

IN THE HIGH COURT OF ORISSA: CUTTACK

(Original Jurisdiction Case)

W.P.(C) No. 710 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 Central Sales Tax Act, 1956 (CST Act). The Central Sales Tax (Orissa) Rules, 1957 (CST (O) Rules), The Central Sales Tax (R & T) Rules, 1957 and Notifications issued there under;

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10/01/12 And

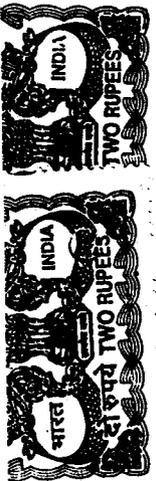
In the matter of:

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

And

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 06.07.06 to 31.07.2011, under Rule 12(3) of the CST (O) Rules for demanding tax and imposing



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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;

A n d

In the matter of:

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.
2. Commissioner of Commercial Taxes, Banijyakar Bhawan, Cantonment Road, P.O.- Buxi Bazar, Cuttack.
3. The Joint Commissioner of Sales Tax Bolangir Range, Bolangir, Orissa.

... Opposite Parties.



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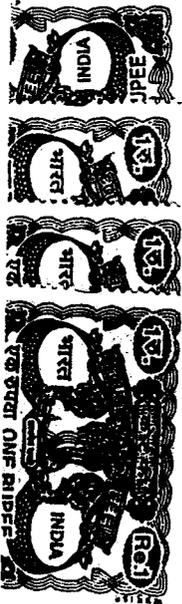
Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
3.	18.01.2012	<p>Heard Mr. S.K.Bagaria, learned Senior Advocate for the petitioner and Mr.M.S. Raman, learned Additional Standing Counsel for the Commercial Taxes Department.</p> <p>2. Though this matter 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 &amp; 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 &amp; 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 audit visit report and the Assessing Authority was further directed</p>	



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Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>to serve a notice on the petitioner-dealer in the prescribed form for the purpose of making assessment under Rule 12(4) of the CST (O) Rules 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 15<sup>th</sup> 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 15<sup>th</sup> February, 2012, the Assessing Officer shall serve notice on the petitioner-dealer in the prescribed form for the purpose of making assessment under Rule 12(4) of the CST (O) Rules on the basis of the tax evasion reports submitted by the ACST, Vigilance Directorate, Cuttack and S.T.O., Vigilance, Cuttack Vigilance Division, Cuttack against the dealer-company involving tax period from 06.07.2006 to 31.07.2010. The Assessing Officer is further directed to complete the assessment under Rule 12(4) of the CST (O) Rules after affording opportunity of hearing to the petitioner and shall examine the petitioner's claim of branch transfer keeping in view the judgment of the Hon'ble Supreme Court in the case of <i>Tata Engineering and Locomotive Co. Ltd. vs. Assistant Commissioner of Commercial Taxes, Jamshedpur and others</i>, (1997) 26 STC 354.</p>	



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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 towards Central Sales Tax is huge amount, then the learned Senior Advocate for the petitioner on instructions submits a sum of Rs.19.00 crores will be deposited with the Revenue, which would be subject to re-determination of the tax due, to the Revenue by the Assessing Officer. For the above reason, the petitioner to deposit a sum of Rs.19.00 crores (rupees nineteen crores) within a period eight weeks from today, which shall be subject to re-determination of tax in assessment. On payment of Rupees Nineteen Crores 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/- V. Gopala Gunda, C.J.  
Sd/- B. N. Malapatra, J

*[Handwritten signature]*  
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