

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

**S.A. No. 73 (VAT) of 2016-17**

(Arising out of order of the learned JCST, Jajpur Range,  
Jajpur Road in Appeal No. AA – 573 CUIII 14-15 (OVAT),  
disposed of on 25.02.2016)

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

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

... Appellant

-Versus-

M/s. Anand Exports,  
At- Golagaon, Pankapal, Jajpur

... Respondent

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

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Date of hearing : 30.06.2023      \*\*\*      Date of order : 30.06.2023  
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**ORDER**

State assails the order dated 25.02.2016 of the Joint Commissioner of Sales Tax, Jajpur Range, Jajpur Road (hereinafter called as ‘First Appellate Authority’) in F A No. AA – 573 CUIII 14-15 (OVAT) reducing the demand raised in assessment order of the Sales Tax Officer, Jajpur Circle, Jajpur Road (in short, ‘Assessing Authority’) to nil.

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

M/s. Anand Exports engages in beneficiation process, i.e. chrome ore is processed to chrome concentrate. The assessment period relates to 01.04.2007 to 31.03.2009. The Assessing Authority raised tax and penalty

of ₹21,86,670.00 u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') on the basis of A.G. Audit objection.

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 'nil' and allowed the appeal. Being aggrieved with the order of the First Appellate Authority, State prefers this appeal. Hence, this appeal.

Dealer files cross-objection supporting the order of the First Appellate Authority as just and proper.

3. The learned Standing Counsel (CT) for the State submits that the Dealer is not eligible for any reversal of ITC as there is no statutory mechanism. He further submits that no ITC shall be allowed to the Dealer where the finished products are exempted for either in whole or in part under the OVAT Act or CST Act. He further submits that exempted from tax and zero rated tax are different from each other. He further submits that zero rated tax means, the Dealer has to pay the tax, but the rate is zero. So, he submits that the orders of the First Appellate Authority and Assessing Authority are illegal and liable to be interfered with in appeal.

4. Per contra, the learned Counsel for the Dealer submits that the Dealer is exempted from payment of VAT and zero rated as per Section 18 of the OVAT Act. So, he submits that he has paid zero rated tax, the ITC cannot be reversed. He further submits that moreover the reassessment was done merely on the basis of A.G. Audit objection and the Assessing Authority has not applied his mind independently. So, he submits that the orders passed on it *non est* in the eyes of law and the same require interference in appeal.

5. Having heard the rival submissions and on going through the materials on record, it transpires from the assessment order that this assessment proceeding was initiated on the basis of the A.G. Audit

objection. The Dealer is engaged in beneficiation process of chrome, i.e. chrome ore is process to chrome ore concentrate.

Assessing Authority recorded a finding that the Dealer sustained 10% loss in the process of beneficiation and the ITC shall have to be reversed only in that manner. Assessing Authority further observed that the Dealer had not effected export of all the stock which he had claimed ITC as huge quantity is lost in such process. Accordingly, the Assessing Authority raised the tax liability along with penalty. First Appellate Authority observed that there is no mechanism to reverse ITC in case of goods manufactured and sold in course of export as per provision u/s. 20(9) of the OVAT Act.

6. The State assails the impugned order on the ground that the Dealer is not entitled to ITC as per the provision of Section 20(8)(k) of the OVAT Act other than those covered under Schedule A, C & D used in manufacturer of goods where the finished products are exempted from the tax either the whole or, in part under the OVAT Act or CST Act.

On the contrary, the Dealer objects that the goods is zero rated tax in course of CST sale. So, he submits that reversal of ITC does not arise when no tax has been paid.

7. In view of provision of Section 20(8)(k) of the OVAT Act, the requirement is exempted from tax either the whole or in part, but the provision does not speak anything for zero rated tax. 'Exempted' and 'zero rated' are not synonymous. 'Zero rated' means the goods are subjected to tax at zero rate. So, the contention of the learned Counsel for the Dealer does not hold good on this score.

1<sup>st</sup> proviso appended to Section 20(9)(b) of the OVAT Act stipulates that if the part of the goods purchased are used otherwise or **lost** (*during the process of beneficiation from chrome ore to chrome ore*

*concentrate*), the amount of reverse tax credit shall be proportionately calculated.

8. The Dealer has also challenged the maintainability of the assessment proceeding u/s. 43 of the OVAT Act on the basis of A.G. Audit objection. The assessment order reveals that the Assessing Authority has initiated the reassessment proceeding merely on the basis of A.G. Audit objection.

In the case of *Bisra Minerex v. Sales Tax Officer and another*, (WP (C) No. 21222 of 2015, decided on 17.11.2022) and in the case of *Indure Ltd. v. Commissioner of Sales Tax and others*, reported in [2006] 148 STC 61 (Orissa), wherein Hon'ble Court have been pleased to quash the notice of reassessment by observing that the reassessment proceeding was blindly initiated on audit objection by the Sales Tax Officer without any application of mind.

In the instant case, the assessment record reveals that the Assessing Authority has issued notice without any subjective opinion. The relevant portion of the order sheet is reproduced herein below for better appreciation :-

“8.6.2012 Issue notice u/s. 43 of the OVAT Act for the period 01.04.2007 to 31.03.2009 for fixing date to 11.07.2012.

Sd/-  
STO”

The aforesaid order reveals that the order of reopening of assessment is merely on the basis of audit objection and the Assessing Authority has not applied his independent mind to issue notice to the Dealer for reassessment. So, the order for initiation of reassessment is bad in law and is liable to be set aside. As the assessment proceeding is invalid, so it is not required to form any opinion on merit of the proceeding. Hence, it is ordered.

9. Resultantly, the appeal stands dismissed. The assessment proceeding is invalid and the same is quashed. As the assessment proceeding is invalid, the order passed arising out of it is also not valid in the eye of law. Accordingly, the order of the First Appellate Authority is not valid and *non est* in the eye of law. 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)  
2<sup>nd</sup> Judicial Member**

**I agree,**

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