**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P. (C) No. 1000 of 2021**

***M/s A.K.Das Associates Ltd.*** .... ***Petitioner***

Mr.Kananbala Roy Choudhury, Advocate

*-versus-*

***The Commissioner of Sales Tax, Odisha & Ors.*** .... ***Opposite Parties***

Mr. Sunil Kumar Mishra, ASC for CT & GST Organization

**CORAM:**
**THE CHIEF JUSTICE**
**DR. JUSTICE S. K. PANIGRAHI**

**ORDER**
**21.11.2022**

**Order No.**

02. 1. The challenge in the present petition to the order dated 14th October, 2020 passed by the Additional Commissioner of Sales Tax, Odisha, Cuttack under Section 60 of the Odisha Value Added Tax Act (OVAT Act) withholding refund of an amount of Rs.25,21,860/- due to the present Petitioner. Even the impugned order notes that it was passed without hearing the Petitioner-dealer.

2. Mr. Sunil Mishra, learned Standing Counsel for the Department seeks to justify the non-hearing of the Petitioner by referring to Section 60(1) of the OVAT Act which reads as under:

> "60(1) Where any order giving rise to a refund is the subject matter of an appeal or further proceeding, or where any other proceeding under this Act is

> pending, and the Commissioner is of the opinion that the grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may withhold the refund till the final order is passed in such appeal or proceeding."

3. There is nothing in the above provision which indicates that the Commissioner can unilaterally pass an order in exercise of the powers thereunder. Since an order withholding refund is obviously adverse to the dealer, it is imperative that he is heard before any such order is passed.

4. On that short ground the impugned order is set-aside. It is open to the Commissioner, after issuing notice to the Petitioner and giving him a hearing, to pass a fresh order in terms of Section 60(1) of the OVAT Act.

5. The Court is informed that the impugned order was passed during the pendency of the appeal against the original assessment order. A direction is issued to the Joint Commissioner of Sales Tax (JCST) (Appeal), CT & GST, Territorial Range, Bhubaneswar to hear and dispose of the said appeal within a period of three months from the date of receipt of a certified copy of this order.

6. The petition is disposed of in the above terms. A copy of this order be sent to the JCST (Appeal) forthwith.

***(Dr. S. Muralidhar)***
***Chief Justice***

***(Dr. S.K. Panigrahi)***
***Judge***

Lingaraj Behera