

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

**S.A. No. 1034 of 2007-08**

(From the order of the Id. ACST, Sambalpur Range,  
Sambalpur, in First Appeal Case No.AA. 8 (SAII) of 07-08,  
disposed of on dtd.22.09.2007)

**Present: Smt. Suchismita Misra, Chairman,  
Sri Subrata Mohanty, 1<sup>st</sup> Judicial Member  
&  
Sri P.C. Pathy, Accounts Member-I**

M/s. Ultra Tech Cement Ltd.,  
At:- Arda, P.O.- Jharsuguda,  
Dist.- Jharsuguda. ... Appellant

**- V e r s u s -**

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

For the assessment period: 2004-05

For the Appellant ... Mr. Uttam Behera, Advocate  
For the Respondent ... Mr. M.L. Agarwal, S.C.

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Date of hearing: 25.07.2019 \*\*\*\* Date of order: 25.07.2019  
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**ORDER**

A confirming order of assessment u/s.12(4) of the Orissa Sales Tax Act, 1947(hereinafter referred to as, the OST Act) is under challenge in this second appeal by the unsuccessful dealer before both the fora below with a prayer to set aside the impugned order and to delete the tax and penalty imposed.

2. The appellant before us is a registered company engaged in manufacture and sale of cement, clinker, gypsum and fly ash. It had faced regular assessment u/s.12(4) of the Orissa Sales Tax Act,

1947 (hereinafter referred to as, OST Act) for the assessment period of 2003-04. The taxing authority found the dealer availed excess set off in terms of Note-I of List 'C' of the OST Rate Chart treating the goods like furnace oil as raw material in the manufacturing of cement wrongly. In the assessment, the learned assessing authority held that, the furnace oil used by the dealer was used as fuel but not as consumable in the manufacturing process, hence set off is not permissible on OST paid on purchase of the same. Assessment was completed accordingly denying set off raising demand of tax of Rs.6,04,556 for the assessment period in question.

3. Being aggrieved with such assessments and demand, the dealer knocked the door of the first appellate authority. The dealer's pleas before the first appellate authority is, the furnace oil used in the manufacturing process of cement is used as consumable attracting the definition of raw materials on which set off is permissible. The plea was turned down by the learned assessing authority and as a result, the demand raised by the assessing authority remained undisturbed. Being further aggrieved, the dealer challenged the confirming orders of first appellate authority in the present appeal.

4. The contentions of the dealer is, the furnace oil used by the dealer to generate hot air for drying of clinkers for the manufacture of cement is nothing but consumable covering the term raw materials and the dealer is entitled for set off of tax paid on purchase of the furnace oil in view of Note-I(a) of List-C of the OST Rate Chart.

5. Revenue, though did not raise any Cross Objection but disputed the claim of the dealer as not in accordance to law.

6. The questions raised for decision in these appeals are,

- (i) whether the furnace oil used by the dealer in the manufacturing of cement is to be termed as consumable and if yes,
- (ii) whether the appellant is entitled for set off of tax paid on purchase of furnace oil.

7. Learned Counsel for the dealer capitalized his submission on different authorities more fully mentioned herein below. Binani Industries Limited v. Assistant Commissioner of Commercial Taxes (2007) 6 VST 783 (SC), CST v. Bhagwan Industries (P) Ltd. (1973) 31 STC 292 (SC), Ratan Industries (Pvt.) Ltd. v. Additional Commissioner Trade Tax and Another 148 STC 111 (All.). Drawing the attention of the Bench to the ratio laid down by the authorities mentioned above, learned Counsel for the dealer strenuously argued that, the assessing authority has held the furnace oil as a fuel. Learned Standing Counsel for the Revenue argued that, the term “consumable” is to be understood in its proper prospective so far as the case in hand in particular. A particular goods may be consumable for production of a particular product thereby, but it cannot be said that, the same goods can be treated as consumable in case of production of other products. So, the decisions referred by the Counsel for the dealer have not laid down any straight jacket formula to be applied to each case in hand. In the present case in hand, the furnace oil has no direct use in the process of manufacturing cement, so it cannot treated as consumable.

Per contra, learned Counsel for the dealer argued that, the gypsum and fly ash need to be dried by using hot air and the hot air is generated by using furnace oil in the hot air generator, thus furnace oil is a consumable for manufacturing of cement. So, once the furnace oil used in the manufacturing process which ended in the production of cement, in that case even though the end product does not contain furnace oil but the furnace oil became an inevitable goods ingredients used in the process of manufacture of cement. In M/s.

Reliance Industries Ltd. v. Assistant Commissioner of Sales Tax and Others reported in 15 VST P. 228 etc. held as follows:-

“xxx xxx (ii) the consumables directly used in such manufacturing process for production of finished product. Therefore, it is not at all necessary that consumables in order to qualify as ‘input’ should directly go into composition of finished product. What is required is that consumables should be directly used in manufacturing process for production of finished product. The expression ‘directly go into composition of finished product’ and ‘directly used in manufacturing or processing of finished product’ are not one and same thing. There is a clear distinction. In the former, while the goods directly go into composition of finished product, in the latter, the consumable is directly used in the manufacturing process of finished products. It has already been held that furnace oil is consumable which is directly used in the manufacturing process for production of finished product. Certainly it does not directly go into composition of finished product. In spite of the same, since ‘input’ as defined under Section 2(25) of the OVAT Act includes consumable which directly used in manufacturing of finished products, furnace oil is nothing but an ‘input’ and tax paid on purchase of such input shall qualify for set off against the output tax.”

In the case of **Saurashtra Calcine Buxite & Allied Industries v. State of Gujarat 91 STC P. 435 etc.**, held that:-

“On a careful examination of the entire process being adopted for the manufacture of the end product, we are satisfied that heat treatment was the key process in the manufacture and that the above said process could not

have been acquired without the use of furnace oil. If the furnace oil is not to be used, the heating process could not have been achieved. It is therefore abundantly clear that furnace oil in both the reference must be regarded as processing material and not merely as a fuel.....”

The argument of the learned Standing Counsel is, other method could have been adopted by the dealer to dry the gypsum, so, furnace oil cannot be treated as consumable is not conceivable. Because, other methods may possible, that does not mean, the furnace oil used as consumable by the dealer is wrong. Conversely, in accordance to submission of learned Standing Counsel, when we look into the case in particular, it can safely be said that, the use of furnace oil by the present dealer is an integral part of manufacture of end product like cement, hence it should be treated as consumable covered under the term of raw materials as per OST Act.

One more aspect of the case advanced by the learned Counsel for the dealer is, the R.C. of the dealer contains furnace oil as raw materials. It is the taxing authority when accepted the application for giving registration being aware of the fact that, the dealer is going to manufacture cement and for the purpose, he is going to purchase raw materials which includes furnace oil. So, accepting the application of the dealer for registration and allowing the registration, the taxing authority must deemed to have accepted the plea that, the furnace oil is nothing but a raw material for the purpose of manufacturing of cement by a particular dealer in hand. Though, mere entry in R.C. is not sufficient for a definite opinion independent of others, But, the authoritative view of the Hon'ble Court and Apex Court discussed above when taken into consideration jointly with it, in the case in hand, we are of the view that, the furnace oil is used as consumable, consequently, the dealer is entitled to set off as claimed.

No need of further discussion on the question of set off since the dealer's claim is upheld that, furnace oil is consumable.

In the result, it is ordered.

8. The appeal is allowed on contest. The dealer is entitled to get set off as claimed treating the furnace oil as consumable-raw material. The impugned order is set aside.

Dictated & corrected by me,

Sd/-  
(Subrata Mohanty)  
1<sup>st</sup> Judicial Member

Sd/-  
(Subrata Mohanty)  
1<sup>st</sup> Judicial Member

I agree,

Sd/-  
(Suchismita Misra)  
Chairman

I agree,

Sd/-  
(P.C. Pathy)  
Accounts Member-I