BEFORE THE ACCOUNTS MEMBER-I: ODISHA SALES TAX TRIBUNAL: KATAKA.

S.A. No. 68(VAT) of 2024

(Arising out of the order of JCST (Appeal), Cuttack I Range, Cuttack, in First Appeal Case Nos. AA106122212000001, disposed of on 10.09.2024)

P r e s e n t: Shri A. Bhoi, Accounts Member-I

M/s. Akshaya Kumar Choudhury,
Canal Road, Shankarpur, Cuttack. ... Appellant

- V e r s u s –

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

For the Appellant: :Mr. B.B. Panda, Advocate.
For the Respondent: :Mr. D. Behura, S.C.(C.T.)
:Mr. S.K. Pradhan, Addl. S.C. (C.T.)

Date of hearing : 22.09..2026 Date of order :13.10.2026

O R D E R

Challenging the legality and propriety of the order dated 10.9.2024 passed by the Learned Joint Commissioner of Sale Tax (Appeal),Cuttack I Range, Cuttack, (herein after referred to as Learned First Appellate Authority/ FAA) bearing First Appeal Case No. AA106122212000001, this appeal has been filed by M/s. Akshaya Kumar Choudhury, Canal Road, Shankarpur, Cuttack, (hereinafter referred to as Dealer).

2. The brief facts of the case are that: M/s. Akshaya Kumar Choudhury, is a works contractor engaged in execution of civil works contract like construction of buildings, earth work in excavation of foundation, trenches and column foundation etc. The dealer contractor has effected purchases of cement, MS Rods, MS Grill, Tiles, Marbles, Stone, Chips, Sand, Bricks etc. from inside the State of Odisha. The dealer contractor received the gross payment of ₹3,17,83,996.00 for the tax period from 1.4.2009 to 31.3.2012. The Assessing Authority initiated the assessment proceedings U/s.42 of the OVAT Act for the aforesaid periods on receipt of Audit Visit Report. After deduction of ₹1,47,28,502.00 from the gross turnover of ₹3,17,83,996.00 towards labour and service charges, the taxable turnover determined at ₹1,70,55,494.00. Tax @ 4% on ₹1,10,82,660.00 and tax @ 12.5% on ₹54,49,230.00 and tax @13.5% on ₹.5,23,604.00 calculated at ₹11,95,147.00. After deduction of ₹5,41,344.00 towards input tax credit and after adjustment of ₹12,14,121.00 towards TDS, the Assessing Authority allowed the refundable amount of ₹5,60,318.00 to the dealer contractor U/s. 42 of the OVAT Act, for the tax period from 1.4.2009 to 31.3.2012.

3. On being aggrieved by the assessment order, the dealer contractor has preferred appeal before the Learned Joint Commissioner of Sales Tax (Appeal), Cuttack-I Range, Cuttack, who being the First Appellate Authority confirmed the order of the Assessing Authority.

4. The Dealer Contractor being further dissatisfied by the order of Ld. FAA, has preferred the second appeal before this Tribunal.

5. Memorandum of Cross Objection has been filed by the State Respondent against the appeal preferred by the dealer.

6. The Learned Advocate appearing for the Dealer-Contractor submits that input tax credit should not be disallowed by applying the amendment of post tax periods as the amendment specifically came in to force by way of addition w.e.f. 1.10.2015 U/s.20(3)(a) of the OVAT Act but in the case assessment period is related to 2011-12, so such amendment should not be applied retrospectively. Further he submits that the goods purchased has been utilized in contract work and payment was made of such incorporation of material used in course of construction of building.

7. On the other hand, the Ld. Addl. Standing Counsel(CT) appearing for the State submits that the grounds raised by the appellant is not sustainable as per provisions of OVAT Act and hence the present second appeal may be dismissed.

8. Heard the rival contentions. Gone through the orders of the forums below, grounds of appeal submitted by the dealer, cross objection filed by the respondent State vis-a-vis the materials available on record.

9. On perusal of record, it is seen that the dealer contractor was filed application for refund for the tax period 1.4.2009 to 31.3.2012. On the basis of refund application of the dealer contractor, the Assessing Authority directed tax audit of the transactions pertaining to such refund. The Audit Team accordingly submitted the Audit Visit Report with a suggestion to disallow the ITC of ₹31,617.25 against the purchase value of ₹2,84,557.25 and also suggested to allow refund of ₹4,34,825.00 for the tax period 2009-10 to 2011-12.

10. On receipt of AVR, Assessing Authority completed assessment U/s.42 of the OVAT Act and allowed refund of ₹6,01,832.00 for the aforesaid material period. On the basis of order of the First Appellate Authority, the Assessing Authority

again reassessed the dealer contractor U/s. 42 of the OVAT Act allowing refund of ₹5,60,318.00 for the tax period from 1.4.2009 to 31.3.2012. The same assessment order is confirmed by the First Appellate Authority.

11. The Learned Advocate for the dealer contractor has vehemently argued in course of hearing of appeal that the Assessing Officer has no power U/s.77 of the OVAT Act to go beyond the observation and direction of the Learned First Appellate Authority. He also contended that the First Appellate Authority directed to the Assessing Authority to verify whether any exempted goods have been purchased as disclosed and actually utilized in the execution of works contract during the period under assessment.

12. It is pertinent to mention herein that the Assessing Authority has disallowed the ITC of ₹1,07,156.00 and allowed ITC of ₹5,41,344.00 for the period in question. Section 14 of the OVAT Act recommends that where a dealer is engaged in execution of works contract, the tax payable by him under this Act shall be levied on his taxable turnover in respect of goods utilized in such execution of works contract, at the rate applicable to such goods. In the case the Assessing Authority

as well as First Appellate Authority have calculated taxable turnover taking into account of the deduction of labour and service charges and the materials utilized in the execution of works contract.

13. Regarding issue of deduction of tax paid through ITC, the Assessing Authority has already been allowed ITC of ₹5,41,344.00. But the Learned Advocate has urged to re-compute the tax taking deduction of tax paid against utilization of fly ash bricks and has also urged to recompute labour and service charges. It is to mention herein that the Assessing Authority in the reassessment order has taken the Taxable Turnover of ₹2,48,955.00 towards purchase of bricks. In the facts and circumstances of the case, this forum feels it proper to remand the case to the Assessing Authority for verification of ITC claimed on purchase of fly ash bricks. The Assessing Authority is also directed to verify the closing ITC of the dealer to calculate the net ITC. Accordingly admissible ITC will be deducted from the output tax as per provision of law.

14. In the result, the appeal filed by the Dealer is partly allowed. The impugned order of the Learned First Appellate Authority is hereby set-aside. The case is remitted back to the

learned Assessing Authority for re-verification of ITC on purchase of fly ash bricks as well as utilization in execution of works contract and re-compute the tax liability as per observations made herein above within three months from the date of receipt of this order. The cross objection is disposed of accordingly.

Dictated and corrected by me.

Sd/-
(A. Bhoi)
Accounts Member-I

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