IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 9856 of 2010

M/s. Grihasthi Udyog	....	***Petitioner***
		On behalf of Mr. Sumit Lal, Advocate

-versus-

Commissioner of Sales Tax and Another	...	***Opposite Parties***
		Mr. S.K. Pradhan, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No. **ORDER**
28.06.2022

07. 1. In terms of Section 9-B(2) of the Orissa Entry Tax Act, 1999 (OET Act), the provisions of Section 41 of the Orissa Value Added Tax Act, 2004 (OVAT Act) would '*mutatis mutandis'* apply when there is a tax audit undertaken under the OET Act.

2. In terms of Section 41(4) of the OVAT Act which *mutatis mutandis* applies, and which is the corresponding provision concerning audit assessment, the mandatory requirement is that after completion of tax audit of any dealer, the officer authorized who conducted such audit shall "within seven days from the date of completion of the audit, submit the audit report to be called the audit visit report to the Assessing Authority…" In the present case, as is stated in the counter affidavit filed by the Opposite Parties,

the date of completion of the audit was 6th December, 2008. It appears that the audit visit report (AVR) was prepared on 11th December, 2008 under the signature of the officer, who conducted the audit. However, that was not the same date on which the AVR was submitted to the Assessing Officer. From the photocopy of the AVR in Form E 27 corresponding to Rule 11 (5)(c) of the OET Rules, it is seen that the date stamp of the office of the Assessing Officer bears the date '19th December, 2008'.

3. Although, learned counsel for the Department sought to urge that the AVR was submitted on the same date that it was prepared i.e. 11th December, 2008 there is nothing stated in the counter affidavit about the aforementioned date stamp of the Office of the Assessing Officer as appearing on the AVR, which clearly indicates that it was received in that office on 19th December, 2008 i.e. more than seven days after the conclusion of the audit visit on 6th December, 2008. In other words, from the copy of the AVR placed on record, the authenticity of which has not been disputed by the Opposite Parties, it can safely be concluded that the AVR was submitted to the Assessing Officer only on 19th December, 2008 which has clearly beyond the period of seven days as stipulated under Section 9-B(2) of the OET Act read with Section 41(4) of the OVAT Act. This being a mandatory requirement, all proceedings consequent upon such AVR submitted to the Assessing Officer would stand vitiated in law.

4. Consequently, the AVR dated 11^{th} December, 2008 the order of assessment and demand notice period 1^{st} April, 2005 to 31^{st} March, 2007 under the OET Act are hereby quashed.

5. The writ petition is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.