

**BEFORE THE CHAIRMAN: ODISHA SALES TAX TRIBUNAL: CUTTACK.**

**S.A. No. 137(V) of 2017-18**

(Arising out of order of the learned Addl. CST (Appeal), Odisha, Cuttack, in Appeal Case No. AA/106121612000047/2016-17, disposed of on 24.05.2017)

**Present :** **Smt. Suchismita Misra,**  
**Chairman**

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

. . . Appellant

**- V e r s u s -**

M/s. Pragati Engineering,  
Industrial Estate,  
Madhupatna, Dist. Cuttack.

. . . Respondent

For the Appellant ... Mr. M.S. Raman, Addl. S.C. (CT)  
For the Respondent ... Mr. M.C. Acharya, Advocate &  
Mr. J.M. Das, Advocate

-----  
Date of hearing: 30.07.2018 \*\*\*\*\* Date of order: 21.08.2018  
-----

**ORDER**

This appeal preferred by the State is directed against the order passed by the Addl. Commissioner of Sales Tax (Appeal), Odisha, Cuttack (first appellate authority) in Appeal Case No. AA/106121612000047/2016-17 on 24.05.2017.

2. The facts as revealed from the case record are that the dealer-assessee carries on business of manufacturing and selling tractor, trolleys, water tanker, threshers, rotavators, tiller cage wheels etc. His establishment was assessed pursuant to Audit Visit Report (AVR) for the tax

period from 01.04.2005 to 31.08.2008 and as such it was found by the Asst. Commissioner of Sales Tax, Cuttack-I Range, Cuttack (assessing authority) that during the period from 01.04.2005 to 18.08.2008 there was total purchase worth `4,48,75,111.61 and there was sale of `6,24,69,551.51 in his establishment. In course of verification some discrepancies were detected relating to purchase and sale of articles by the dealer-assessee for which it was held by him that 104 numbers of trolleys were sold out without being shown for the tax purpose. Thus, basing upon the best judgment the assessing authority held that the dealer had suppressed sale worth `82,00,000.00 on trolleys and evaded VAT due to State revenue. He thus calculated the rate of tax on the TTO determined as prescribed under the OVAT Act and then found that the dealer was liable for payment of VAT of `29,24,528.65 and further he was eligible for ITC of `21,78,315.14. He had also paid `3,38,624.00 as per the provision contained u/R. 57 of the OVAT Rules and payment made at checkgates. Therefore, it was found that the dealer was required to pay the remaining VAT of `4,07,589.51 and as such the same was to be levied with penalty from him at the rate of twice the tax amount due and in total ultimately it was worked by the assessing authority that the dealer-assessee was to pay `12,22,769.00 to the State.

The dealer-assessee preferred an appeal against the order of assessing authority before the first appellate authority and learned first appellate authority assigning the reasons had reduced the amount of tax to be paid to the State by the dealer-assessee and ultimately held that the dealer was to pay `28,319.51 along with two times penalty of `56,639.02 and thus, was ordered to pay `84,959.00 to the State.

Being aggrieved by this order of the first appellate authority the State came to this forum.

3. In course of hearing learned Addl. Standing Counsel (CT) for the State submitted that the order of the first appellate authority suffers from arbitrariness because when there is ample evidence that the dealer-assessee was found to have sold some articles which are highly essential for manufacturing tractors and for which he was caught red handed by the assessing authority who found that the dealer had manufactured certain things and made the finished goods like tractor and did not bother to reflect the same in his books of account then obviously the assessing authority was absolutely correct in directing him to make payment of VAT as per the calculation made by him (the assessing authority) with penalty which is again considered as mandatory provision of law.

4. Learned Counsel for the dealer-assessee, however, in terms of cross-objection opposed the appeal filed by the State while submitting that in this case the AVR submitted by the Audit Visit Officer was

barred by limitation as the same contravenes sub-section (4) of Sec. 41 of the OVAT Act. He also submitted that the order of the first appellate authority was based on admission of sale of stock of 208 numbers of rims @ `1,500/- each which was quite justified and reasonable and furthermore the dealer might have utilized the unaccounted stock of rims for manufacturing purpose and in absence of other supporting raw materials it should not be accepted that he had manufactured tractors by using those rims. It is also submitted by the learned Counsel for the dealer-assessee that there is no nexus between the admitted books of account with the sale of extra numbers of tractors etc. Learned Counsel cited a decision of the Hon'ble High Court rendered in the case of Allied Traders Vs. State of Orissa, reported in 29 STC 284 to apprise that when there is no evidence against the dealer-assessee to find that he had actually deviated from the process of law in course of business, then he ought not to be fastened with liability as held in the instant case.

5. On perusal of the case record it is found that in fact the dealer-assessee could not reconcile the articles which he had with him in stock in addition to the articles for which he had paid tax. Both learned assessing authority and learned first appellate authority had detected the discrepancies as pointed out by them in their respective orders but it seems that the assessing authority had acted upon some guess work on his part in his assessment of the dealer-assessee selling finished goods like tractors with trolleys during that relevant period. Learned first appellate authority, however, had reduced the tax demand while assigning some valid reasons in his order. According to the first appellate authority the extra numbers of tractors with trolleys alleged to have been sold by the dealer-assessee was absolutely baseless on the ground that no such tractor was registered under the Motor Vehicles Act. Further in absence of other raw materials apart from rims/wheels which are required for manufacture of a trolley as per the

specifications of different customers it may not be proper to appreciate the conclusion drawn by the assessing authority that the dealer-assessee had made sale suppression of trolleys and not the wheels since the wheel is only a single component out of a number of components required for manufacture of tractors. Thus, it is found that the first appellate authority had assigned some clear and cogent reasons for reducing the quantum of tax demanded by the assessing authority inclusive of penalty. On a bare perusal of the order passed in the first appeal alongwith facts as revealed from the record, I find that there is absolutely no infirmity in the order of the first appellate authority requiring interference by this forum.

6. Therefore, the order of the first appellate authority in the instant case is hereby confirmed and accordingly the appeal is dismissed being devoid of merit. Cross-objection is disposed of accordingly.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**