

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

S.A. No. 313 (VAT) of 2015-16

(Arising out of order of the learned JCST (Appeal), Cuttack II Range,
Cuttack in Appeal No. AA /11/OVAT/CUII/2013-14,
disposed of on 07.09.2015)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri M. Harichandan, Accounts Member-I

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

... Appellant

-Versus-

M/s. Rashmi Cement Ltd.,
Manguli, Cuttack

... Respondent

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

Date of hearing : 14.02.2023 *** Date of order : 13.03.2023

ORDER

State is in appeal against dated 07.09.2015 of the Joint Commissioner of Sales Tax (Appeal), Cuttack II Range, Cuttack (hereinafter called as 'First Appellate Authority') in F A No. AA /11/OVAT/CUII/2013-14 allowing the ITC amount to be carry forwarded against disallowance by the Sales Tax Officer, Cuttack II Circle, Cuttack (in short, 'Assessing Authority').

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

M/s. Rashmi Cement Ltd. deals in iron ore. The assessment period relates to 01.04.2007 to 31.03.2012. The Assessing Authority raised

‘Nil’ tax demand u/s. 42(4) of the Odisha Value Added Tax Act, 2004 (in short, ‘OVAT Act’) on the basis of Audit Visit Report (AVR) without allowing ITC claimed.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority computed the tax @ 4% on ₹70,65,888.00 and the same came to a sum of ₹2,82,636.00. The First Appellate Authority adjusted the output tax with the carry forward ITC. Accordingly, the claim of carry forward ITC reduced to ₹98,14,069.00. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files cross-objection.

3. The learned Standing Counsel (CT) for the State submits that the Dealer fails to produce the books of account and relevant documents before the Assessing Authority as well as the First Appellate Authority, but the First Appellate Authority allowed the carry forward ITC on the mere submission of the Dealer. He further submits that the Dealer has not come with clean hands and the Dealer has to show the accrual of ITC to avail the same for the subsequent period of 24 months. So, the order of the First Appellate Authority is otherwise bad in law and the same requires interference in appeal.

4. On the contrary, the learned Counsel for the Dealer supporting the finding of the First Appellate Authority and submits that the order of the First Appellate Authority is correct in its perspective. He further submits that the First Appellate Authority has passed a reasoned order, which warrants no interference in appeal.

5. Having heard the rival submissions and on going through the materials on record, it transpires from the assessment order that the Dealer has purchased iron ore worth of ₹10,64,970.00 and ITC of ₹42,599.00 from M/s. Serajuddin & Co., Joda, Keonjhar. The Dealer had sold 7,360.300 MT

during the period 2009-10, but had not sold the goods worth of ₹73,60,300.00 and not collected tax of ₹2,94,412.00. The Assessing Authority did not allow the ITC as the Dealer fails to produce the books of account for his verification.

The First Appellate Authority allowed carry forward ITC of ₹98,14,069.00 after allowing deduction of output tax of ₹2,82,636.00 from the total ITC of ₹1,00,96,705.00. The State disputes the carry forward ITC on the ground that the First Appellate Authority allowed the ITC even if there was no physical stock available with the Dealer and the Dealer fails to produce the books of account in respect of such carry forward ITC of ₹1,00,54,106.00. The State has taken another ground that the Dealer was found to have effected sale in course of inter-State trade and commerce to the tune of ₹16,06,07,080.00 during the period 01.06.2008 to 31.03.2009, but has not reversed the ITC in respect of such inter-State sale as per the proviso (d) of Section 20(3) of the OVAT Act.

6. During the course of hearing, learned Standing Counsel (CT) for the State had drawn the attention of this forum that to the AVR which reveals that the VAT demand has already been set aside in S.A. No. 12 of 2011-12 and S.A. No. 3(C) of 2011-12. Though pendency of number of disputes are vital, but the same do not find place in the assessment order and in the first appellate order, nor the State has challenged the same in second appeal raising such ground. From the paper filed on behalf of the Dealer, it is found that this Tribunal in Full Bench in S.A. No. 77 (C) of 2015-16 of the instant Dealer for the self-same period found that the Dealer had transactions of export and inter-State sales for the years 2007-08, 2008-09 and inter-State sales for the year 2009-10. There was no export or inter-State sale for the years 2010-11 and 2011-12.

7. It is provisions of law that if the ITC as claimed in the return has been accepted as valid, the same shall be either adjusted the against the

disclosed output tax during the same tax period or the Dealer is at liberty to carry forward the same to the next tax period, i.e. following 24 months. It is also principles of law that if the Dealer is not carrying the business further, he is not entitled to claim the ITC. The return filed for the period 01.04.2009 to 31.05.2009 shows that the Dealer has claimed carry forward ITC of ₹1,65,44,607.64. This means the carry forward ITC has accrued prior to that period. The Dealer has not filed any document showing the period from which the carry forward ITC is accrued. Unless, the same is clear or specific, the Dealer is not entitled to avail the ITC. Moreover, the order of this Tribunal in S.A. No. 77 (C) of 2015-16 reveals that there was no export or inter-State sales for the years 2010-11 and 2011-12. The Dealer had not filed any books of account before the Assessing Authority to prove the claim of carry forward ITC. The order of the First Appellate Authority also transpires that the Dealer fails to produce the books of account and relevant documents. In absence of any material document and book of account, the First Appellate Authority adjusted the output tax of ₹2,82,636.00 out of the carry forward ITC of ₹1,00,96,705.00 (carry forward ITC of ₹1,00,54,106.00 + ITC of ₹42,599.00 on purchase of goods) merely on the basis of submission of the Dealer. So, the First Appellate Authority went wrong in allowing carry forward ITC of ₹1,00,54,106.00 without verifying the books of account and relevant documents as per law and even in absence of the period of accrual of ITC.

8. So, for the foregoing discussions, we are of the unanimous view that the First Appellate Authority allowed the carry forward ITC merely on the basis of submission of the Dealer and in absence of books of account and relevant documents, which is contrary to the provisions of law and needs interference in appeal. Hence, it is ordered.

9. Resultantly, the appeal is allowed and the impugned order of the First Appellate Authority is hereby set aside. The order of the Assessing Authority is restored. 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/-
(M. Harichandan)
Accounts Member-I**