

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,  
CUTTACK.  
S.A.No. 257(V)/2016-17**

(From the order of the Id.DCST (Appeal), Balasore Range, Balasore, in  
Appeal No. AA-20/BA-2014-2015(VAT), dtd.20.09.2016,  
modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty  
2<sup>nd</sup> Judicial Member**

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

**-Versus-**

M/s. Ganapati Pipes & Industries (P) Ltd.,  
Dist. Balasore. ... Respondent

For the Appellant : Mr. M.S. Raman, Addl. Standing Counsel (C.T.)  
For the Respondent : Mr. M.P. Jena, Advocate

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Date of Hearing: 23.06.2018      Date of Order: 06.07.2018

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**ORDER**

The present appeal of the State has been directed against the impugned order of the Learned Deputy Commissioner of Sales Tax (Appeal), Balasore Range, Balasore, (hereinafter referred to as FAA) passed on dated 20.09.2016 in First Appeal Case No. AA-20/BA-2014-2015(VAT) in reducing the additional tax demand to Rs.1,04,202.00 from Rs.1,64,712.00 raised by the Learned Assessing Officer/Sales Tax Officer, Balasore Circle, Balasore (hereinafter referred to as AO) in the order of assessment passed u/s.42 of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as OVAT Act) for the tax period from 2009-10 to 31.01.2013.

2. The brief facts of the case are as follows :

M/s. Ganapati Pipes and Industries (P) Ltd., is engaged in manufacturing of PVC Pipes for sale inside and outside the State including branch transfer. The learned Assessing Authority completed

the audit assessment u/s.42 of the OVAT Act for the period from 2009-10 to 31.01.2013, resulting in extra tax demand of Rs.54,902.00 and penalty of Rs.1,09,808.00 u/s.42(5) of the OVAT Act. The demand was based on the determination of creditable ITC after reversal and adjustment against CST payable in respect of branch transfer and inter-state sale at Rs.89,81,702.00 against the claim of Rs.81,26,271.00 by the dealer. Further, the demand of tax after taking into account the tax paid by the dealer, was based on additional output tax of Rs.20,075.15 determined in the assessment due to discrepancy in physical stock leading to suppression.

3. Aggrieved by the order of assessment, the dealer preferred appeal before the learned First Appellate Authority. The learned First Appellate Authority allowed the appeal in part and reduced the demanded tax to Rs.34,734.00 and accordingly penalty was reduced to Rs.69,468.00, which is twice the amount of tax. The First Appellate Authority has deleted the demand of Rs.20,075.15 on account of suppression (stock discrepancy), the contention of the dealer being convincing regarding the minor discrepancy.

4. Being aggrieved with the order of FAA, Revenue has preferred this appeal mainly challenging thereby the method of calculation of ITC reversal wrongly availed by the dealer on branch transfer.

5. The assessment order as it revealed, the AO has found the dealer had shown 75% of his finished products as branch transfer. So the said branch transfer is not qualified for claim of ITC. However, while determining the ITC reversal, the AO has determined the ratio of raw materials in the finished product at 86.79% and then determined the ITC reversal. The total ITC reversal as determined by the AO was Rs.79,81,702/-. On the other hand, the FAA has determined the reversal of ITC of Rs.79,81,702/-. It is found that, there is no material difference between the determination of reversal ITC between the

authorities. When it is found that, there is no difference in amount, the question like what should be the correct method to be applied to determine the ITC reversal became more academic than practical. Here in the considered view of the Tribunal the impugned order need not be disturbed.

In the result, it is found that, the Revenue has failed to substantiate how the tax due determined by FAA is wrong. Hence, it is ordered.

The appeal is dismissed on contest.

Dictated and Corrected by me,

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member

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