BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL:CUTTACK

S.A.No.335(V)/2014-15

(Arising out of the order of the learned DCST, Jajpur Range, Jajpur Road in First Appeal Case No. AA /429/KJB/2013-14, disposed of on 30.10.2014)

Present: Shri A. K. Panda, Judicial Member-I **Shri P.C. Pathy, Accounts Member-I**

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

-Versus-

M/s. Tyre Planet & Md. Khatibur Rahman.
At/Po- Jhumpura,
Dist-Keonjhar.

... Respondent.

For the Appellant: :Mr. M. L. Agarwal. S.C. (C.T.).
For the Respondent: :Mr. B.N. Mohanty, Advocate.

Date of Hearing: 23.04.2018 *** Date of Order: 07.05.2018

O R D E R

The State has preferred this appeal against the order of the Ld. Deputy Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short, 'the Ld. DCST') passed in first appeal case no.AA-429/KJB/2013-14 on 30.10.2014 reducing demand from Rs.3,91,157.00 to Rs.18,080.00 raised by the Ld. Sales Tax Officer, Barbil Circle, Barbil (in short, 'the Ld. STO') in his order dated 29.06.2013 for the period 01.04.2007 to 31.03.2012 under section 42 of the Odisha Value Added Tax Act (in short, 'the OVAT Act').

2. The dealer-respondent in the instant case deals in trading of tyre, tubes and flaps of CEAT Company and also engaged in trading business of iron ores and iron ore fines. The dealer appellant was assessed on the basis of Audit Visit Report

showing discrepancies in the books of accounts for the relevant period. The dealer has effected purchase of tyres, tubes and flaps both within and outside the State of Odisha. The item iron ores has been purchased only within the State of Odisha. The dealer-respondent has effected intrastate sale, sale in course of interstate trade and commerce apart from effecting indirect export sales U/s. 5(3) of the CST Act. The Ld. STO at the assessment stage confronted the discrepancies in the Audit Visit Report to the instant dealer. The Ld. STO passed the impugned order determining G.T.O. and T.T.O. at Rs.50,57,85,492.00 and 48,58,85,273.00 respectively. Output tax has been determined at Rs.2,00,30,573.00 against which Rs.1,98,93,625.00 has been allowed towards input tax credit and the output tax net of input tax credit has been determined at Rs.1,36,948.00 taking the payment of admitted tax of Rs.6,593.00, the dealer was assessed to tax of Rs.1,30,355.00 on which penalty of Rs.2,60,710.00 U/s. 42(5) of the OVAT Act was imposed apart from levy of interest of Rs. 92/- for late payment of admitted tax.

3. Being aggrieved with the order of the Ld.STO the dealer company preferred appeal before the Ld. DCST with the following grounds:-

That, the Ld. STO has not accepted the method of calculation adopted by the appellant for reversal of input tax credit under clause(d) of the proviso to sub-section 3 of Section 20 of the OVAT Act. The instant dealer is found to have made reversal of input tax credit to the tune of Rs.12,74,514.00 in respect of sales made in course of interstate trade and commerce by taking into account the corresponding value of the inputs for the concerned tax period. The Ld. STO in the assessment order has calculated the reversal of input tax credit year-wise instead of tax period-wise, which is not in accordance with the explanation appended to sub-rule 2 of Rule 11 of the OVAT Rules. The Ld. DCST has viewed the method of calculation adopted by the Ld. STO for determination of reversal of input tax credit under the clause (d) of the proviso to sub-section 3 of

Section 20 of the OVAT Act on yearly basis as not justified. Hence, disagreeing with the calculation of the Ld. STO, who has determined Rs.18,50,589.00 towards the reversal input tax credit, the Ld. DCST has held that the instant dealer has calculated the reversal input tax credit at Rs.12,74,514.00 which is justified. Accordingly the Ld. DCST readdressed and modified the order of the Ld. STO which resulted in reduction of demand to Rs.18,080.00 including penalty of Rs.11,992.00 imposed under section 42(5) of the OVAT Act and interest levied under section 34(1) of the OVAT Act to the tune of Rs.92/-. This led the State to come in second appeal before this forum.

4. Being aggrieved with the order of the Ld. DCST the State has preferred appeal before this forum on following grounds:-

In the grounds of appeal filed by the State it has been contended that the Ld. DCST has reduced the amount of reversal of input tax credit of Rs.18,50,589.00 determined by the Ld. STO to the claim of the dealer at Rs.12,74,514.00 with the observation that reversal of input tax credit cannot be computed year-wise as per the provisions contained in Rule (1) and (2) of the Rule 11 of the OVAT Rules. The action of the Ld. DCST is not proper in view of the following reasons.

(i) Sub-Rule (1) and (2) of Rule 11 are un-related to this case.

(ii) Audit assessment under section 42 of the OVAT Act can be taken up for a tax period or tax periods. Thus, the Ld. STO while taking up audit assessment of tax periods, i.e. 01.04.2007 to 31.03.2012 has computed reversal of input tax credit tax period-wise from 01.06.2008 to 31.03.2012 and 01.06.2008 to 31.03.2009, 01.04.2009 to 31.03.2010, 01.04.2010 to 31.03.2011 and 01.04.2011 to 31.03.2012. Thus, action of the Ld. STO is in conformity with the provisions of the statute and hence no wrong has been committed by the Ld. STO.

(iii) The Ld. DCST, however, without appreciating the provisions of Law, has not considered the determination of reversal of input tax credit by the Ld. STO which is not correct.

5. Mr. M. L. Agarwal, the Ld. Standing Counsel (C.T.) appearing on behalf of the State has reiterated the grounds of appeal and has vehemently argued for restoration of the assessment order passed by the Ld. STO. At the time of hearing the Ld. S.C. (C.T.) has submitted a statement reflecting the figures of purchase and CST sale for the period 01.01.2007 to 31.03.2012 in the following manner:-

Total Purchase (Q.T. in M.T.)	348,028.070
Involvement of ITC	15,305,025
Involvement of ITC in per M.T. Purchase	43.976409972
CST Sales (Q.T. in M.T.)	86,740.590
Involvement of ITC in CST Sale Goods	3814539.725
CST Collected	2,309,252.00
Reversal	1,505,288

6. The Ld. Advocate appearing on behalf of the dealer-respondent stated, that the appeal order passed by the Ld. DCST is just and proper and need not be interfered with and the period considered by the Ld. DCST is in accordance with provision of the law. However, no cross objection was filed.

7. At the time of hearing of the matter the Ld. Standing Counsel (C.T.) furnished written submission on behalf of the State with the following grounds:-

a) The revenue has filed second appeal against the first appeal order dtd.30.10.2014 passed by the Ld. DCST, Jajpur Range, Jajpur in Appeal No.AA429 KJB/13-14 for the tax period 01.04.2007 to 31.03.2012 under the OVAT Act, 2004 wherein the Ld. DCST has reduced the demand by deleting the reversal of ITC in respect of inter-State sales u/s. 20(3)(d) read with Rule 11(3) of

the OVAT Rules made by the STO, Barbil Circle, Barbil vide order of assessment dtd.29.06.2013.

b) The Ld. DCST has confirmed the appeal on other points raised vide order of assessment which is not disputed by either of the parties.

c). The dealer during the period of assessment has effected purchase of Iron ores and iron ore fines within the State of Odisha from registered dealers of 3,48,028.070 MT quantity on payment of VAT of Rs. 1,53,05,025.00. Out of the said stock the dealer had effected inter-State sales of the said goods of 86,740.590 MT and have collected CST of Rs.23,09,252.00 thereon. The balance stock of 2,61,287.48 MT has been sold locally.

d). That under the OVAT Act the ITC has to be allowed as per clause (d) to the proviso in sub-section (3) of Section 20 of the OVAT Act read with Rule 11(3) of the OVAT Rules along with Annexure-II of return form VAT-201. Which means the ITC is to be allowed only to the extend of CST payable and the balance of ITC is to be reversed

e) The levy of tax under the OVAT Act is on goods as per the preamble and charging section of the Act and the assessment is framed for tax period and or period(s). The assessment framed is for block period taking into several tax period(s) and thereby all the returns filed becomes one unit of assessment. The segregation or separation of the tax period(s) on the basis of returns filed is not permissible and the returns filed succumbs to one assessment as a unit as a whole. The respondent-dealer taking into account provisions of Rule 11(1) & (2) had calculated the reversal of ITC, which has been accepted by the Ld. DCST which is not accordance to law.

f) That the dealer-respondent has purchased iron ore of 3,48,028.070 MT quantity on payment of VAT of Rs. 1,53,05,025.00. Out of the said stock the dealer had effected inter-State sales of the said goods of 86.740.590 MT and have

collected CST of Rs.23,09,252.00 thereon. Thus, the involvement of VAT ITC towards CST Sales comes to Rs.38,14,539.73 { 15305025/3,24,028.070 MT × 86741.590 MT}. The dealer out of it having collected CST of Rs.23,09,252.00, hence, has to reverse the ITC of Rs.15,05,288.00 [38,14,539.73-23,05,252.00].

g) It has been contended to rectify the error in reversal of ITC calculated by the Ld. DCST.

8. Mr. B. N. Mohanty, the Ld. Counsel on behalf of the dealer-respondent has also furnished written submission countering the contentions advocated by the Ld. Standing Counsel (C.T.) as follows:-

i) That the 1st appeal order dated .30.10.2014 passed by the Ld. Dy. Commissioner of Sales Tax, Jajpur Range, Jajpur Road, is just and proper and is not liable to interfere as per the provision of law.

ii) That the Ld. Appellate Authority passed the order after examination and verification of the books of accounts produced by the appellant at the time of hearing and having gone through the grounds of appeal and materials available on record like Audit Records as well as Assessment Records the Ld. Appellate Authority pleased to allow the appeal in part which is just and proper as per the provision of law.

iii) That, the dealer filed Returns on monthly basis up to 2011-12. All calculation regarding reversal entry on CST Sale also made on monthly basis and reflect the same in the monthly return. But the learned sales tax officer has made calculation of reversal entry year wise with commodity wise which also not correct as a result the reversal amount has been increased. As per his calculation the purchase price of commodity is more higher than my purchase price. The Rule 11 Explanation clearly mention that "For the purpose of this sub-rule, the expression "total input tax" referred to in sub-rule (1) shall be the input tax as apportioned in respect of a tax period. When he calculates

one commodity year wise the average price has been increased. This type of calculation has not instructed by the Govt. So the calculation method adopted by the learned Sales tax officer is arbitrary & do not base on the Rule 11(3)(c)(d) of OVAT Act, 2004. the dealer-respondent has submitted month wise reversal calculation sheet for the period from 2008-09 to 2010-11 at the time of audit visit as well as audit assessment but the learned sales tax officer has not taken into the account for consideration of assessment.

iv) That, Rule 11(3)(c) states that, "In case the sale of goods in the manner referred to clause (a) above, results in CST payable less than the corresponding input tax on the corresponding purchase of goods, the input tax creditable for the tax period shall be reversed by the amount calculated in the box provided in serial No.5 of Annexure-II in the Return". Further, Rule 11(3)(d) states that, "In case the CST payable is equal to or more than the corresponding input tax as calculated as per provisions of clause(c), there shall be no reversal of Input Tax credit." In this regard in VAT Form 201 Annexure-II, Serial No.3 may be referred where in, the method of calculation has been clearly mentioned. As per the same,

The purchase value of the inputs=

Tax group wise proportionate purchase value of goods sold in course of interstate trade or commerce (divided by) goods purchased (multiplied with) which go into the composition of the goods manufactured for sale in course of interstate sale.

1. That, if we consider the transaction of June 2008 and July-2008 example because in these month both Size Iron ore 30-80MM & Iron ore fines has sold in interstate trade, the calculation of purchase value of input will be as follows cited in VAT Form-201, Annexure-II, Serial No.3

CALCULATION FOR THE MONTH OF JUNE-2008

(i) Proportionate purchase value =3,04,98,363.00
(ii) Goods purchase (Iron Ore Fines) = 36435.370MT
(iii) Goods Sales on CST Transaction =1608.060MT
The Calculation is:-

$$\frac{30498363}{36435.370} \times 1608.060 = 13,46,033.00$$

The 4% Input of the above amount comes to Rs. 53841.00. On the other hand, the said month the CST accrues to Rs.104524.00. So, the reversal amount not comes as the CST amount is more than the VAT which leads rule 11 explanation clues (d):

CALCULATION FOR THE MONTH OF JULY- 2008

(i) Proportionate purchase value =43,96,175.00
(ii) Goods purchase (Size Iron Ore 30-80) =2376.310 MT
(iii) Goods sale on CST Transaction = 898.770 MT

The calculation is :-

$$\frac{4896175}{2376.310} \times 898.770 = 16,62,725.00$$

The 4% input of the above amount comes to Rs.66,509.00 On the other hand, the said month the CST accrues to Rs.55146.00 So, the reversal amount comes to

66,509.00 – 55,146.00 = 11,363.00

2. That, a detailed calculation sheet for the year from 2008-09 to 2010-11 has been enclosed for ready reference and for acceptance.

9. Considered the rival contentions, the grounds of appeal, the orders of the Ld. DCST and the Ld. STO for the relevant period, the connected appeal and assessment records and the written submissions filed by both the appellant-State as well as and the dealer-respondent at the time of hearing before the bench. The main dispute in this case is whether the calculation of

reversal of input tax credit to the extend of Rs.12,74,514.00 in respect of sale made in course of interstate trade and commerce by taking into account of the corresponding purchase value of the inputs for the concerned tax periods adopted by the dealer-respondent and accepted by the Ld. DCST against calculation of Rs.18,50,589.00 made by the Ld. STO taking reversal of input tax credit year-wise instead of tax period-wise is justified?

i) As per clause (d) to the proviso in sub-section (3) of Section 20 of the OVAT Act 2004, input tax credit on purchase when sold in course of inter-State trade or commerce shall be allowed only to the extent of Central Sales Tax payable under Central Sales Tax Act, 1956, (74 of 1956). This proviso has been in force w.e.f. 01-06-2008. Vide Finance Department Notification No.-27252-CTA-11/07-F(SRO No-248/2008) dated 28.05.2008.

ii) In the present case, the period of assessment covers the period from 01.04.2007 to 31.03.2012. While completing the assessment, the Ld. STO has considered the annual turnover of the dealer for calculation of reversal of excess input tax credit and the same is calculated at Rs.18,63,240.00. However, while calculating the reversal figure for interstate sale of 5-18mm Iron Ore for the period 2007-08, the Ld. STO has failed to appreciate the fact that reversal amount has exceeded the corresponding involvement of input tax thereon in the noted transaction. As per the order, the dealer has disclosed its interstate sale of 3977.720M.T. of 5-18MM Iron Ore with CST value for Rs.95,46,528.00 (excluding CST of Rs.1,90,931.00). For calculating the reversal, entire input tax amount for the noted period has been taken into account without applying the involvement of proportionate input tax whereby reversal ITC has been calculated at Rs.4,25,644.00.

iii) It is observed that though the Ld. STO has determined the input tax credit reversal at Rs.18,63,240.00 yet has accepted the

figure Rs.18,50,589.00 without properly explaining the reason for doing so.

iv) Further, the Ld. DCST in the appeal order has considered the monthly calculation of reversal of ITC and for sample base, only the period June-2008 and July-2008 are examined with finding of reversal of input tax to the tune of Rs.11,363.00. A broad conclusion is not appropriate to be drawn for the entire period basing on the sample examination. All the intrastate and interstate purchase and sale transactions are to be examined vividly with reference to return disclosure in Annexure-II of Form VAT-201.

V) In view of the above, this forum consider it appropriate to remand back the case to the Ld. STO for re-examination and re-computation of input tax reversal observing the principle as mentioned under rule 11(3)(a)(f) of OVAT Rules 2005.

10. Accordingly, the appeal is allowed in part and the matter is remanded to the Ld. STO to re-examine and re-compute in the light of the observations made above, in accordance with the provision under the law, within a period of four months from receipt of this order.

Dictated and Corrected by me.

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

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

I agree,

Sd/-
(A. K. Panda)
Judicial Member-I