

Legal Note

Sl. No.	Section/Act	Issue /subject matter in brief	Reported decision
1.	42 (2) of the OVAT Act	30 days of times needs to be allowed to the dealer from the date of issue of the notice in Form VAT 306. Otherwise the assessment will be invalid.	<ul style="list-style-type: none"> • Order dated 25.09.2014 in case of M/s Delhi Foot Wear Vrs. STO & Others in W. P. (C) No. 2971/2009. • Order dated 24.09.2014 in case of M/s Patitapabana Bastralaya Vrs. STO, Puri Circle, Puri in W. P. (C) No. 2971/2009.
2.	42 (6 & 7) of the OVAT Act	Limitation for completion of assessment beyond 6 months provides U/s 42 (6) of the OVAT Act can be sought & obtained post-facto if over all limitation of one year for completion of assessment granted U/s 42 (7) of the OVAT Act has not expired.	
3.	42 (6 & 7) of the OVAT Act	The implication of the terms “assessment made”, “assessment completed” & “assessment passed” is to be understood for the purpose of calculation of limitation period. wherever the term assessment made is subject matter of interpretation, it should be understood as assessment made by the Department. Period for issue & service does not come under the term assessment made & completed. However, when the term assessment passed comes for scrutiny it should be understood as assessment completed by the department & served on the dealer.	P.G.Nagendra vs.CCT, 109 STC 143 Kar
4.	Section 2 (d) of the OST Act,	The Hon’ble Supreme Court of India have remanded 18 BSNL cases to	BSNL-vrs- Commissioner of Sales

	1947 & pari materia provision under the OVAT Act	respective assessing authority for fresh assessment taking into consideration the amount involved in sale of goods in respect of the impugned transaction. These transactions are claimed as deemed sale by State of Orissa on the ground of transfer of right to use goods & rendering of service by the dealer. The Supreme Court have directed to segregate the claim & come to a conclusion regarding the amount involved in deemed sale & in rendering of the service by the assessing authority.	Taxes, Cuttack & Anr .Order of Hon'ble Supreme Court of India on dated. 25.07.2013 in C.A No. 2048/2008
5.	Section 2 (7), 2 (12)& 2 (45) of the OVAT Act.	The question whether sale of mortgaged goods by the Bank amounts to sale by the said Bank has been affirmed by the Hon'ble High Court of Orissa in case of State Bank of India Vrs. State of Orissa. Discarding the contention of the Bank that it is not a dealer, the Honb'le High court held that financial institutions like banks are defined as persons & therefore they can be dealers under the OVAT Act.	SBI & Others-vrs- State of Odisha & Others. Order dated.03.03.2014 in W.P(C) No. 313/2014
6.		The question whether sale of flats by the real estate developers would be treated as works contract & the state would be able to recover sales Tax on account of such sales was decided by the Hon'ble Supreme Courts of India in case of Larson & Turbo Vrs. State of Karnataka. The Hon'ble Court held that where tripartite agreement is made between the land owner, developer & buyer, it would amount to sale of goods involved in execution of works contract even though goods are embedded on earth & is immovable.	Apex Court Order dated. 26.09.2013 in case of Larson & Turbo-vrs- State of Karnatak in SLP© No. 17741/2007

7.		The question whether installation of lift amounts to interstate sale or transfer of property of goods involved in execution of works contract has been considered by the Supreme Court of India in case of M/s Kone Elevators Vrs.- Others. The State of Orissa had levied works contract tax in all these transactions. Upholding the stand of the State the Hon'ble Court held that installation of lift attracts works contract tax & will not amount to inter-state sale.	Order dated. 06.05.2014 of Hon'ble Supreme Court of India in W.P(C) No. 428/2009 in Case of M/S Kone Elevator India Pvt. Ltd-vrs- Union of India & others
8.		The question whether consumption of food & drinks by the members of a club is pending consideration in the High Court of Orissa in case of BBSR Club vs. State of Orissa. The Hon'ble Court directed the petitioner to pay the entire tax demand. The dealer preferred appeal before the Supreme Court of India who directed the dealer to comply the order of the Hon'ble High Court of Orissa.	Order dated. 19.08.2014 of Hon'ble Supreme Court of India in SLP(C) No. 21231/2014& 21628/2014 in case of M/S Bhubaneswar Club-vrs-Commercial Taxes& Anr
9.	Para 30 of the order of the High Court Case of Reliance Industries	This is a case relating to Nestle India Private Ltd. The dealer brings milk products into the state. Similar goods are also produced inside the State. Earlier the Hon'ble High Court had granted stay on recovery of Entry Tax relying on their own judgment dt.18.02.08 in case of Reliance Industries. The tax demand was made on the dealer on the ground that similar goods are produced inside the State & the dealer is not entitled for conditional stay. Upon the writ petition filed by the dealer, the Hon'ble High Court directed the dealer to pay the entire demanded dues subject to the result of the writ petition.	M/S Nestle India Ltd.-vrs- CCT . Order dated. 05.08.2014 in W.P(C) No. 13573/2014