

~~COURT OF ORISSA~~
IN THE HIGH COURT OF ORISSA: CUTTACK

17
847

(Original Jurisdiction Case)

W.P.(C) No. 708 of 2012

Code No 170499

In the matter of:

An application under Article 226 of the Constitution of India;

And

In the matter of:

An application under the provisions of the Orissa Value Added Tax Act, 2004 (OVAT Act) and the Orissa Value Added Tax Rules, 2005 (Rules) and Notifications issued there under;

And

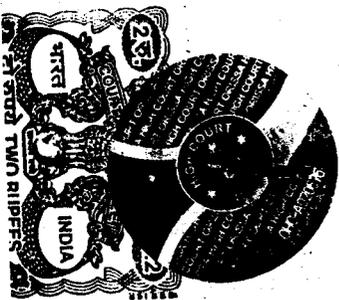
In the matter of:

An application for challenging the Audit Assessment Order dated 30.11.2011 and the consequent demand notice, passed by the Joint Commissioner of Sales Tax, Bolangir Range for the period 01.04.2005 to 31.07.2011, under Section 42 of the Orissa Value Added Tax Act for demanding tax and imposing penalty, as being illegal, arbitrary, violative of the principles of natural justice and violative of Article 14 and 19(1)(g) of the Constitution of India;

And

Presented in Court
B.C.

MD
10/01/12



18

In the matter of:

6

1. M/s. Vedanta Aluminium Limited a company incorporated under the provisions of the Companies Act, 1956 having its registered office at SIPCOT Industrial Complex, Madurai Bypass Road, T V Puram, P.O.- Tuticorin-628002 and site office located At/P.O.- Langigarh, Dist.- Kalahandi, Orissa, and At- Burkhamunda, P.O.-Jharsugda, Dist. Jharsugda, Odisha, TIN 21541802883, represented through its AGM, Legal, Mr. Nabal Kishor Sharma.

2. Mr. Nabal Kishor Sharma, aged about 37 years, son of Shri Amarchand Sharma, residing At-C/5/4, Staff Colony, At/P.O.- Lanjigarh, Dist. Kalahandi, Odisha-766027.

... Petitioners.

-Versus-

1. The State of Orissa, represented through its Secretary, Department of Finance, Orissa Secretariat, Dist.- Khurda, Bhubaneswar, Orissa.

Commissioner of Commercial Taxes, Banijyakar Bhawan,
Antonment Road, P.O.- Buxi Bazar, Cuttack.

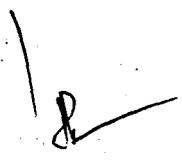
Joint Commissioner of Sales Tax Bolangir Range,
; Orissa.

... Opposite Parties.

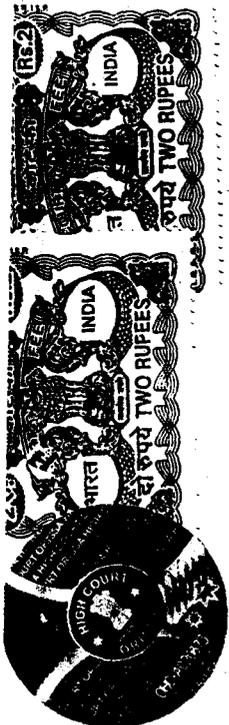


✓

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
3.	18.01.2012	<p>Heard Mr. S.K.Bagaria, learned Senior Advocate for the petitioner and Mr.M.S. Raman, learned Additional Standing Counsel for the Commercial Taxes Department.</p> <p>2. Though this matter is listed for preliminary hearing, on the consent of the learned counsel for the parties this is taken up for final disposal.</p> <p>3. Mr. S.K.Bagaria, learned Senior Advocate submits that the question of law arises in this case being similar to that raised and decided by this Court in W.P.(C) No.27427 of 2011 vide judgment dated 02.12.2011, the present writ petition may be disposed of in terms of the said judgment.</p> <p>4. Mr. Raman, learned Additional Standing Counsel for Revenue sought to justify the assessment order and submits that without exhausting alternate remedy provided in the statute, the petitioner has approached this Court for which the writ petition is liable to be dismissed.</p> <p>5. The question of law arise in this case being similar to that raised and decided by this Court in W.P.(C) No.27427 of 2011 (<i>M/s Bhusan Power & Steel Ltd. Vs. State of Orissa</i>) vide judgment dated 02.12.2011, the present matter is disposed of in terms of the said decision. In <i>Bhusan Power & Steel Ltd.</i> case (supra), the Assessing Authority passed audit assessment order taking into consideration the allegations raised in the audit visit report as well as the report submitted by the Special Investigation Team (SIT). The assessment order was quashed and the matter was remanded to the Assessing Authority to make audit assessment afresh under Rule 12(3) of the C.S.T. (O) Rules exclusively on the basis of the</p>	




Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>audit visit report and the Assessing Authority was further directed to serve a notice on the petitioner-dealer in the prescribed form for the purpose of making assessment under Section 43 of the Orissa Value Added Tax Act, 2004 on the basis of the report submitted by the Special Investigation Team after affording reasonable opportunity of hearing to the petitioner.</p> <p>6. The same sets of facts having been placed in this case, we quash the impugned assessment order under Annexure-1 by exercising extraordinary jurisdiction and remand the matter to the Assessing Authority with a direction to pass audit assessment order afresh exclusively on the basis of the audit visit report within a period of four weeks from the date of appearance of the petitioner-dealer before him for this purpose, which is fixed to 15th February, 2012.</p> <p>7. If the petitioner-dealer is aggrieved of audit assessment order he may prefer statutory appeal. On the date of appearance on 15th February, 2012, the Assessing Officer shall serve notice on the petitioner-dealer in the prescribed form for the purpose of making assessment under Section 43 of the Orissa Value Added Tax Act, 2004 on the basis of the tax evasion report submitted by the ACST, Vigilance Directorate, Cuttack against the dealer-company involving tax period from 01.04.2005 to 31.07.2010. The Assessing Officer is further directed to complete the assessment under Section 43 of the Orissa Value Added Tax Act, 2004 after affording opportunity of hearing to the petitioner.</p> <p>8. Since we are quashing the impugned order on technical ground, we asked the learned counsel for the petitioner to pay a portion of the amount to the Revenue as the liability fastened</p>	



Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
------------------	---------------	----------------------	---

towards Orissa Value Added Tax is huge amount, then the learned Senior Advocate for the petitioner on instructions submits a sum of Rs.5,50,00,000/- will be deposited, which would be subject to the result of re-determination of tax due to the Revenue by the Assessing Officer. For the above reason, the petitioner to deposit a sum of Rs.5,50,00,000/- (rupees five crores and fifty lakhs) within a period eight weeks from today, which shall be subject to re-determination of tax in assessment. On payment of rupees five crores and fifty lakhs as directed above, the realization of balance amount shall remain stayed.

9. With the aforesaid direction, the writ petition is disposed of.

Issue urgent certified copy of the order on proper application.

A copy of the order may be handed over to learned Additional Standing Counsel for Revenue.

Sd/- N. Gopala Gowda, C.J.
Sd/- B. N. Mahapatra, J.

Comp. by *[Signature]*
3-2-12

