



period from 01.04.2009 to 30.04.2012 whereby a demand of `28,08,315.00 was raised.

2. The dealer is a partnership concern dealing with trading of surgical goods, hospital sundries, scientific laboratory instruments and orthopedic goods on retail and wholesale basis. On the basis of a Tax Evasion Report, a proceeding u/s. 43 of the OVAT Act was initiated for the period 01.04.2009 to 30.04.2012. In course of such proceeding, the allegations leveled by the Enforcement Team regarding sale suppression and non-payment of tax on certain goods by claiming them to be tax exempted were confronted. The dealer's explanation to such allegations was not accepted and the tax liability was calculated and the demand was raised as aforesaid. In first appeal filed by the dealer, it was contended that the goods in question, being covered under entry No.2 of Schedule under the OVAT Act are exempted from tax, but referring to the dictionary meaning of the term 'handicapped', learned first appellate authority held that the items in question being used by orthopedically handicapped persons cannot be included under entry No.2 and are hence, taxable. The order of assessment was thus, confirmed.

Being further aggrieved, the dealer has approached this Tribunal.

3. Assailing the impugned order, Sri D.R. Mohapatra, learned Counsel appearing for the dealer has raised the following points:-

- (i) There being no assessment u/s. 39, 40, 42 or 44, the proceeding u/s. 43 of the OVAT Act is without jurisdiction and hence, invalid;
- (ii) The goods in question are used by handicapped persons and hence, clearly covered under entry No.2 of Schedule-A; and
- (iii) The finding of the assessing authority as confirmed by the first appellate authority regarding sale suppression of `1,38,347.00 is not tenable.

4. Per contra, Sri S.K. Pradhan, learned Addl. Standing Counsel (CT) appearing for the Revenue has supported the impugned order by submitting that since the dealer was self assessed u/s. 39, the assessment u/s. 43 is permissible in law. Further, it is submitted that the entry in question is intended to include persons, who are handicapped but the goods sold by the dealer are ones that are used by persons under treatment or during temporary bodily pain. With regard to the sales suppression, Sri Pradhan contends that the dealer's explanation with regard to two numbers of note books found by the Enforcement Team in its premises is not tenable.

5. On the first point urged by the dealer, it is submitted by Sri Mohapatra that prior to initiation of proceeding u/s. 43 of the OVAT Act, there was no assessment u/s. 39, 40, 42 or 44. Though the appellant submitted returns for the tax period, nothing was intimated by the authorities regarding acceptance or otherwise of the same in terms of Sec.

39 of the said Act. Therefore, according to Sri Mohapatra, the authorities could not have initiated the reassessment proceeding u/s.43.

6. We do not accept the above contention, because on his own admission, the dealer is found to have submitted returns as contemplated u/s. 39 of the OVAT Act. Even accepting for a moment that there was no formal order of the authorities in accepting such return, still, it must be held that the returns were duly accepted. Law is well settled that the authorities are not obliged to issue an order of acceptance of the returns filed by the dealer in each and every case and are required to do so only if there is any discrepancy in the returns so filed. Reference may be had in this regard to the decision of our Hon'ble High Court of Orissa in the case of **M/s. Neelachal Ispat Nigam Ltd. Vs. State of Odisha and others** (W.P. (C) No. 22343 of 2015, decided on 07.12.2016).

7. On the next point urged by the dealer, it is contended by Sri Mohapatra that the dealer had sold ankle caps, knee caps, waist belt, walker, surgical collar etc. as tax exempted goods under entry No.2 of Schedule-A since these are aids and implements meant for handicapped persons only. Sri Pradhan, on the other hand, has argued that entry No.2 refers only to those items which are used by physically handicapped persons implying thereby persons with permanent disability.

8. For appreciating the rival contentions, it would be proper to refer to the relevant entry, which is quoted herein below :-

“Aids and implements used by handicapped persons”

9. A reading of the order of assessment reveals that according to assessing authority, such items are used by orthopedically handicapped persons which are taxable and that the Govt. has specific guidelines to determine a physically handicapped person as there is reservation in Govt. job for such persons. Learned assessing authority has also observed that the voluntary organizations provide care to the mentally and physically handicapped persons and since the sale effected by the dealer is to “orthopedic persons”, but not to physically handicapped persons the same is, therefore, taxable. Learned first appellate authority has referred to the dictionary meaning of ‘handicapped’ and made a distinction between a ‘handicapped’ person and an ‘orthopedically handicapped’ person. According to learned first appellate authority in case of handicapped person, the disability is permanent while in case of orthopedically handicapped persons, the disability is temporary. It is, therefore, manifest that both the authorities below have approached the issue from an erroneous perspective inasmuch as the term ‘handicapped’ has been interpreted by them to mean only permanently disabled persons. As already referred herein before, the Act does not make any distinction between permanent disability or temporary disability. Therefore, it would not be permissible for a statutory authority to add words to the statute or restrict the meaning of a particular term unilaterally. It is to be noted that the OVAT Act does not define the

word 'handicapped' and, therefore, we may refer to the dictionary meaning of the term. The Chambers Dictionary defines the word 'handicapped' as "suffering from some physical or mental disability, disadvantaged in some way. The Oxford Dictionary defines 'handicapped' as suffering from physical or mental disability. It is common knowledge that disability can be partial or total and temporary or permanent. However, the term 'handicapped' as ordinarily understood and as defined in the dictionary referred above, does not admit for such qualification. Therefore, interpreting the word 'handicapped' as being relatable to permanent disability only is not permissible. Similarly, qualifying the word 'handicapped' as orthopedically handicapped is also not permissible. We, therefore, find considerable force in the contention of Sri Mohapatra that both the authorities below committed manifest error in holding the items in question as taxable items.

10. With regard to sale suppression of `1,38,347.00, Sri Mohapatra submits that the same was leveled on the basis of entries in two note books, which were nothing but order books. The front page of the seized note book clearly mentions it as order books. According to Sri Mohapatra, as per normal business practice, the order book contains the details of the orders received from the customers over telephone or verbally and only upon completion of supply, the dealer raises invoices. The invoice numbers are also mentioned in the order book. In certain cases, though orders are received, the corresponding supply is unable to be made because

of non-availability of goods. Therefore, there is no suppression as such. Sri Pradhan does not dispute the factual position regarding seizure of note books or the fact of the same being described as order books, but argues that the entries therein not being reflected in the sale register, automatically raise a presumption of sale suppression which the dealer failed to explain properly.

11. A reading of the order of assessment reveals that the dealer took the above plea during assessment proceeding, but the same was not accepted on the ground that the cumulative figures comprising all the orders did not match with the sale invoices raised by the dealer. Hence, learned assessing authority considered it as sales suppression.

After going through the order of assessment as well as the impugned order vis-à-vis the dealer's explanation in this regard, we are of the considered opinion that the finding regarding sale suppression appears to be standing on shaky ground inasmuch as there is no clear cut finding as to what was the total cumulative figure of orders received and the total value of sale invoice issued by the dealer, thereby showing the discrepancy, if any. The dealer's explanation that in all cases of receipt of orders actual sales had not taken place for want of availability of goods at the material time, appears to be a plausible explanation which the authorities below have taken into consideration. We, therefore, feel persuaded to interfere with the impugned order.

11. For the foregoing reasons, therefore, we find the dealer to have made out a good case for interference with the impugned order.

12. In the result, the appeal is, therefore, allowed. The impugned order is hereby set aside. The order of assessment is quashed.

Dictated & Corrected by me,

**Sd/-**  
**(Sashikanta Mishra)**  
**Chairman**

I agree,

I agree,

**Sd/-**  
**(Sashikanta Mishra)**  
**Chairman**

**Sd/-**  
**(Subrat Mohanty)**  
**2<sup>nd</sup> Judicial Member**

**Sd/-**  
**(Prabhat Chandra Pathy)**  
**Accounts Member-I**