BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 248 (VAT) of 2015-16

(Arising out of order of the learned Addl. CST (Appeal), South Zone, Berhampur in First Appeal No. AA (VAT) 21/2012-13, disposed of on 30.04.2015)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri B. Bhoi, Accounts Member-II

State of Odisha, represented by the Commissioner of Sales Tax, Odisha, Cuttack ... Appellant

-Versus-

M/s. Jagannath Rice Mill, Old Station Road, Bhubaneswar ... Respondent

For the Appellant : Sri D. Behura, S.C. (CT)
For the Respondent : Sri B.N. Joshi, Advocate

Date of hearing : 04.01.2023 *** Date of order : 01.02.2023

O R D E R

State is in appeal against the order dated 30.04.2015 of the Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (hereinafter called as 'First Appellate Authority') in F A No. AA (VAT) 21/2012-13 reducing the assessment order of the Dy. Commissioner of Sales Tax Bhubaneswar I Circle, Bhubaneswar (in short, 'Assessing Authority').

2. The facts of the case, in brief, are that –

M/s. Jagannath Rice Mill is engaged in manufacture of wheat products like atta, maida and suji by purchasing wheat as raw material and sold the goods both inside and outside the State. The assessment period

relates to 01.07.2009 to 31.03.2011. The Assessing Authority raised tax demand of ₹45,38,763.00 u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') basing on the Audit Visit Report (AVR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the assessment order by allowing refund of ₹1,32,551.00. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

3. The Dealer files cross-objection supporting the order of the First Appellate Authority to be just and proper in the facts and circumstances of the case.

4. The learned Standing Counsel (CT) for the State submits that the order of the First Appellate Authority is otherwise bad in law and fact involved. He further submits that the First Appellate Authority went not in deleting the tax demand on reversal of ITC on the ground that chuni is a by-product and reversal principle of tax credit is not applicable and same requires interference in this appeal.

5. Per contra, learned Counsel for the Dealer submits that Hon'ble Madhya Pradesh High Court and this Tribunal have already recorded a finding that chuni is a by-product and reversal principle of tax credit is not applicable. He relies on the decision in the cases of ***Ruchi Soya Industries Ltd. v. State of M.P. and others***, reported in **[2014] 70 VST 40 (MP**), ***Commissioner, Commercial Tax, Uttarakhand v. Eastman Agro Mills Ltd.,*** reported in **[2013] 60 VST 325 (Uttara)**; and the orders passed by this Tribunal in ***S.A. No. 95 (VAT) of 2009-10*** decided on 05.02.2011, ***S.A. No. 149 (VAT) of 2016-17*** decided on 08.12.2017, ***S.A. No. 422 (VAT) of 2015-16*** decided on 07.02.2018, ***S.A. No. 20 (VAT) of 2017-18*** decided on 19.06.2019 and ***S.A. Nos. 133 (VAT) & 134 (VAT) of 2012-13*** decided on 01.08.2013.

6. Having heard the rival submissions of the parties and on going through the orders of both the Assessing Authority and the First Appellate Authority vis-a-vis the materials on record, it transpires that the Assessing Authority determined the GTO at ₹52,52,05,369.00 and TTO at ₹36,37,77,751.00 after deducting ₹14,71,12,572.50 and ₹1,43,15,045.50 towards sale of chokad, rice bran, de-oiled and collection of VAT respectively. The Assessing Authority levied tax @ 4% on ₹3,42,000.00 towards purchase of gunny bags, 4% on ₹40,000.00 towards purchase of machinery scrap, @ 4% on ₹25,31,230.00 towards proportionate purchase value of wheat from unregistered dealers used in production of chokad and @ 4% on ₹33,70,391.00 towards proportionate purchase value of wheat from unregistered dealers used in production of taxable goods against consignment sales. He raised the tax of ₹15,12,921.00 after allowing the admissible ITC of ₹23,37,171.28 (against claim of ₹45,87,191.28) and payment of VAT ₹1,07,01,018.00 and levied two times penalty, which came to a sum of ₹45,38,763.00.

The First Appellate Authority recorded a finding in the appeal that chokad is a by-product and the Dealer is not liable to reversal of ITC. The First Appellate Authority also confined to ₹7,05,796.60 towards reversal ITC on wheat, HDPP bags and packing materials. The First Appellate Authority re-determined the GTO at ₹52,26,74,139.00, allowed deduction of ₹14,71,12,572.50 and ₹16,14,27,618.00 towards sale of tax free goods and collection of VAT respectively. The First Appellate Authority determined the TTO at ₹36,12,46,521.00 and assessed the tax @4% thereon, which came to ₹1,44,49,860.84. The Dealer had already paid ₹1,45,82,412.24 including admissible ITC of ₹38,81,394.24 and found excess payment of ₹1,32,551.00 and allowed the refund accordingly.

7. The State has challenged the finding of the First Appellate Authority on the ground that chokad being a by-product of raw materials, the reversal of ITC to the extent of use of by-product is applicable in view of Section 20 of the OVAT Act r/w Rule 14(4)(i) of the OVAT Rules.

In the case of ***Ruchi Soya Industries Ltd. v. State of M.P. and others***, reported in **[2014] 70 VST 40 (MP)**, the Hon'ble Madhya Pradesh High Court have been pleased to observe as follows :-

> "that the de-oiled cake, a by-product was tax-free and another by-product sludge and the main product oil were taxable. Hence, the authority could not apportion the tax liability after deducting the percentage of proportionate manufacture of de-oiled cake. The dealer was eligible to get set-off on the entire raw material purchased by it."

The same view has also been reiterated by the Hon'ble Uttarakhand High Court in the case of ***Eastman Agro Mills Ltd.*** cited supra.

This Tribunal has already decided similar issue with a finding that chuni is a by-product and for that the reversal tax credit principle is not applicable in ***S.A. No. 95 (VAT) of 2009-10*** decided on 05.02.2011. The same view has been reiterated by this Tribunal in ***S.A. No. 149 (VAT) of 2016-17*** decided on 08.12.2017, ***S.A. No. 422 (VAT) of 2015-16*** decided o 07.02.2018, ***S.A. No. 20 (VAT) of 2017-18*** decided on 19.06.2019, ***S.A. Nos. 133 (VAT) & 134 (VAT) of 2012-13*** decided on 01.08.2013.

8. In view the settled position of law as decided by the Hon'ble M.P. High Court in ***Ruchi Soya Industries Ltd.'***s case cited supra and the consistent view of this Tribunal that chuni is a by-product and for that the reversal tax credit principle is not applicable and the First Appellate rightly deleted the tax demand on that score, which calls for no interference. Hence, it is ordered.

9. Consequently, the appeal being devoid of any merit stands dismissed and the impugned order of the First Appellate Authority is hereby confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G.C. Behera)
Chairman

Sd/-
(G.C. Behera)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(B. Bhoi)
Accounts Member-II