

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

S.A. No. 141 of 2010-11

(Arising out of order of the learned JCST, Cuttack II Range,
Cuttack in First Appeal No. AA – 247/CUII-J/2006-07,
disposed of on 23.03.2010)

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. Oswal Chemicals & Fertilizers Ltd.,
At present – 7th Floor, Antriksh Bhawan,
22, Kasturba Gandhi Marg, New Delhi-110001

... Respondent

For the Appellant : Sri D. Behura, S.C. (CT)
For the Respondent : Sri R.K. Dhal, Advocate

Date of hearing : 17.10.2022 *** Date of order : 02.11.2022

ORDER

The Dealer assails the order dated 23.03.2010 of the Joint Commissioner of Sales Tax, Cuttack II Range, Cuttack (hereinafter called as ‘First Appellate Authority’) in F A No. AA – 247/CUII-J/2006-07 allowing the appeal and reducing the assessment order of the Sales Tax Officer, Jagatsinghpur Circle, Paradeep (in short, ‘Assessing Authority) to return figure.

2. The case of the Dealer, in brief, is that –

M/s. Oswal Chemicals & Fertilizers Ltd. is a Limited Company and engaged in manufacturing of chemical fertilizer utilizing raw materials

and consumables, such as rock phosphate, sulphur, ammonia, CPC, black carbon powder etc. The assessment period relates to 1999-2000. Assessing Authority raised tax demand of ₹21,92,940.00 u/s. 12(8) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') basing on the Fraud Case Report (FCR) of the Commercial Tax Officer, Bhadrak Circle, Bhadrak and Misc. FCR of the Asst. Commissioner of Commercial Taxes, Cuttack I Range, Cuttack.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority allowed the appeal and reduced the assessment order to return figure. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

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

3. The learned Standing Counsel (CT) for the State submits that order of the First Appellate Authority is erroneous and bad in law on the ground that purchase of cement on concessional rate of tax by utilizing Form-IV for construction of residential building, boundary wall etc. cannot be treated as "use in manufacture of goods" as provided under Sl. No. 81 of List-C of the OST Rate Chart. He further submits that the First Appellate Authority has not enquired about the volume of goods utilized for construction of plant and without any finding, allowed concessional rate of tax for the entire purchases effected through Form-IV. Accordingly, he submits that the order of the Assessing Authority be restored and that of First Appellate Authority be quashed.

4. On the other hand, learned Counsel for the Dealer submits that purchase of cement at concessional rate inside the State against Form-IV is justified on the ground that consumption of cement is an indispensable requirement for the production and the same is used for installation of plant and machineries like storage tanks in plant, such as SAP, PAP, DAP, Train-

A, B & C and also in raw water reservoirs for the unit without which ultimate production cannot be possible. Supporting the contention, he files copy of Exemption Certificate obtained from DIC, Odisha, Cuttack vide No. 6770 dated 14.06.2007 for sales tax concession both under the OST Act and CST Act on raw materials, machinery, spare parts, packing materials and finished products under IPR-96 limited to 100% of the fixed capital investment and also an order dated 19.12.2008 of this Tribunal passed in S.A. No. 1241 of 2006-07 allowing exemption under IPR-96 to the instant Dealer for the period 2003-04 under the OST Act. He ultimately submits to dismiss the State appeal as the same is baseless and without any valid ground.

5. Having heard the rival submissions and on careful scrutiny of the materials on record, it is not in dispute that the Dealer is an industrial Unit in the category of large and medium industry authorised to (1) manufacture and sale of finished products i.e. (i) diammonium phosphate, (ii) ammonium phosphate/sulphate, (iii) NPK complexes; (2) machinery spare parts, raw materials and packing materials. The certificate is valid for five years five months and fifteen days from the date of commercial production w.e.f. 16.04.2000 to 30.09.2005.

6. The Assessing Authority found that the Dealer had purchased cement from the selling dealer in question for an amount i.e. ₹1,03,19,504.00, which had been utilized by it in the construction of plant and building and not for manufacturing process for sale. It has submitted Form-IV to the selling dealer in contravention of Section 5(1) of the OST Act. The Assessing Authority determined the GTO and TTO of the Dealer at ₹1,03,35,872.00. The Assessing Authority assessed the tax of ₹8,27,524.48 on the Dealer on the amount of ₹1,03,19,504.00 @ 8% as differential rate of tax against Form-IV and ₹16,368.00 @ 12%. The Assessing Authority

assessed the total tax liability of ₹21,92,940.00 which includes surcharge and penalty.

7. The First Appellate Authority reduced the tax liability to return figure with a finding that the purchase of cement against declaration in Form-IV for ₹1,03,19,504.00 has been utilized in the process to manufacture of fertilizer and the terms and conditions of Form-IV have not been violated.

8. Learned Standing Counsel (CT) for the State objects such finding of the First Appellate Authority and claims that the Dealer is only entitled to get the tax benefit on manufacturing of fertilizer, raw materials, packing materials and machine spare parts. But, the Dealer is not entitled to the concessional rate on purchase of cement against Form-IV in utilizing construction of residential building, boundary wall etc. which do not include in the term of use in manufacturing of goods under Sl. No. 81 of List-C of the OST Rate Chart. He further claims that the First Appellate Authority has not inquired the volume of goods utilized for construction of plant and allowed concessional rate of tax on the entire purchase under Form-IV in absence of any such finding.

9. On perusal of the Registration Certificate and Annexure-1, it shows that cement has been included in Sl. No. 339 of Annexure-1. The word 'for and in' are two terms which denotes the direct and indirect use for establishing a plant. Cement has been included in Annexure-1 for installation of plant and machineries like storage tank in plant such as SAP, PAP, DAP, Train-A, B & C and also in raw water reservoir for the unit without which the ultimate production cannot be possible.

10. The State raised a ground that cement was utilized in residential building and boundary wall, but the same has not been mentioned in the orders of the fora below. In absence of any such finding, we do not find any material on the record regarding utilization of cement in construction of residential building and boundary wall. So, we do not find any illegality in

the impugned order of the First Appellate Authority warranting any interference in appeal. Hence, it is ordered.

11. In the result, the appeal stands dismissed and the order of the First Appellate Authority is hereby confirmed. Cross-objection is accordingly disposed of.

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**