

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

**S.A. No.85(V) of 17-18**

(Arising out of the order of the learned JCST,  
Sambalpur Range, Sambalpur in First Appeal Case No.  
AA 282/SA-II/VAT/2014-15 disposed of on  
25.04.2017)

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

M/s. Aryan Ispat & Power Pvt. Ltd.,  
At:- Bomaloi, Po-Rengali,  
Dist-Sambalpur. .... Appellant.

**-Versus -**

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

For the Appellant : : Mr. R.C. Poddar, Advocate  
For the Respondent : : Mr. D. Behura, S.C.(C.T.)

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**Date of Hearing : 03.10.2023 \*\*\* Date of Order: 02.11.2023**  
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**O R D E R**

The dealer-assessee is in appeal against the order dated 25.04.2017 of the Joint Commissioner of Sales Tax, Sambalpur Range, Sambalpur (in short, '1d. FAA') passed in First Appeal Case No. AA 282/SA-II/VAT/2014-15 confirming the order assessment passed under Section 42 of the Odisha Value Added Tax Act (in short, 'OVAT Act') by the Deputy Commissioner of Sales Tax, Sambalpur-II Circle, Sambalpur (in short, '1d. assessing authority').

2. The summary of the case is that M/s. Aryan Ispat and Power Pvt. Ltd., Bomaloi, Rengali, Sambalpur carries on business in manufacturing of Sponge Iron utilizing iron ore, coal and dolomite

etc. as raw materials. The learned assessing authority completed assessment under Section 42 of the OVAT Act for the tax period 01.04.2011 to 31.03.2013 basing on the allegations contained in the Audit Visit Report (AVR) and raised demand of ₹13,25,553.00 including penalty of ₹8,83,702.00. The demand so raised in assessment was confirmed in the first appeal preferred by the dealer-assessee.

3. The dealer-assessee on being aggrieved with the order of the ld.FAA preferred second appeal before this forum endorsing grounds of appeal. Mr. R. C. Poddor, learned Advocate representing the dealer-assessee seeks to put forth the following questions of facts in challenge of the orders of the forum below:-

i. Whether in view of Section 20(9)(a) of the OVAT Act, the learned assessing authority is correct to hold that manufacturing loss of raw materials occurred in course of manufacturing process can be said to be 'used otherwise' leading to deduction of input tax credit availed to the extent of purchases of such goods effected u/s.20(3)(b) from the admissible input tax credit for the tax period under consideration and therefore the appellant is liable to pay non-deduction of input tax credit as "tax" added with penalty totaling to ₹13,25,553.00?

ii. Whether, in view of section 19 of the OVAT Act and in facts and under the circumstance of the case, the order for recovery of input tax credit of ₹4,41,851.00 which is arrived at for non-deduction of the same on account of manufacturing loss occurred in course of manufacturing process can be equated with the term "Tax Payable/Due ?

iii. Whether, in the facts and under the circumstance of the case, the penalty levied to the tune of ₹8,83,702.00 u/s.42(5) by the ld. assessing authority is at all justified when there was

availability of surplus input tax credit to the tune of ₹7,92,774.00 as on 31.03.2013 ?

In addition to the above facts urged for consideration, the ld. Advocate places reliance on the decision of the Hon'ble Apex court passed in case of **Multimetals Ltd. Vs. Asst Collector, Central Excise** reported in 1992(57) E.L.T. 209 (SC) and the decision of the Madras high Court in case of **Ars Steels & Alloys International Pvt. Ltd. Vs. The sales Tax Officer, Group, Chennai** reported in (2021)37 TAXLOK.COM 047(Madras).

The State has filed cross objection supporting the orders of the forums below.

4. The orders of the forums below are gone through at length. The grounds of appeal, submission and the decisions of the Hon'ble Courts as relied upon are perused as well. On perusal of the order of assessment, it transpires that the dealer-assessee has reversed ITC on processing/ manufacturing loss on coal, iron ore fines and dolomite amounting to ₹24,29,009.00, ₹20,12,258.00 and ₹33,422.00 respectively totaling to ₹44,74,589.00. But the dealer-assessee is found to have not reversed ITC for the month of January, 2013 on 6995.70MT of coal disclosed as manufacturing loss valuing ₹87,43,161.00 involving input of ₹4,37,235.00. Similarly, reversal of ITC on dolomite said to be manufacturing loss for a quantum of 247.180MT valuing ₹1,12,148.00 and input involved therein for ₹4,616.00 has not been effected. Admittedly, the inadmissible ITC involving ₹4,41,851.00 claimed by the dealer-assessee has been demanded at assessment imposing penalty of ₹8,83,702.00 under Section 42(5) of the OVAT Act. The ld.FAA observed that due to the handling or processing loss in course of the process of manufacturing, the raw materials could not be used for production of the finished products and as there is no production, the dealer-

assessee is not eligible to avail ITC amounting to ₹4,41,851.00 on the purchase of the said raw materials.

5. Sub-section (9) (a) and (b) of Section 20 of the OVAT Act provide in relation to disallowance of ITC in cases where (a) goods purchased are intended for any of the purposes specified under sub-section (3) but are subsequently used otherwise, and (b) if goods purchased are lost due to theft, damage or for any other reason. In the present case, coal, iron ore fines and dolomite were purchased as raw materials for manufacture of Sponge Iron. As is evident, loss of the above materials to a certain extent was registered in course of handling, processing, loading and unloading etc. as disclosed by the dealer-assessee. The said raw materials were not utilized for production of sponge iron. The dealer-assessee is thus not entitled to avail ITC on such purchases of raw materials in terms of sub-section (9) (a) and (b) of Section 20 of the OVAT Act. It is needless to say that as indicated supra, the dealer-assessee had reversed ITC for an amount of ₹44,74,589.00 in the identical circumstances on other occasions on processing/ manufacturing loss of coal, iron ore fines and dolomite. In the instant case, the learned assessing authority could find out based on the findings of the AVR that ITC for an amount of ₹4,41,851.00 has not been reversed by the dealer-assessee on purchase of coal and dolomite. This could be brought to fore in assessment passed under Section 42 of the OVAT Act. As such, the amount of tax due emerges at ₹4,41,851.00. Imposition of penalty under Section 42(5) of the OVAT Act is automatic. Accordingly, the forums below are right in imposition of penalty of ₹8,83,702.00 in the ratio of the decision of the Hon'ble High Court of Odisha in STREV No.69 of 2012 dated 05.07.2022 delivered in case of **State of Odisha Vs M/s Chandrakanta Jayantilal, Cuttack**

**and Another.** Para 14 of the said decision is relevant and quoted as under:-

“It will be straightway noticed that the very wording of Section 42(5) indicates that once an assessment is completed under Section 42(4) of the OVAT Act, the penalty leviable under Section 42(5) automatically follows. There is no discretion in the STO unlike the penalty imposable under Section 43(2) of the OVAT Act. This was what explained by this Court in M/s National Aluminium Company Limited (Supra).”

Under the above facts, the contention of the learned Advocate pleading rebuttal of the demand and penalty in the present case merits no consideration. The citation of case laws (supra) by the ld. Advocate is of little application in the present facts and circumstances of the case.

6. Under the above facts and in the circumstances, it is ordered that the appeal filed by the dealer-assessee is dismissed. The order of the ld.FAA is upheld. Cross objection filed is hereby disposed of accordingly.

Dictated & Corrected by me

**Sd/-**  
**(Bibekananda Bhoi)**  
**Accounts Member-I**

**I agree,**

**Sd/-**  
**(Bibekananda Bhoi)**  
**Accounts Member-I**

**I agree,**

**Sd/-**  
**(G.C. Behera)**  
**Chairman**

**Sd/-**  
**(S.K. Rout)**  
**2nd Judicial Member**