the proprietor of the business concern.

4. On the backdrop of Mr. Mishra above, the revenue being aggrieved questioned the sustainability of the order of the first appellate authority on the contentions like the first appellate authority has mechanically deleted the demand without proper investigation into the matter and the evidence is sufficient to hold that, Mr. Subrat Mishra is the proprietor of the business concern. So, he being associated with the business and is to be treated as a dealer under the Act.

5. Who is a dealer has been defined under Section 2(12) of the OVAT Act. Keeping in view the definition as per the statute advertent to the case in hand, it is found that according to taxing authority Mr. Subrat Mishra was managing the day-to-day business of the Hotel. The H.P. Gas connection supplying gas to run the hotel is being booked in the address C/o. the said Mr. Mishra. Payments for the gas were also made through by Mr. Mishra through cheques of his banker Andhra Bank. The plea of Mr. Subrat Mishra is he is the managing partner of M/s.Aditya Park Construction (P) Limited. He had given the premises on lease vide agreement dated 31.10.2011 given the premises on lease to M/s.Artha Tatwa Food Mart Private Limited. When the lessee left and stopped running the hotel, the workers engaged in

the hotel wanted to continue the hotel business with the help and assistance of Mr. Mishra. Taking into consideration of the aforesaid plea of Mr. Mishra, learned first appellate authority held that Mr. Mishra is not the dealer.

Bare perusal of the impugned order as it is revealed, that the first appellate authority has mechanically cited few judgments of Hon'ble Court and Apex Court. The ratio laid down by the authorities in the reported case were not reflected in the order or even not discussed. The order is found to be whimsical and is a clear manifestation of non-application of mind by the first appellate authority. In the event of any doubt the taxing authority could have verified the documents like food licence, electricity bill, gas connection document, municipality tax bill, IT return of Mr. Subrat Mishra and other documents so as to ascertain if Mr. Mishra is the proprietor, partner, manager or is dealing with the regular course of business of the hotel Dalema in any capacity. Without going into the details, the first appellate authority has proceeded in a sleep shod manner which is ended with a result confirmed not in accordance to law. Hence, it is believed that, the impugned order cannot withstand with the eye of law and is successfully intercept able by the Tribunal in appeal .

Accordingly, it is ordered.

6. The appeal is allowed on contest. The impugned order is set aside. The matter is remitted back to the first appellate authority for assessment afresh as per the observation given above. The first appellate authority is directed to complete the remand assessment with a period of four months here.

Dictated and Corrected by me,

(Sri Subrat Mohanty)
Judicial Member.

(Sri Subrat Mohanty)
Judicial Member.