

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 324 (VAT) of 2013-14

(Arising out of order of the learned JCST, Koraput Range,
Jeypore in Appeal No. AAV (KOR) 12/11-12,
disposed of on 16.11.2013)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Mr. J. Khan, Accounts Member-III

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

... Appellant

-Versus-

M/s. Mysore Construction Company,
NALCO Site, Damanjodi.

... Respondent

For the Appellant : Sri D. Behura, S.C. (CT) &
Sri N.K. Rout, Addl. SC (CT)

For the Respondent : Sri N. Anand Rao, A/R

Date of hearing : 22.11.2023 *** Date of order : 19.12.2023

ORDER

State assails the order dated 16.11.2013 of the Joint Commissioner of Sales Tax, Koraput Range, Jeypore (hereinafter called as ‘First Appellate Authority’) in F A No. AAV (KOR) 12/11-12 reducing the demand raised in assessment order of Sales Tax Officer, Koraput Circle, Jeypore (in short, ‘Assessing Authority’).

2. Briefly stated, the facts of the case are that –

M/s. Mysore Construction Company is a contractor executing works contract under M/s. NALCO Ltd., Damanjodi. The assessment relates

to the period 01.04.2005 to 31.07.2009. The Assessing Authority raised tax, interest and penalty of ₹27,83,045.00 u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') basing on 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 tax demand to ₹11,58,640.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The Dealer files cross-objection supporting the impugned order of the First Appellate Authority.

3. The learned Standing Counsel (CT) for the State raises the sole issue that the First Appellate Authority mechanically allowed the set off of ITC in absence of any utilization certificate. So, he submits that the order of the First Appellate Authority is otherwise bad in law and the same needs interference in appeal.

4. Per contra, the learned Authorized Representative for the Dealer submits that the First Appellate Authority cross-verified the details of purchase minutely and found the VAT already paid on such purchases. He further submits that the finding of the First Appellate Authority cannot be interfered in appeal unless the State proves such finding is perverse. So, he submits that the impugned order of the First Appellate Authority requires no interference in appeal.

5. Heard the rival submissions, gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. In course of hearing of this appeal, the State only pressed the sole issue relating to allowance of ITC in absence of utilization certificate in the works contract. So, the same shall be examined from the materials available on record.

Assessment order reveals that the Assessing Authority disallowed the ITC on the ground that the Assessing Authority fails to ascertain the tax suffered on the purchases of materials as the Dealer had not maintained the purchase register in the prescribed manner. The impugned order of the First Appellate Authority reveals that the agent of the Dealer submitted the detail statement of purchase of goods from different registered dealers within the State which were cross-verified by the First Appellate Authority and found that the Dealer Company has paid VAT to the selling dealers as per tax invoices, so, the First Appellate Authority allowed only set off of ITC of ₹5,41,468.33. It appears that the First Appellate Authority cross-verified the details of purchase and found payment of VAT on the materials purchased, so, he allowed set off of ITC. In view of such fact, this Tribunal cannot alter unless the State proves such finding is perverse with contrary materials on record. So, we do not find any illegality or infirmity in the impugned order of the First Appellate Authority to call for any interference in appeal. Hence, it is ordered.

6. Resultantly, the appeal 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/-
(J. Khan)
Accounts Member-III**