

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

**S.A. No. 371 (VAT) of 2015-16**

**&**

**S. A. No. 187 (ET) of 2015-16**

(Arising out of orders of the learned Addl. CST, North Zone in First Appeal Nos. AA- SNG-118/13-14, & AA- 106101510000289/15-16, disposed of on dated 04.11.2015 & 05.11.2015 respectively)

Present: **Shri A.K. Das, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri M. Harichandan, Accounts Member-I**

M/s. Pawanjay Sponge Iron Ltd.,  
Bijabahal, Kuanarmunda,  
Dist. Sundargarh ... Appellant

-Versus-

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

For the Appellant : Sri S.C. Agrawal, Advocate  
For the Respondent : Sri D. Behura, S.C. (CT) &  
Sri S.K. Pradhan, Addl.SC (CT)

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Date of hearing: 21.02.2022 \*\*\* Date of order: 17.03.2022  
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**O R D E R**

Both these second appeals at the instance of the dealer-appellant involve common question of facts and law for which they are taken up together for hearing and are disposed of by this common order.

2. The dealer-appellant filed S.A. No. 371 (VAT) of 2015-16 u/s. 78 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') assailing the order dated 04.11.2015 passed by the learned Addl. Commissioner of Sales Tax, North Zone (hereinafter called as 'first appellate authority') in Appeal No. AA- SNG- 118/13-14 thereby reducing the tax demand to ₹1,34,05,353.00 from ₹6,90,00,178.00 raised by the Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, 'assessing authority') u/s. 42 of the OVAT Act for the tax periods from 01.04.2011 to 31.03.2013.

2(a). It (dealer-appellant) also filed S. A. No. 187 (ET) of 2015-16 u/s. 17 of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') assailing the order dated 05.11.2015 passed by the same first appellate authority in Appeal No. AA-106101510000289/15-16 reducing the tax demand to ₹35,67,522.00 from ₹1,56,58,185.00 raised by the same assessing authority for the same tax periods u/s. 9C of the OET Act.

3. The facts common in both the appeals are that the dealer is engaged in manufacturing of sponge iron, M.S. ingot and M.S. rod. It utilizes raw materials like iron ore, coal and dolomite for manufacturing of sponge iron, M.S.

scrap, pig iron and aluminium sorts for production of M.S. ingot and use of M.S. ingot, M.S. billet for production of M.S. rod. The finished goods such as sponge iron and M.S. ingot produced by the dealer are partly consumed for captive consumption and rest are sold. The dealer also engaged in purchase and sale of sponge iron, M.S. ingot and M.S. scrap. The main consumables very often used by the dealer for manufacturing of M.S. ingot were C.P. coke, silico manganese, B.P. set, boric acid, sodium silicate, ferro silicon and aluminium sorts. The dealer effects purchase and sale both inside and outside the State of Odisha. The dealer-assessee maintains purchase register, sale register, stock register, purchase invoice and sale invoice etc. for this purpose. The accounts of dealer-assessee were audited under the provisions of the OVAT Act by the DCST, Rourkela-II Circle, Panposh and it was found during the audit that the dealer-Company has purchased aluminium sorts and M.S. scrap worth ₹1,59,300.00 involving ITC of ₹7,965.00 from M/s. Laxmipati Aluminium Traders during the period from 31.01.2013 to 23.03.2013 and M.S. scrap worth ₹3,99,574.00 involving ITC of ₹15,983.00 from M/s. Zentac Industries. The R.C. of M/s. Laxmipati Aluminium Traders

was cancelled w.e.f. 01.11.2012 and that of M/s. Zentac Industries w.e.f. 01.02.2007. Therefore, the dealer was not entitled to claim ITC amounting to ₹23,948.00.

3(a). It was also further found that the dealer-Company had claimed ITC ₹1,16,462.00 on purchase of furnace oil which was not admissible as per the Finance Department Notification vide SRO No. 34/2009 dt. 27.01.2009; that as per the Standard Input Out Norms (SION), the dealer should utilize 1.60 MTs of iron ore for production of 1.00 MT of sponge iron, but it had shown utilization of 1.90 MTs of iron ore to produce 1.00 MT of sponge iron; that adopting the SION i.e. 1.60 : 1.00 ratio, the under production of sponge iron was detected as 2833.800 MT during the year 2011-12 and 1630.007 MT during the year 2012-13.

3(b). On receipt of the Audit Visit Report (AVR), the dealer was noticed in Form VAT-306 to produce the books of account. On verification of the books of account, audited balance sheet and profit and loss account prepared by the C.A. for the years 2011-12 and 2012-13, huge discrepancies in purchase and sale of finished product, traded goods and suppression of consumption of raw materials were detected. The assessing authority considering the explanations

submitted by the dealer-assessee with regard to the discrepancies pointed out in the AVR, held that the dealer was liable to pay tax worth ₹23,948.00 and ₹1,16,462.00 for erroneous claim of ITC and it was also liable to pay penalty u/s. 42(5) of the OVAT Act. It was observed that as per the own admission of the dealer, the production of sponge iron should be 16519.893 MT during the year 2011-12 and 22015.565 MT during the year 2012-13. but the dealer disclosed production of sponge iron of 13380.800 MT for the year 2011-12 and 10563.730 MT for the year 2012-13 in the books of account maintained by it. So, there is understatement of production of sponge iron by 3139.093 MT during the year 2011-12 and 11451.835 MT during the year 2012-13. The contention of the dealer that they had purchased more quantity of iron ore fines than the sized iron ore was found wrong and further the contention of the dealer that less percentage of production of sponge iron during the years 2011-12 and 2012-13 was due to utilization of iron ore fines was found unsound.

3(c). The assessing authority was of further view that, the dealer had disclosed production of sponge iron of 10563.730 MT utilizing iron ore of 41830.830 MT during the

year 2012-13 which means the percentage yield was at 25.25% as against the percentage yield of 52.63% admitted by the dealer resulting less disclosure of production by 27.38%; that during the year 2011-12, the dealer by utilizing iron ore of 31388.740 MT which was less by 10442.090 MT in comparison to utilization of iron ore made during the year 2012-13 had shown production of 13380.800 MT of sponge iron which was more than 2817.070 MT sponge iron produced during the year 2012-13; that the dealer in its audited balance sheet and profit and loss account had not taken into consideration the utilization of iron ore fines of 2461.484 MT and 5865.970 MT made during the years 2011-12 and 2012-13 respectively; that the dealer failed to produce chemical analysis register in support of its contention that it utilized iron ore having Fe content ranging from 56% to 60%; that the quantity of under production of sponge iron and suppression of sales stood established and that the books of account maintained by the dealer did not reflect true picture of purchase, sale and stock. The assessing authority so observing determined the GTO at ₹172,51,23,844.00 and after deduction of ₹5,38,98,188.00 towards ITC, the TTO was determined at ₹1,67,12,25,656.00 which was taxed @ 4% on

₹81,39,26,088.00 and @ 5% on ₹85,72,99,568.00. The total tax payable was calculated at ₹7,54,22,022.00 against which ITC worth ₹3,93,66,109.00 was adjusted and the balance tax payable was determined at ₹3,60,55,913.00 against which the dealer had deposited ₹1,44,43,768.00. Accordingly, the balance amount payable was determined at ₹2,16,12,145.00. The assessing authority also calculated the penalty at ₹4,32,24,290.00 and interest at ₹41,63,743.00. The total tax, penalty and interest together was determined at ₹6,90,00,178.00.

3(d). The dealer being aggrieved with such demand raised by the assessing authority filed appeal before the first appellate authority u/s. 77 of the OVAT Act in which the first appellate authority deleted the interest levied by the assessing authority fully and reduced the tax demand to ₹1,34,05,353.00. The dealer being further aggrieved with the order of the first appellate authority filed S.A. No. 371 (VAT) of 2015-16.

4. The dealer-appellant also filed S.A. No. 187 (ET) of 2015-16 challenging the order of the first appellate authority dated 05.11.2015 wherein it reduced the tax demand to ₹35,67,522.00 from ₹1,56,58,185.00 raised by the

assessing authority by invoking power U/s.9C of the OET Act. The facts, in brief, giving rise to the present appeal are that the entry tax payable was reported at ₹1,78,879.00 on due calculation in the AVR submitted in Form E-27. The assessing authority relying on the AVR under the OVAT Act quantified the suppression of production of sponge iron for the years 2011-12 and 2012-13 including VAT. He, however, accepted the freight charges @ 5% of bill value calculated by the Audit and also claim of set off of ₹96,846.00 for the year 2011-12 and ₹30,148.00 for the year 2012-13 disallowed by the audit holding that silico manganese, sodium silicate, aluminium sorts, furnace oil, calcined petroleum coke were not raw materials for manufacturing. In appeal the Learned first appellate authority after adding VAT @ 4% for the year 2011-12 and @ 5% for the year 2012-13 on the suppressed turnover, determined the escaped turnover by limiting to ₹10,42,40,418.00 for the purpose of entry tax. Further, the interest amount of ₹9,44,877.00 levied by the assessing authority was also deleted by the first appellate authority holding the same to be premature and illegal.

5. The learned Counsel for the dealer-assessee challenging the impugned orders of both the forums below

being contrary to law vehemently urged that the first appellate authority though did not accept the finding of the assessing authority on the issue of production suppression, calculated such suppression basing on the finding of the audit team on account of which the impugned order is not sustainable. When the audit team did not find any irregularity in the books of account it should not have resorted to SION for the purpose of calculation of the purchase and sale suppression. The dealer utilized 1.9 MT of iron ore for production of 1 MT of sponge iron, but the audit team in the absence of any discrepancy in the books of account or physical stock of raw materials or finished goods, determined the production on the ratio of 1.6 : 1 MT by applying SION. The determination of consumption of iron ore and production of sponge iron is based on surmises, conjectures and assumption for which the order cannot withstand the scrutiny of law. When there is no cogent evidence to establish that there was discrepancy in purchase of iron ore and sale of sponge iron, the estimation of turnover and fixing liability to pay tax hypothetically is bad in law and not legally sustainable. The dealer-assessee in order to

substantiate its contention, relied upon the following judgments :-

- (i) The judgment of the Tribunal in case of State of Orissa Vs. M/s. Pawnjay Sponge Iron Ltd. (S.A. No. 1624 of 2005-06) vide order dated 14.02.2011
- (ii) Judgment of Hon'ble High Court of Orissa in case of Larsen & Toubro Limited Vs. State of Orissa and others, reported in [2008] 12 VST 31 (Ori.)

6. On the contrary, learned Standing Counsel (CT) for the revenue supporting the impugned order of the first appellate authority in terms of cross-objection filed by it vehemently urged that the authority below was justified in accepting the finding of the audit team regarding sale and purchase suppression and calculating actual production by applying SION. The first appellate authority has categorically narrated in its order the discrepancy found by it in the books of account and the profit and loss account prepared by the dealer-assessee. The dealer purposefully suppressed the purchase of iron ore and sale of sponge iron in order to evade tax. Though the provision contained under the OVAT Act do not prescribe any such norms for calculation of purchase and sale suppression, the application of SION is justified and legally tenable in the facts and circumstances of the present

case. He submitted to dismiss the appeals and confirm the orders of the first appellate authority.

7. We have heard the rival submissions of the parties, carefully gone through the orders of the forums below, grounds raised in the memorandum of appeal vis-a-vis the materials on record. In course of hearing of the appeals, learned Counsel for the dealer-appellant mainly challenged the impugned orders of the forums below on the ground that the fora below were not correct in their approach in calculating the production suppression by applying SION, which has no legal sanctity. The facts relevant for addressing this issue are that the dealer is engaged in manufacturing of sponge iron and for this purpose, it effects purchase and sale within and outside the State of Odisha. Statutory audit as per the provisions of the OVAT Act was conducted by the DCST, Rourkela-II Circle, Panposh in respect of the present dealer-appellant and in the AVR, the audit team calculated under production of sponge iron to the tune of 2833.800 MT during the year 2011-12 and 1630.003 MT during the year 2012-13 adopting SION, i.e. 1.60 : 1 ratio. Besides this the audit team also pointed out other two discrepancies regarding claim of ITC by the dealer-assessee. On the basis of

the discrepancies pointed out by the audit team, proceeding u/s. 42 of the OVAT Act was initiated. Learned assessing authority agreed with the AVR that production of sponge iron was less than the quantity of iron ores used in such production applying a ratio of yield of sponge iron @ 60% which was totally different opinion of the audit team. The dealer-assessee filed appeals before the first appellate authority who stuck to the finding in the AVR and calculated less production of sponge iron applying the SION, i.e. 1.6 : 1 MT.

8. The whole dispute in the present case being with regard to application of SION, it is necessary to narrate the historical background of the said principle. In response to the query made by the CTO, Rourkela-II Circle on the input/output ratio for manufacturing of sponge iron, Dr. R.C. Behura, Dean NIT, Rourkela vide his letter dated 21.04.2004 clarified that there was no direct data available in any reference book dealing with on raw materials consumption pattern. This would vary from plant to plant, depending on consumption and quality of raw materials and operating conditions. He basing on his own knowledge and general discussion observed that some producers produced 1 MT of

sponge iron against use of 1.5 MT of iron ore having Fe content @ 65%, 1.5 MT of non-cooling coal having minimum 25% of ash content and 25 to 30 Kgs. of dolomite of size 1 to 6 mm. He has further intimated that if Fe content is less in iron ore and carbon content in coal is more, the consumption of raw materials and coal will be more. **The input output ratio 1:1.6 is possible only if iron ore is of higher 'Fe' content with 65% or above.** This Tribunal in case of **State of Orissa Vs. M/s. Pawnjay Sponge Iron Ltd. (S.A. No. 1624 of 2005-06) vide order dated 14.02.2011** considering the question about applicability of SION in para-6 of the order also observed the same thing that ratio of 1.6 : 1 can work well with standard raw material having Fe content of 65% or more and the ratio prescribed cannot be taken as to have been etched in stone with no flexibility. A specialist's view is of immense help only when proper ground work is done to form a pyramid and the specialist's view is put to at the top as a top-up. The Hon'ble High Court in case of **Larsen & Toubro Limited Vs. State of Orissa and others, reported in [2008] 12 VST 31 (Ori.)**, held that taxation by way of administrative instructions which are not backed by any authority of law is unreasonable and contrary to article

265 of the Constitution of India. It is crystal clear from the evolution of law as above that there was no fixed ratio of consumption of iron ore for production of sponge iron. It depends upon the quality, hardness and Fe content of iron ore. In these circumstances, it would be prudent to seek opinion from an expert having technical knowledge in this line in order to determine the production ratio. In the case at hand, on perusal of the impugned orders of the forums below, we find that both the forums below have not given any finding with regard to Fe content of the iron ore used and without giving any finding on the Fe content in iron ore used, calculated the production of sponge iron by applying SION principle, which has not been prescribed in the OVAT Act. It reveals from the AVR of the audit team that it did not find any discrepancy in the books of account maintained by the dealer-assessee. In col. 12 of the AVR prepared in Form VAT-303, the Audit Officer has specifically mentioned that the dealer maintained books of account with adequate accuracy and filed returns in due time with correct payment of tax. The AVR also does not reveal that during verification of books of account and visit to the business premises of the dealer-assessee, the audit team found any clandestine business

transaction regarding purchase of iron ore, sale of sponge iron or stock discrepancy in finished products. The audit team only on verification of manufacturing account of the dealer opined that the Company utilized more quantity of raw materials to produce comparatively less quantity of finished product as the dealer utilized 1.9 MT of iron ore to produce 1 MT of sponge iron. The audit team further observed that as per SION, the dealer should have utilized 1.60 MT of iron ore for 1 MT of sponge iron. The Audit Team while arriving at such conclusion has not given any reason for discarding the books of account and resorting to SION method. This Tribunal in its order passed in other cases have held that the ratio of 1.6 : 1 can work well when the standard raw materials having Fe content 65% or more. The Audit Team without giving any finding with regard to Fe content of the iron ore used has resorted to application of SION which was accepted by the first appellate authority blindly without applying his own mind. When there is no opinion of expert with regard to Fe content of the iron ore used, the first appellate authority should not have accepted the opinion of the Audit Team for calculation of production of sponge iron by applying SION. Moreover, when the Audit Team did not

find any discrepancy in purchase of raw material or sale of finished product, the observation of the Professor of NIT, Rourkela regarding the input and output ratio, i.e. 1.6 : 1 with the iron ore used having Fe content 65% or above, should not have been applied to the facts and circumstances of the present case. It appears from the impugned order of the first appellate authority that the dealer has explained the reason for calculating the production on the ratio of 1.9 : 1 on account of non-availability of iron ore size consequent to closure of different mines of the State and purchase of maximum variety of iron ore from different mine owners of 0 X 10 size apart from useful size of 5 X 18 and 3 X 5. He further explained that 0 X 10 size were further screened to reclaim it to 3 X 5 and 3 X 10 size for the purpose of production of sponge iron. The explanation offered by the dealer-assessee is found to be reasonable and acceptable to us. The first appellate authority if at all followed SION to determine the actual production of sponge iron, he should have taken the opinion of the expert to determine the Fe content of raw materials used. In the absence of opinion of any expert with regard to Fe content of iron ore used, the SION should not have been applied to determine the

suppression of raw materials used and finished products. Therefore, the determination of production of sponge iron and suppression of sale by the forums below is not acceptable to us and accordingly, the same is deleted.

9. In view of the foregoing discussions, both the appeals filed by the dealer-assessee are allowed, the impugned orders of the forums below are set aside and the matters are remitted back to the assessing authority to recompute the tax liability of the dealer-assessee under both the Acts in accordance with law keeping in view the observation made herein above within a period of three months from the date of receipt of this order. Cross-objections are disposed of accordingly.

Dictated & Corrected by me

Sd/-  
(A.K. Das)  
Chairman

Sd/-  
(A.K. Das)  
Chairman

I agree,

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

I agree,

Sd/-  
(M. Harichandan)  
Accounts Member-I