

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

**S.A. No. 298 (VAT) of 2013-14**

(Arising out of order of the learned Addl. CST, North Zone,  
in Appeal No. AA- 22(V)/ ACST (Asst.), Sundargarh/  
07-08 (OVAT Act), disposed of on 04.11.2013)

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

M/s. OCL India Ltd.,  
At/PO- Rajgangpur,  
Dist. Sundargarh ... Appellant

-Versus-

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

For the Appellant : Sri Bibekananda Mohanti, Sr. Advocate &  
Sri A.K. Samal, Advocate  
For the Respondent : Sri Sri D. Behura, S.C. (CT) &  
Sri S.K. Pradhan, Addl.SC (CT)

-----  
Date of hearing : 05.06.2023 \*\*\* Date of order : 30.06.2023  
-----

**ORDER**

Dealer assails the order dated 04.11.2013 of the Addl. Commissioner of Sales Tax, North Zone (hereinafter called as 'First Appellate Authority') in F A No. AA- 22(V)/ ACST (Asst.), Sundargarh/ 07-08 (OVAT Act) reducing the demand raised in assessment order of the Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, 'Assessing Authority').

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

M/s. OCL India Ltd. is a Company registered under the Companies Act. The Company is engaged in manufacture of cement, clinker, refractory items and sponge iron by using various raw materials and consumables as per RC and effects sale of goods inside and outside the State as well as in course of export. The assessment period relates to 01.04.2005 to 31.03.2006. The Assessing Authority raised tax, interest and penalty of ₹5,22,72,404.00 u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') basing on the 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 ₹4,81,80,096.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, Dealer prefers this appeal. Hence, this appeal.

State files cross-objection supporting the orders of First Appellate Authority and Assessing Authority to be just and proper.

3. The learned Sr. Counsel for the Dealer submits that the First Appellate Authority and the Assessing Authority lost sight of the fact that the goods, like molasses, resins, saw dust and chemicals, directly go into the composition of finished refractory products. He further submits that chemicals also directly go into the composition of finished products of cement and sponge iron. He further submits that the findings of the Assessing Authority and First Appellate Authority in disallowing ITC on capital goods and imposition of penalty are not correct. So, he submits that the orders of the First Appellate Authority and Assessing Authority are contrary to law and the same need interference in appeal.

4. On the contrary, the learned Standing Counsel (CT) for the State submits that the ITC claimed on the goods do not go directly into the composition of finished products like cement, refractory products and sponge iron. He further submits that the orders of the First Appellate

Authority and the Assessing Authority in disallowing the claim of ITC on consumables and on capital goods are correct in its perspective and the same require no interference in appeal. He further submits that the imposition of penalty is mandatory as per Section 42(5) of the OVAT Act, which also does not require any interference in appeal.

5. Heard the rival submissions and gone through the orders of the First Appellate Authority and Assessing Authority vis-a-vis the materials on record. Though several points were urged in the grounds of appeal, but learned Sr. Counsel for the Dealer restricted his arguments while challenging the impugned order on the following grounds only :-

- (i) Disallowance of ITC of ₹1,57,79,546.00 is illegal;
- (ii) Disallowance of ITC of ₹1,54,806.00 is not proper; and
- (iii) Imposition of penalty u/s. 42(5) of the OVAT Act is unwarranted.

5.1. It transpires from the assessment order that the Assessing Authority disallowed the ITC to the extent of ₹1,57,79,546.00 on the ground that the goods used in the process of manufacturing cannot be qualified for 'consumables', and disallowed the ITC claimed. The First Appellate Authority upheld the finding of the Assessing Authority on this score.

Section 20(3)(b) of the OVAT Act, as it stood then, provides that the ITC shall be allowed on the goods used as inputs for capital goods in the manufacturing other than those specified in Schedule A and Schedule C and Schedule D for sale.

Section 2(25) of the OVAT Act defines 'input' means any goods purchased by a dealer in the course of his business for resale or for use in the execution of works contract, in processing or manufacturing, where such goods directly goes into composition of finished products or packing of goods for sale, and includes consumables directly used in such processing or manufacturing.

5.2. Now we shall examine whether the goods comes under the definition of Section 2(25) and the Dealer is entitled to the ITC. The Dealer claims that it deals in consumables like nut bolts, spares, electrodes, base frames, store items, lubricants, gas, 'O' rings, bearings, molasses, resins, saw dust etc.

It is further argued that the consumables items were directly used in various processes involved in converting raw materials into finished goods. It is also argued that the goods used in the process of manufacturing are consumables and the Dealer is entitled to ITC on such goods.

Section 20(3)(b) of the OVAT Act provides that ITC shall be allowed on the goods used as inputs or as capital goods in the manufacturing other than those specified in Schedules A, C and D for sale.

The goods used in 'in processing' or 'manufacturing' are included within the meaning of 'input' as per Section 2(25) of the OVAT Act. Section 2(25) of the said Act further provides that types of goods, which directly go into composition of finished products or packing of goods for sale and include consumables directly used in such processing or manufacturing. Therefore, 'inputs' comprises four different types of articles, such as (i) articles or goods for resale; (ii) goods used in the execution of works contract; (iii) goods used in processing or manufacturing, where such goods directly go into composition of finished products; and (iv) consumables directly used in such processing or manufacturing.

'Consumables' are directly used in such processing or manufacturing of finished products. 'Consumables' need not be required to directly go into the composition of finished products. 'Consumable' postulates that such articles are destroyed or used upon the processing or manufacturing of goods.

The expression "directly go into composition of finished product" and "directly used in manufacturing or processing of finished products" are

not one and same thing. In the former, the goods directly go into the composition of finished products, but in the latter, the consumable which directly used in the manufacturing process or finished product.

5.3. The Assessing Authority disallowed the claim of ITC of ₹1,57,79,546.00 on purchase of goods like nuts, bolts, spares, electrodes, base frame, store items, lubricants, electrical goods, gas, 'O' rings, bearings, molasses, resins, saw dust in respect of all three Units, i.e. Cement Unit, Refractory Unit and Sponge Iron Unit, on the ground that the same are neither used as raw materials for manufacturing/processing of finished goods, nor as consumable directly used in such manufacture/process along with raw materials wherein those goods loses their identity. The First Appellate Authority upheld the findings of the Assessing Authority.

Now, we shall examine whether the goods used are directly go into the composition of finished products or used in the process of manufacturing. Mainly, the Dealer claims ITC on the goods purchased, i.e. nuts, bolts, spares, electrodes, base frame, store items, lubricants, electrical goods, gas, 'O' rings, bearings, molasses, resins, saw dust. The aforesaid goods include some items like molasses, resins and saw dust, which are directly used as 'inputs' in manufacturing of finished refractory products. Some chemicals like calcium sulphate, silicon dioxide, sulphur trioxide, etc. along with other materials are being used for manufacturing of cement. For manufacturing of sponge iron, chemicals are also required along with other goods. Some other goods like nuts, bolts, spares, etc. are used, but do not use in making of the end product. So, the Assessing Authority and the First Appellate Authority went wrong in disallowing ITC in respect of aforesaid items, which are used in manufacturing of the end products, i.e. cement, refractory products and sponge iron.

6. As regards disallowance of ITC on capital goods worth ₹1,54,806.00, the Assessing Authority disallowed the ITC on the ground

that the same are bar for the restrictions as per Sl. Nos. 3 & 7 of Schedule D appended to Section 2(8) and 20(5) of the OVAT Act being the subsequent purchases of capital goods and same are not connected with the business of the Dealer. The First Appellate Authority upheld the same on the ground that the Dealer fails to show materials that the goods are directly used in the manufacture of either cement, or sponge iron, or refractory products.

The claim of ITC for ₹1,54,806.00 as capital goods for the items, such as hand drill, angle grinder, wheeler trolley, counter current wet mix, vibrating screen, air tool straight, die grinder, scrapper and conveying system etc. The Dealer claims that the same are connected to its business within the purview of Section 2(7) of the OVAT Act and the Dealer has purchased the said goods from other dealer. During hearing, the Dealer fails to produce any material to support that the same relates to its business and the same are not second hand purchase goods. So, we do not find any illegality in the finding of the First Appellate Authority on that score.

7. As regards levy of penalty, the Assessing Authority levied twice penalty u/s. 42(5) of the OVAT Act. The First Appellate Authority confirmed the same. It has already been settled in law that the penalty u/s. 42(5) of the OVAT Act is mandatory and the statute provides twice penalty for violation of provisions of the OVAT Act. So, we do not find any scope to interfere the impugned order on this score.

8. So, for the foregoing discussions, the goods like molasses, resins, chemicals etc. as observed in the preceding paragraph are directly go into the composition of finished products and the Dealer is entitled to ITC on the said goods, but we do not find any illegality or impropriety in the order of disallowance of ITC of ₹1,54,806.00 for capital goods and also in imposing penalty. Therefore, we feel it proper to remand the matter to the Assessing Authority to examine the claim of ITC, if the aforesaid goods directly go into the composition of finished products and allow the claim of ITC on that

score as per law. The Dealer is at liberty to file specifically the goods which are used in manufacturing of each finished products, i.e. cement, refractory products and sponge iron, before the Assessing Authority for allowance of ITC on that score. Hence, it is ordered.

9. Resultantly, the appeal stands allowed in part and the impugned order of the First Appellate Authority is hereby modified to the extent observed above. The matter is remitted to the Assessing Authority to examine the claim of ITC, if molasses, resins and chemicals, directly go into the composition of finished products and allow the claim of ITC on that score as per law. The Dealer is at liberty to file specifically the goods which are used in manufacturing of each finished products, i.e. cement, refractory products and sponge iron, before the Assessing Authority for allowance of ITC on that score. The Assessing Authority is instructed to complete reassessment within a period of three months from the date of receipt of this order. 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**