BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 249 (VAT) of 2015-16
&
S.A. No. 269 (VAT) of 2015-16

(Arising out of orders of the learned Addl. CST (Appeal), South Zone, Berhampur in Appeal Nos. AA 75/2009-10 & AA (VAT) 12/2014-15, disposed of on 30.04.2015 & 30.07.2015 respectively)

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

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

-Versus-

M/s. Subhalaxmi Agencies Pvt. Ltd., At/PO- Rajsunakhala, Nayagarh ... Respondent

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

Date of hearing : 04.01.2023 *** Date of order : 01.02.2023

O R D E R

Both these appeals relate to the same party for different periods involving common question of facts and law. Therefore, they are heard analogously and disposed of by this composite order for the sake of convenience.

S.A. No. 249 (VAT) of 2015-16 :

2. State assails the order dated 30.04.2015 of the Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (hereinafter called as 'First Appellate Authority') in F A No. AA 75 /2009-10 reducing

the assessment order of the Joint Commissioner of Sales Tax, Puri Range, Puri (in short, 'Assessing Authority).

S.A. No. 269 (VAT) of 2015-16 :

3. State is also in appeal against the order dated 30.07.2015 of the First Appellate Authority in F A No. AA (VAT) 12/ 2014-15 reducing the assessment order of the Assessing Authority.

4. Briefly stated, the facts of the cases are that –

M/s. Subhalaxmi Agencies Pvt. Ltd. is engaged in manufacture and sale of atta, maida, suji and choked from wheat. The Dealer also trades in edible oil repacking in pouch and tin, dal of all varieties, sugar, vanaspati, peas, sagu, castor oil, salt etc. on wholesale basis in intra-State and inter-State trade and commerce. The assessment periods relate to 01.04.2006 to 31.03.2009 and 01.04.2009 to 30.06.2012. The Assessing Authority raised tax demands of ₹10,42,629.00 for the period 01.04.2006 to 31.03.2009 and ₹17,77,137.00 for the period 01.04.2009 to 30.06.2012 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 appeals against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹11,190.00 for the period 01.04.2006 to 31.03.2009 and to the return figure for the period 01.04.2009 to 30.06.2012. Being aggrieved with the orders of the First Appellate Authority, the State prefers these appeals. Hence, these appeals.

5. The Dealer files cross-objections supporting the orders of the First Appellate Authority to be just and proper in the facts and circumstances of the case.

6. The learned Standing Counsel (CT) for the State submits that the orders of the First Appellate Authority are contrary to the law and facts involved. He further submits that the finding of the First Appellate Authority

for both the periods under assessment is illegal as there is no distinction between the finished product and bi-product in the RC. So, the appellant-State claims that the part of the raw material used in tax free item must be required for reversal of ITC. The State further claims that the Dealer is not eligible for getting any ITC when its products are claimed to be taxed. The State relies on the case of ***Ganesh Trading Co.*** of the Hon'ble Apex Court.

7. Per contra, learned Counsel for the Dealer submits that the reverse tax method u/r. 14(4)(i) of the OVAT Rules is not applicable to this case as the by-product to which the manufacturer had not intended to produce out of its purchased goods, is found to be exempted from tax liability. He further submits that this Tribunal has already settled the issue in identical case by allowing full ITC. He relies on the orders of this Tribunal in ***S.A. Nos. 133 (VAT) & 134 (VAT) of 2012-13, S.A. No. 227 (VAT) of 2013-14, S.A. No. 422 (VAT) of 2015-16, S.A. No. 20 (VAT) of 2017-18 and S. A. No. 95 (VAT) of 2009-10***. He also relies on the decision in case of ***Ruchi Soya Industries Ltd. v. State of M.P. and others***, reported in **[2014] 70 VST 40 (MP)** and ***State of Gujarat v. Jayant Agro Organics Ltd.***, reported in **[2016] 90 VST 399 (Gujarat)**; and ***Commissioner, Commercial Taxes, Uttarakhand, Dehradun v. Eastman Agro Mills Ltd.***, reported in **[2013] 60 VST 325 (Uttara)**.

8. Having heard the rival submissions of the parties and on going through the orders of the both the Assessing Authority and the First Appellate Authority vis-a-vis the materials on record, it transpires from the record for the period 01.04.2006 to 31.03.2009 that the Assessing Authority did not allow the reversal of ITC on the ground that the Dealer used to purchase more wheat from outside the State than the purchase made from inside the State. Likewise, the Dealer used to despatch finished goods to its own branch on stock transfer and send goods on consignment sale to outside of the State. The Assessing Authority found stock discrepancy and enhanced

the GTO by adding ₹8,43,346.04 and determined the TTO at ₹83,89,12,734.78 after allowing deduction towards sale of exempted goods. The Assessing Authority allowed the claim of ITC and payment of VAT for ₹3,32,09,868.49. The Assessing Authority raised the tax of ₹3,47,543.00 and twice amount of penalty as per the provision of Sec. 42(5) of the OVAT Act. Accordingly, he sent the demand notice for ₹10,42,629.00.

The First Appellate Authority re-determined the GTO at ₹101,14,25,346.32 with a finding that the reversal tax credit method as provided u/r. 14(4)(i) of the OVAT Rules is independent of the amount claimed as ITC vis-a-vis the output tax determined. He also determined the TTO at ₹83,89,12,734.78 after allowing deduction of ₹13,89,88,930.86 and ₹3,35,23,680.68 towards sale of tax free goods and collection of VAT respectively. The First Appellate Authority computed the tax @ 4% and 12.5% and reassessed the balance tax amount of ₹3,730.09 after allowing deduction of ₹3,35,53,681.49 (including ITC of ₹1,80,08,005.49). The First Appellate Authority computed total amount of ₹11,190.00 including penalty of ₹7,460.18 as per the provision of Section 42(5) of the OVAT Act.

Likewise, the Assessing Authority rejected the books of account for the period 01.04.2009 to 30.06.2012 and computed the tax on the best judgment principles. The Assessing Authority calculated the tax @ 4% and 5%. He also added the excess collection of VAT of ₹0.57, which comes to a sum of ₹5,57,34,931.31. The Assessing Authority allowed ITC of ₹3,69,71,985.00. Hence, he raised the tax due of ₹5,92,379.00 after adjusting the VAT paid of ₹1,81,70,567.00. He also computed the penalty of ₹11,84,758.00 u/s.42(5) of the OVAT Act, i.e. twice the amount of tax due. Accordingly, he sent the demand notice to the Dealer.

The First Appellate Authority allowed the appeal in full and the assessment is reduced to return figure and further allowed refund of excess tax paid, if any, on the same finding that the reverse tax credit method as

provided u/s. 14(4)(i) of the OVAT Rules is independent of the amount claimed as ITC vis-a-vis the output tax determined. The First Appellate Authority had relied on the order of this Tribunal passed in ***S.A. No. 95 (VAT) of 2009-10 and S.A. Nos. 133 (VAT) & 134 (VAT) of 2012-13***. He had also relied on the case of ***Ruchi Soya Industries Ltd. v. State of M.P.***, reported in **[2014] 70 VST 40 (MP)**.

9. The State challenged the finding of the First Appellate Authority for both the periods under assessment on the ground that there is no distinction between the finished product and by-product in the RC. So, the appellant-State claims that the part of the raw material used in tax free item must be required for reversal of ITC. The State further claims that the Dealer is not eligible for getting any ITC when its products are claimed to be taxed.

In the case of ***Ruchi Soya Industries Ltd.*** cited supra, Hon'ble M.P. High Court have been pleased to observe as follows :-

> "the de-oiled cake, a by-product was tax-free and another by-product sludge and the main product oil were taxable. Hence, the authority could not apportion the tax liability after deducting the percentage of proportionate manufacture of de-oiled cake. The dealer was eligible to get set-off on the entire raw material purchased by it."

In the case of ***M/s. Shree Jagat Janani Dal & Flour Mill v. State of Odisha*** in **S.A. Nos. 133 (VAT) & 134 (VAT) of 2012-13**, this Tribunal has already recorded a finding that chuni is a by-product and for that reverse ITC is not applicable and the method adopted is not sustainable in the eye of law. In the present case, it is not in dispute that 'chokad' is a by-product and not the finished product. So, in view of the decision of ***Ruchi Soya Industries Ltd.*** cited supra and the orders of this Tribunal passed in **S.A. Nos. 133 (VAT) & 134 (VAT) of 2012-13**, the principle of reverse tax u/r. 14(4)(i) of the OVAT Rules is not applicable. Therefore, the First Appellate Authority rightly reduced the tax demands raised on this score.

10. So, for the foregoing discussions, we are of the unanimous opinion that the First Appellate Authority rightly reduced the tax demands with the finding that the principle of reversal ITC as per Rule 14(4)(i) of the OVAT Rules is not applicable and the same requires no interference in appeal. Hence, it is ordered.

11. Resultantly, the appeals being devoid of any merit stand dismissed and the impugned orders of the First Appellate Authority are hereby confirmed. Cross-objections are disposed of accordingly.

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/-
(B. Bhoi)
Accounts Member-II