IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.10349 of 2016

M/s. Pawanjay Sponge Iron Limited, Rourkela .... ***Petitioner***

Mr. Basudev Panda, Senior Advocate
assisted by Mr. B. Panda, Advocate

-versus-

The Deputy Commissioner of Sales Tax, Rourkela-II Circle and others .... ***Opposite Parties***

Mr. Sunil Mishra, Additional Standing Counsel
for Revenue Department

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
28.11.2022

Order No.

03. 1. The challenge in the present petition is to an assessment order dated 15th March, 2016 passed by the Deputy Commissioner of Commercial Taxes, Rourkela II Circle-Assessing Officer (AO) in respect of two assessment periods i.e. 1st April, 2011 to 31st March, 2013 and 1st April, 2014 to 31st March, 2015 under the Odisha Value Added Tax Act, 2004 (OVAT Act).

2. It is an admitted position that as far as the first period i.e. 1st April, 2011 to 31st March, 2013 is concerned, the Petitioner-Assessee had already been assessed in respect of that period under Section 42 of the OVAT Act. After the Special Investigation Team conducted an inquiry, certain discrepancies in the books of account were found and a tax evasion report was submitted. On that basis, the assessment was reopened and as a result of that reopening, the impugned assessment order has been passed.

3. For the said period i.e. 1st April, 2011 to 31st March 2013, learned counsel for the Petitioner seeks leave to withdraw the writ petition with liberty to challenge the assessment order in accordance with law.

4. Consequently, for the said period i.e. 1st April, 2011 to 31st March 2013, the Petitioner is permitted to withdraw the present petition to challenge the impugned assessment order in accordance with law.

5. However, the demand raised as a result of the impugned order is for both the periods. Consequently, the matter has to anyway be remanded to the Assessing Officer (AO) for restricting the demand to the first period i.e. 1st April, 2011 to 31st March, 2013 to enable the Assessee thereafter to seek appropriate remedies in accordance with law for that purpose.

6. As far as the second period i.e. 1st April, 2014 to 31st March, 2015 is concerned, it was preceded by a self-assessment by the Assessee under Section 39 of the OVAT Act. According to the Petitioner, there was no acceptance of the self-assessment by the Department and, therefore, the impugned assessment order for that period under Section 43 of the OVAT Act would be bad in law by virtue of the judgment of this Court dated 1st December, 2021 in STREV No.64 of 2016 read with a subsequent order dated 8th April, 2022 in STREV No.64 of 2016 ***(M/s. Keshab Automobiles v. State of Odisha)***, which has been affirmed by the Supreme Court of India in ***Deputy Commissioner of Sales Tax v. M/s. Rathi Steel and Power Limited*** by order dated 13th July, 2022 in Special Leave to Appeal (C) No.9912 of 2022.

7. Mr. Sunil Mishra, learned Additional Standing Counsel for the Revenue Department produces before the Court a computer generated ‘acknowledgement receipt’ bearing the very same date the return was filed online by the Assessee i.e. 22nd May, 2014. By referring to para 22 of the Judgment in ***Keshab Automobiles*** *(supra)*, he sought to contend that the present case would be different from the facts in ***Keshab Automobiles*** *(supra)* because of the auto generated acknowledgement receipt, which was not available in the aforesaid case.

8. The Court notes that prior to the amendment to OVAT Act with effect from 1st October, 2015 under Section 39(2) of the OVAT Act there was a requirement of the Department having to determine if the return filed by way of self-assessment was ‘in order’. Section 39(2) of the OVAT Act reads as under:

> “If a registered dealer furnishes the return in respect of any tax period within the prescribed time and the return so furnished is found to be in order, it shall be accepted as self assessed subject to adjustment of any arithmetical error apparent on the face of the said return.”

9. Consequently, what is envisaged under Section 39 (2) of the OVAT Act is not a mere computer generated acknowledgement of the return filed but some degree of application of mind by the Department to find out if the return filed is ‘in order’. The computer generated acknowledgement produced before the Court does not indicate if the Department found the return filed by way of self-assessment to be ‘in order’. Consequently, the Court does not consider this case to be different from the facts in ***Keshab Automobiles*** *(supra)* and holds that it is covered by the said

judgment. Consequently, the impugned assessment order as far as it concerns the period i.e. 1st April, 2014 to 31st March, 2015 is hereby quashed.

10. The matter is remanded to the AO i.e. Deputy Commissioner of Commercial Taxes, Rourkela II Circle to re-work the demand by eliminating the demand so far as it concerns the period 1st April, 2014 to 31st March, 2015 and confining it to the period 1st April, 2011 to 31st March, 2013. This exercise be completed by the AO within a period of two months from the date of receipt of the present order. For this purpose, the matter to be listed before the concerned AO on 1st February, 2023 on which date the Assessee will produce a downloaded copy of this order for the necessary steps to be taken by the AO.

11. It is clarified that after the AO issues the modified assessment order and demand, it will be open to the Petitioner-Assessee to seek appropriate remedies thereagainst in accordance with law.

12. The petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda