

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 243(V)/2017-18

(Arising out of order of the Id. Addl.CST (Appeal), South Zone,
Berhampur, in First Appeal Case No. AA(VAT)46/2015-16,
disposed of on dtd.29.06.2017)

Present: Sri S.K. Rout
2nd Judicial Member

M/s. The India Cement Limited,
At/P.O. Goods Shed Road, Berhampur,
Dist. Ganjam. Appellant

-Versus-

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

For the Appellant : Mr. G.S. Mohanty, Advocate
For the Respondent : Mr. M.L. Agarwal, Standing Counsel (C.T.)

(Assessment Period : 04/12 to 03/14)

Date of Hearing: 11.02.2022 *** Date of Order: 07.03.2022

ORDER

Challenge in this second appeal is the order
dtd.29.06.2017 passed by the learned First Appellate
Authoirty/Addl. Commissioner of Sales Tax (Appeal), South Zone,
Berhampur (in short, FAA/Addl.CST) in First Appeal Case
No.AA(VAT)46/2015-16 thereby confirming the order of
assessment passed by the learned Assessing Officer/Joint
Commissioner of Sales Tax, Berhampur (in short, STO/JCST)

u/s.42(4) of the OVAT Act for the tax period 04/12 to 03/14 raising demand of Rs.2,03,132/- including penalty of Rs.1,35,421.40.

2. The case at hand is that, the dealer-appellant, M/s. The India Cement Ltd., Berhampur being a limited company was dealing in “Raasi Gold brand Portland Cement” on wholesale basis located at Vishnupuram of Telengana state. On receipt of Audit Visit Report (AVR), the learned AO initiated audit assessment proceeding u/s.42 of the OVAT Act and pursuant to notice, the General Manager, Finance and Sr. Asst. Manager (M&A) of the dealer-company appeared, filed statements and related books of accounts which were examined by the learned AO with reference to the observations available in the AVR. On examination of stock accounts, the audit team found that the dealer was maintaining stock inside the State. The dealer was having no stock at the principal place of business at Berhampur at the time of visit, details of stock position individually for each additional place of business to the audit team.

The audit team verified the books of accounts of the dealer company maintained for each additional place of business inside the State and found the same to be tallied with in the AVR, it is stated that as regards to lost/damaged stock of 827.75 MT of cement, the dealer-company failed to submit any documentary evidence. But the dealer had paid due VAT and Entry tax on it at the end of the year taking the average sale value of cement for the year it related. On verification, the audit team found that the company had deposited VAT and entry tax on 01.10.2014 i.e. after

receipt of the audit visit notice towards damaged stock. Further, the DCST noticed that the dealer had not revised the monthly return filed earlier reflecting the sale value of damaged/lost stocks for the month it related and had also not paid due interest on it for the belated payments as per provision u/s.34(1)(d)(iii) of the OVAT Act. The DCST had calculated interest of Rs.89,802/- on VAT payable on transit loss and damaged stock cement.

Further on cross verification of the utilization statement of way bills vis-à-vis stock receipt register, the audit team noticed that the dealer had generated four numbers of way bills on the same day for the same two numbers of invoices and value. But the Authorised Officer of the dealer-company could not give any satisfactory answer for non-cancellation of extra two numbers of way bills till the date of visit. So, in view of such, the Id.DCST (Tax Audit) treated the value of transaction i.e. Rs.1,98,000/- as purchase suppression. However, the Id.DCST (Tax Audit) had pointed out that the dealer had neither utilized nor applied for cancellation of these two way bills till the date of audit visit.

The audit team also found that during the year 2013-14, the dealer had issued credit note for Rs.5,69,220/- including VAT amount of Rs.67,704.59 which was adjusted by deducting from the output tax payable by the dealer for the tax period July, 2013. On this score, it was explained that M/s. Panda Infrastructure Private Ltd., Bhubaneswar bearing TIN-21301118680 towards goods return by the purchaser for the sales effected during the month of April, 2013. But in return, the purchasing dealer M/s.

Panda Infrastructure Private Limited had not issued debit note to this effect. Further, on verification of return in form VAT-201 for the tax period July, 2013 submitted by the purchasing dealer, the Id.DCST found that there was no mention of any kind of debit note issued to the selling dealer i.e. M/s. The India Cement Limited and the purchasing dealer had not reduced the input tax credit as required. Thus, the DCST suggested for disallowance of credit note issued by the dealer-company.

At the time of assessment, the Id.AO verified the books of accounts maintained by the dealer with reference to the periodical returns filed. On verification, it was revealed that during the period from 01.04.2012 to 31.03.2014, the branch had received 385236.65 MT cement valued Rs.172,78,63,451.00 with an opening stock of 2012.65 MT. During the period under assessment, the dealer-company had sold 377289.00 MT of cement worth of Rs.178,50,57,257.00 and disclosed transit and refilling loss of 827.75 MT leaving a closing balance of 9132.55 MT. The dealer-company had collected output VAT to the tune of Rs.24,09,82,730.00 and deposited the same to the State exchequer.

The authorized officers of the company were confronted with the Audit Visit Report submitted by the DCST, Ganjam-II Circle, Berhampur. The DCST, Head of the Audit Team had suggested for imposition of interest to the tune of Rs.89,802.02 for late payment of tax on the damaged stock of 827.75 MT cement. But the Sr. Asst. Manager of the dealer-company refuted such

charges and explained that in fact tax should not have been paid on such goods as the same was not sold but the company had wrongly paid the said tax which needs to be refunded.

It is revealed that the company had claimed damage of 827.75 MT cement out of the total receipt of 401251.15 MT which was only 0.21% of the total receipt including opening balance. It is a fact that in such nature of business, there was possibility of loss and damage during transit as well as in the godown. The loss claimed by the company during the impugned period was very negligible in comparison to the receipt of goods. The dealer-company had not sold the damaged stock in the open market as these goods were damaged which had no sale value. Even if the dealer-company had deposited VAT to the tune of Rs.5,29,825.00 on the damaged stock. So, the Id.AO considered that the suggestion for imposition of interest for late payment of tax on the damaged stock of cement was not justified and therefore rejected.

With regard to non-receipt of debit note for Rs.5,69,220/- involving tax of Rs.67704.59 for the month of April, 2013 from M/s. Panda Infrastructure Pvt. Ltd., Bhubaneswar bearing TIN-21301118680 on account of return of goods, the plea of dealer-company was that it had furnished the connected debit note for the amount on dt.12.07.2013 after audit was completed, but such claim was not accepted at the assessment stage being considered as afterthought. So, on the sale value of Rs.5,69,220/- as the dealer-company had not deposited tax, was treated as sales suppression and tax and penalty were calculated.

With regard to purchase suppression of Rs.1,98,000/- due to non-cancellation of way bill No.21W-13045014393 dtd.08.03.2013 and way bill no.21W-13077190580 dtd.23.04.2013, application was shown for cancellation made on dtd.10.06.2015 before the DCST, Ganjam-I Circle, Berhampur. The plea of dealer-company was that the way bill No.21W-13045014393 dtd.07.03.2013 for 22.50 MT of cement amounting to Rs.94,500/- as the way bill was not generated due to system error. So, second way bill against the same invoice number vide way bill no.21W-13045043790 was generated vide requisition acknowledgement No.49120016852. As regards way bill No.21W-13077190580 dtd.23.04.2013 which had been raised against invoice No.2452 dtd.19.04.2013 for 22.50 MT amounting to Rs.1,03,500/- as the same had not been generated properly, the dealer-company generated second way bill No.21W-13077197807 vide requisition acknowledgement no.49130027651. But the evidence produced by the dealer-company with regard to purchase suppression levelled against the dealer-company was not accepted by the ld.AO. Accordingly, the ld.AO completed the assessment and imposed demand of Rs.2,03,132/- and penalty of Rs.1,35,421.39 u/s.42(5) of the OVAT Act on dealer-company.

3. Being aggrieved with such order of assessment, the dealer-company filed first appeal before the ld.ACST, South Zone, Berhampur, who in turn, disallowed the appeal and confirmed the assessment.

4. Further being dis-satisfied with the order of Id.FAA/ACST, South Zone, Berhampur, the dealer-company preferred this present appeal.

5. Cross objection is filed by the State-respondent in this case.

6. Heard both the parties, perused the assessment order as well as first appeal order and the materials available on record. Learned Standing Counsel for the Revenue, Mr. M.L. Agarwal during course of argument vehemently contended that the orders of the fora below are just and proper.

The contention of the dealer-appellant is that it keeps sale register, stock register, party ledger, goods ledger, sale invoices including tax voices and retail invoices electronically in an updated manner which have been examined by the audit authority and found to have been maintained properly. That the entire stock of cement was received through stock transfer only and the dealer had not effected any purchases from inside the State. That during the period under assessment the dealer had received goods amounting to Rs.172,78,63,451/- and shown sale value of Rs.178,50,57,257/- and had paid VAT to the tune of Rs.24,09,15,019/- calculating @13.5%. That the dealer had adjusted VAT to the tune of Rs.67,704.59 from out of the output tax against issuance of credit note valued at Rs.5,69,220/-. That the credit note was issued to one M/s. Panda Infrastructure Pvt. Ltd. bearing TIN 21301118680 towards sales effected during April, 2013. That even if M/s. Panda Infrastructure Pvt. Ltd. had

returned the goods worth Rs.5,69,220/- along with the debit note, but that had not been considered by the Audit Authority. That the dealer was never liable to pay VAT on unsold cement as returned by M/s. Panda Infrastructurer Pvt. Ltd. which was supported by debit notes. The sole contention of the dealer-appellant is that the debit note was overlooked by the audit authority as well as the learned AA which resulted an extra demand of Rs.67,710.70 coupled with a penalty of Rs.1,35,421.39 totalling to Rs.2,03,132.00 and the same is illegal being a violation to the principle of natural justice.

But after having a thorough glance to the materials available on record and the finding of the Id.FAA/Addl.CST, it becomes quite evident that the Id.AO raised the demand due to levy of tax on the value of goods returned amounting to Rs.5,69,220/- by M/s. Panda Infrastructure Pvt. Ltd., Bhubaneswar which was supported by debit note and also the same was received by the appellant-company on dtd.12.07.2013 and that too after completion of audit visit. If this being so, what is wrong on it. At this juncture, can it be said that the debit note was overlooked ? Certainly "No" is the answer. Ld.FAA/ACST has rightly appraised this aspect and passed the order accordingly and as such, the same needs no interference.

7. In the result, the appeal preferred by the dealer-appellant is disallowed and as a corollary, the order dtd.29.06.2017 passed by the Id.FAA/ACST (Appeal), South Zone,

Berhampur in Appeal Case No.AA(VAT)46/2015-16 is hereby confirmed. The cross objection is disposed of accordingly.

Dictated and Corrected by me,

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

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