

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

S.A.No. 396(V)/2016-17

(From the order of the Id.ACST, Odisha, Cuttack, in
Appeal No. AA-230(V)/JCST/J/2009-10, dtd.31.01.2017, allowing
the assessment order of the Assessing Officer)

Present: Sri S. Mohanty
2nd Judicial Member

Sri R.K. Pattnaik
Accounts Member-III

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

.... Appellant

-Versus-

M/s. Serajuddin & Co.,
Dist. Keonjhar.

... Respondent

For the Appellant : Mr.M.S. Raman, A.S.C. (CT)
For the Respondent : Mr. P.K. Jena, Advocate

(Assessment period : 01.04.2007 to 31.03.2008)

Date of Hearing: 01.12.2018 Date of Order: 01.12.2018

ORDER

The crux of the dispute between the taxing authority and dealer evolve around the decision on the moot question such as the explosives used in the mining activities should cover under the definition of term "input" as per Sec.2(25) of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) and thereby if the dealer is entitled to claim ITC as contemplated u/s.2(27) read with Sec.20(3)(b) of the OVAT Act. The dispute as above is not new to this second appellate authority since the disputes involving identical issue has been raised time and again in connection with the determination of tax liability and claim of ITC relating to many dealers. The instant dealer is engaged in mining work such as extracting mines and minerals for

sale. For the purpose of extraction of minerals, the explosives used by the dealer on the mining side is the centre of dispute, as the dealer claimed ITC against purchase of explosives, which is used in the process of mining activities treating the same as “input” as per Sec.2(25) of the OVAT Act, whereas, the taxing authority claims mining activity does not fall under the category of processing or manufacturing as contemplated under the definition of Sec.2(5) of the OVAT Act. It is also claimed that, since the same is also does not cover u/s.2(21) and as such Sec.2(27) i.e. Input Tax Credit read with Sec.20 is not available. The further contention is, on strict interpretation of the provision u/s.2(28) i.e. the definition of ‘manufacture’ it never can be attracted by the dealer as against the mining work or extraction of mines and minerals work carrying the above view, the AA at first instance, acting upon the AVR assessed the dealer’s and in ultimate analysis the dealer was denied to avail ITC on the purchase of explosives as aforesaid. But in appeal, the FAA reversed the finding of AA and by treating the explosives as “input”, ITC was allowed to the dealer. Be that as it may, Revenue being aggrieved calls the impugned order of the FAA in this second appeal as not sustainable in the eye of law.

The appeal is heard with cross objection supporting the view of the FAA by the dealer.

3. The substantial question of law and fact raised for decision in this appeal are, the explosives purchased and used by the dealer in the mining work should be covered under the ambit of the term “input” as per Sec.2(25) of the OVAT Act ? and it thereby if the ITC is admissible thereby to the dealer as held by FAA ?

4. Advancing the pleas of Revenues, learned Addl. Standing Counsel, Mr. Raman, vehemently argued that, Sec.2(25) defines the

term “input” which has got two limbs. The explosives used in the mining process as claimed, to be consumable directly used in “processing” or “manufacturing” work. The Section does not include the term “mining” activities. As such, explosives used in the mining activities would not fall under the ambit of Sec.2(25). Explaining the term “manufacture” where not a new material is produced, it is claimed that, extraction of minerals and change in the size of the minerals as per the requirement of the dealer, digging of earth etc. do not come under the definition of processing or manufacturing. Learned Addl. Standing Counsel placed reliance on many of the authorities like **Commercial Sales Tax Vrs. Lal Kunwa Stone Crusher Pvt. Ltd., (2000) 118 STC 287 (SC), Divisional Deputy Commissioner of Sales Tax Vrs. Bheraghat Mineral Industries, (2000) 120 STC 205 (SC), State of Odisha -Vrs. - D.K. Construction, (2017) (I) ILR-CUT 615, Commissioner of Central Excise Vrs. Kutty Flush Doors & Furniture Co. Pvt.Ltd., (1988) 70 STC 314 (SC), Chowgule & Co.Pvt.Ltd. Vrs. Union of India, (1981) 47 STC 124 (SC), State of Odisha Vrs. Titaghur paper Mills Co. Ltd., (1985) 60 STC 213 (SC) and Hari Samanta Vrs. State of Orissa, (1987) 66 STC 86 (Ori), Aman Marble Industries P. Ltd. Vrs. CCE, (2005) 1 SCC, 279, Iqra Traders Vrs. State of Tamil Nadu, (2003) 132 STC 471 (TNTST), and in the matter decided by this Tribunal **State of Odisha Vrs. Sri Salasar Ores & Minerals Pvt. Ltd., S.A.No.1486 of 2006-07**. In all these decisions mentioned above, the ratio laid down by the authority which still holds the ground that, whenever there is felt necessary to determine the term ‘Manufacturing’ and ‘Processing’ before the taxing authority “Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labour**

and manipulation. But something more is necessary. There must be transformation; a new and different article must emerge, 'having a distinctive name, character or use', so that the new products can be said to have manufactured".

Per contra, learned Counsel for the dealer placed reliance on the decision of this Tribunal by Division Bench passed on earlier occasions in the identical matter, where it has been held that, the explosives used in the mining sector by the dealer is an import and ITC is admissible to the dealer on such purchase.

5. To appreciate the disputed question involved in this appeal, let us recalculate the relevant provision such as Sec.2(25) which reads as follows :

"INPUT" means any goods purchased by a dealer in the course of his business for resale or for use in the execution of works contract, in processing or manufacturing, where, such goods directly goes into composition of finished products or packing of goods for sale, and includes consumables directly used in such processing or manufacturing".

Sec.2(21) of the OVAT Act which reads as follows :

"GOODS" means every kind of movable property not being newspapers, actionable claims, money, stock, shares or securities, and includes all materials, commodities and articles (including goods as goods or in some other form) involved in the execution of any works contract or goods used in the fitting out, improvement or repair or movable property and growing crops, grass and trees, plants including the produce thereof and all other things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale".

Sec.2(28) reads as follows :

"MANUFACTURE" means any activity that brings out a change in an article or articles as result of some process,

treatment, labour and results in transformation into a new and different article so understood in commercial parlance having a distinct name, character and use, but does not include such activity of manufacture as may be notified;

Sec.2(27) reads as follows :

(27) "INPUT TAX CREDIT" in relation to any tax period means the setting off of the amount of input tax or part thereof under Section 20 against the output tax, by a registered dealer other than a registered dealer paying turnover tax under Section 16"

In the case of **Reliance Industries Vrs. State of Odisha** reported in **2008 (15) VST 228 (Ori)**, the Hon'ble Court while interpreted the definition of "input" and held that, for the purpose of Sec.2(25) the term consumable need not go into the composition of finished goods and their direct use in the processing of the goods is enough to allow ITC to the dealer. In **CIT Vrs. Sesa Goa Ltd.**, reported in **(2004) 13 SCC 548** the Apex Court has held that, activities of mining amounts to production of goods.

6. To understand the dispute it is to be seen how minerals are removed from the ground. There are several different ways mineral can be extracted from the earth. Two main methods are surface mining and sub-surface mining. In the case of sub-surface mining, blasting of the earth is required, so that the minerals and gangue can be extracted. Ore dressing, mineral dressing or milling follows the mining and in the process prepares the ore for extraction of valuable matter or to produce a commercial end product. Diamond is also extracted from the mining. Is it not correct to say that, diamond sold in the market is not the processed metal extracted from the mines? So processing is a distinct term included in the definition besides the term manufacturing. The term processing has got wide connotation in

comparison to the term 'manufacturing'. Blasting is an integral part of sub-surface mining. It breaks the earth and metals beneath the surface in the mining area, so that the lump can be extracted in different sizes.

In the case of **Chowgule & Co. Pvt.Ltd., Vrs. UOI reported in 1981 (1) SCC 653 [1981] 47 STC 124 (SC)** the Hon'ble Supreme Court while defining the meaning of 'processing' held that as a result of processing the commodity must experience some change.***** It is also held that, where the dealer is engaged both in mining operation as also in processing of the mined ore for sale, and the two process are inter-dependent, as in the instant case, then any use of machinery, vehicle, barges and other items for carrying the ore from mining site to the place processing, would tantamount to use of such goods in the processing of ore for sale.

The dealer in the instant case is engaged in the production and sale of Iron Ore, Manganese Ore etc. The dealer produces ores from their captive mines and in the process the minerals are first extracted/mined with the use of explosive by blasting and then blasted ores boulders are crushed/screened at the crusher/screening plant installed within the mine to sized marketable ores. The activities of production of ores begin with the extraction/mining of ores and end with crushing/screening of ores. The process of extraction/mining of ores and crushing/screening thereof for sale are integrated and interdependent process that amounts to production of ores. In the VAT Registration Certificate 'Explosive' is incorporated as consumables and iron ore and manganese ore are accepted as finished goods.

In the case of **CIT Vrs. Sesa Goa Ltd. (supra)**, following earlier judgment in the case of **Chrestien Mica Ind Ltd. Vrs. State of Bihar 91961) 12 STC 150 (SC)** hon'ble Supreme Court going by ordinary

and plain meaning of term “production” held that the activities of mining amounts to production of goods which meaning mining is an activity for processing of goods . In **Western Coalfield Ltd. Vrs. STO reported in (1986) 61 STC 102 (MP)** it is held that use of explosive in the mines amounts to use of explosives in the production of goods.

Our High Court in the case of **National Aluminium Company Ltd. Vrs. DCCT, reported in [2012] 56 VST 68 (Orissa)** following the judgment in the case of **CTO Vs. Rajasthan Taxchem Ltd.**, reported in **[2007] 5 VST 529 (SC)**, **Maruti Suzuki Ltd., Vrs. CCE**, reported in **(2010) 1 GSTR 200 (SC)** and **CCE Vrs. Ballarpur Industries Ltd.**, reported in **(1990) 77 STC 282 (SC)** has held that generation of electricity in the captive power plant was integrity connected with the ultimate production of finished goods. Therefore, the goods required in the process of generation of electricity energy would fall within the expression ‘input’ U/r.2(25). It is further held the purpose of Sec. 2(25) it is not necessary that the consumables should directly go into the composition of the finished goods and what is required that those goods should be directly used in manufacturing or processing for production of finished goods. Direct relation means without which manufacture of any product is not possible at all. In the instant case also the Explosives are used in the production of Ores without production of Ores would not have been possible.

7. Sec.20(1)(a)(vii) is very much pertinent in this context. Same runs as follows :

“Machinery and equipments including accessories are component parts thereof purchase for use in mining”.

Explosive is not machinery or equipment but a kind of goods, which loses its entity when used in the mining. The Legislature has inserted sub-section (1a) Clause (vii) to exclude certain capital goods

intended for use in mining though covered under Sec.2(25) which means the intention of the Legislature is to deny ITC only on certain specific kind of goods/inputs involved in mining work. In consequence thereof it can safely be presumed that ITC is admissible on all other inputs/capital goods. In the case of **Yogendra Nath Naskar Vrs. CIT (1969) 1 SCC 555**, it is held by the Hon'ble Apex Court that subsequent amendment in law may be referred to throw light on the earlier provisions of the Act.

In view of the discussion above, we are of the considered view that, explosive purchased on payment of tax which are used in the process of mining activities like extraction and processing to get the end product like iron ore and manganese ore, which are being sold by dealer in market and exigible to OVAT, is to be treated as input as defined U/s.2(25) of the OVAT Act and the tax which has been paid on such purchases can be claimed as Input Tax Credit U/s.2(27) of the OVAT Act against the tax payable on sale of finished products. Accordingly, it is ordered.

The appeal is dismissed on contest against the dealer as of no merit.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III

