BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL: CUTTACK.

P r e s e n t: **Shri A.K. Dalbehera, O.S.J.S. M.A., LL.M. 1st Judicial Member**

S.A. No. 236(V) of 2017-18

(Arising out of the order of the learned JCST (Appeal), Jajpur Range, Jajpur Road, in First Appeal Case No. AA 664 KJB 16-17 (OVAT), disposed of on dtd.23.06.2017)

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

- V e r s u s -

M/s. G.S. Engineering, Nalda Road, Belkundi, Barbil, Dist.- Keonjhar. ... Respondent

For the Appellant ... Mr. M.L. Agarwal, S.C.
For the Respondent ... Mr. B.N. Mohanty, Advocate

Date of hearing: 22.01.2020 ******** Date of order: 18.02.2020

O R D E R

This appeal is directed against the order dtd.23.06.2017 passed by the learned Joint Commissioner of Sales Tax (Appeal), Jajpur Range, Jajpur Road (hereinafter referred to as, the learned JCST) in First Appeal Case No. AA 664 KJB 16-17 (OVAT), wherein he set aside the order of the learned Sales Tax Officer, Barbil Circle, Barbil (hereinafter referred to as, the learned STO) for the assessment period 01.04.2013 to 31.03.2015 u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act).

2. The brief facts of the case are that, the respondent-dealer is a proprietorship concern which deals in manufacturing of iron

doors, windows and frames, threshold of doors, grills, gate and shutters and also deals in trading of automobile parts and accessories, wet cell batteries, grease and lubricants. On the basis of the Audit Visit Report (in short, the AVR) and materials available in the record, the GTO and TTO were determined at Rs.67,45,863.00 and Rs.64,40,206.00. Calculating tax @ 5% on Rs.9,32,977.00 and 13.5% on Rs.55,07,229.00 the total tax was calculated at Rs.7,90,123.00. The respondent-dealer had claimed ITC of Rs.8,595.00 and Rs.27,145.00 for the year 2013-14 and 2014-15 respectively as per VATIS. The learned STO had disallowed the total ITC of Rs.35,740.00 and ITC of Rs.6,72,160.00 was allowed as against Rs.7,07,900.00. The respondent-dealer had already paid an amount of Rs.84,266.00 and ITC carried forward to the next tax period was Rs.NIL. Though the respondent-dealer had paid excess amount of Rs.2,043.00, he was required to pay Rs.33,697.00. Thereafter, the learned STO imposed one time penalty along with tax which came to Rs.67,394.00. Thus the tax together with penalty due to be paid by the respondent-dealer was determined at Rs.1,01,091.00.

3. Being aggrieved by the order of the learned STO, the respondent-dealer preferred an appeal before the learned JCST who after consideration remanded the matter to the learned STO for fresh assessment. Being aggrieved by the order of the learned JCST, the Revenue as appellant has preferred this second appeal before this forum.

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

5. Heard the learned Standing Counsel appearing for the Revenue so also the learned Counsel for the respondent-dealer. Perused the orders of both the fora below, materials available on record and grounds taken in the appeal. In this case the respondent-dealer produced the books of account comprising the sales and

purchases along with stock account which are verified and examined. The respondent-dealer used to purchase goods from registered dealer inside the State of Odisha by paying usual rate of tax and the said tax has been taken for adjustment as ITC. The respondent-dealer had produced the original invoices for the said purchases and maintained books of account. But the selling dealer had not filed the return in time for which the same was not shown in the VATIS. Because of this the disallowance of ITC and imposition of penalty is not proper. The demand was raised due to disallowance of ITC to the tune of Rs.35,740.00. Before the learned JCST it was contended by the respondent-dealer that the assessment has been completed in contravention of Sec.20(3) of the OVAT Act. Sec.20(3) of the OVAT Act reads as follows:-

> "(3) Input tax credit 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-
> (a) sale or resale by him in the State;
> (b) use as inputs or as capital goods in the manufacturing of goods within the State, other than those specified in Schedule A and Schedule C and Schedule D for sale;
> (c) sale of goods subject to levy of tax at zero rate under Section 18;
> (d) for use as containers or materials for packing of goods, other than those exempt from tax under this Act, for sale or resale; or
> (e) transfer of stock of taxable goods other than by way of sale, to any place outside the State;"

It is seen that the respondent-dealer had purchased materials from a registered dealer having valid certificate of registration. Hence there was no occasion to disallow ITC more so when the respondent-dealer had submitted the relevant documents in respect of the purchase of materials and payment of tax. The learned Counsel for the respondent-dealer during the first appeal stage sought for more time for complying of mismatch of ITC. While discussing

about the facts of the case it is also necessary to quote Sec.20(3a) of the OVAT Act which reads as follows:-

> "(3a) Notwithstanding anything contained in this Act, no amount of input tax credit shall be allowed to a registered dealer on any purchase of goods in excess of the amount of such tax actually paid under this Act."

It is not out of place to mention here that sufficient opportunity should be allowed to the respondent-dealer for the ends of justice and in view of the principle of natural justice. It is well settled that any forum, quasi-judicial or judicial should make all endeavor for disposal of a dispute before it on merit so as to give a satisfactory and conclusive end to the lis. Hence there is no infirmity in the order of the learned JCST directing reassessment. I am also of the considered view that this is a fit case of remand to the learned STO for disposal afresh.

6. In the result, the appeal is dismissed and the impugned order is hereby confirmed.

Dictated & corrected by me,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

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