BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 12 (VAT) of 2019

(Arising out of order of the learned JCCT & GST (Appeal), Sundargarh Territorial Range, Rourkela in Appeal No. AA V- 64 of 2014-15, disposed of on dated 30.11.2018)

Present: **Shri A.K. Das, Chairman**

M/s. Industrial Engineering Enterprises,
7 & 8 Area, Panposh, Dist. Sundargarh ... Appellant

-Versus-

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

For the Appellant : Sri S.C. Agarwal, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing: 28.07.2022 *** Date of order: 30.07.2022

O R D E R

Instant appeal is directed at the behest of the dealer-assessee against the order dated 30.11.2018 passed by the learned Joint Commissioner of CT & GST (Appeal), Sundargarh Territorial Range, Rourkela (hereinafter called as 'first appellate authority') in Appeal No. AA V- 64 of 2014-15 thereby enhancing the demand of ₹14,20,384.00 raised by the Sales Tax Officer, Rourkela-II Circle, Panposh (in short, 'assessing authority') for the tax

period 01.04.2011 to 31.03.2013 in the assessment framed u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act').

2. The facts relevant for adjudication of the present second appeal are discussed hereunder in brief –

The dealer-assessee in the instant case is engaged in manufacturing of machineries and its spare parts by utilizing the basic inputs like iron and steel goods, aluminium, casting of all types and it also uses consumables like oxygen, oxy acetylene gas, cotton waste, lubricants, welding electrodes and mig wires. It also purchases and sells finished goods both in course of intra-State and inter-State trade and commerce. On receipt of the Audit Visit Report (AVR) in Form VAT-303 submitted by the Asst. Commissioner of Sales Tax, Sundargarh Circle, Sundargarh, proceeding u/s. 42 of the OVAT Act was initiated and notice was issued to the dealer to produce the books of account. In the AVR, it was alleged that the dealer wrongly calculated the ITC in excess of CST payable during the tax period under audit. The Audit Team calculating the same proportionately on the basis of the value of the raw materials and essential consumables, which directly go into

the composition of finished products, suggested to reduce the ITC to the tune of ₹2,77,018.00 as per the provisions contained in Section 20(3) of the OVAT Act. The assessing authority basing on the AVR reduced the ITC on purchase of raw material which was sold in course of inter-State trade and commerce as per the provisions of clause (d) of sub-section (3) of Section 20 of the OVAT Act and raised an extra demand of ₹14,20,384.00.

2(a). The dealer-assessee being dissatisfied with the demand raised by the assessing authority, preferred appeal before the first appellate authority mainly on the ground that the assessing authority acted in excess of its jurisdiction in travelling beyond the AVR; that when the Audit Visit Team suggested to disallow the reversal of ₹2,77,000.00 and odd, it could not have raised demand of ₹4,71,106.00 rejecting the explanation of the dealer-assessee and that it passed the assessment order only basing on the AVR and imposed penalty twice the amount due which is unwarranted. Learned first appellate authority on hearing the learned Counsel for the dealer-assessee and examining the materials on record, opined that the dealer-assessee having not maintained day-to-day stock account

though a manufacturer, Rule 11 is to be resorted to for calculating the amount of ITC to be reduced for CST sale. It further opined that in view of sub-section (7) of Section 20, the dealer-assessee being a registered dealer should maintain accounts and such other records in respect of purchases and sales made by him and stock in trade for the purpose of determining the amount of ITC. The first appellate authority so observing, enhanced the assessment.

3. The dealer-assessee again being dissatisfied with the order of the first appellate authority, preferred the present second appeal mainly on the ground that the first appellate authority committed error of fact and law in disallowing ITC of ₹9,28,258.00 thereby making enhancement on that count.

4. The learned Counsel for the dealer-assessee challenging the impugned order vehemently urged that learned first appellate authority under misconception of law calculated the reversal of ITC against CST sales erroneously. When the books of account maintained by the dealer-assessee have not been rejected, resorting to Rule 11 of the OVAT Rules for calculation of reversal ITC is not correct. The dealer-assessee has maintained proper books of account

and annual inventory has been done and disclosed in the Profit & Loss Account and Balance Sheet duly audited u/s. 44AB of the Income Tax Act and u/s. 65 of the OVAT Ac. The first appellate authority while calculating the reversal of ITC against CST sales should have relied upon those documents, which have been prepared as per the provisions of OVAT Act and the Rules thereof. It was further argued that the provisions contained under the OVAT Act and the Rules framed thereunder do not prescribe that the goods purchased earlier should be treated to have been consumed for production of finished goods leaving no stock of raw materials. The first appellate authority adopted the principle, which is unknown to the taxing statute. The impugned order of the first appellate authority calculating reversal of ITC against CST sales is illegal, perverse and against the sanction of law, for which the impugned order is not sustainable.

5. Per contra, learned Standing Counsel (CT) for the State argued in favour of the impugned order passed by the first appellate authority. He vehemently urged that reversal of ITC against the CST sales has been calculated strictly following the principles laid down in Rule 11 of the

OVAT Rules and there is no illegality or impropriety in such calculation warranting interference of this forum. He submitted to dismiss the appeal and confirm the order of the first appellate authority.

6. I have heard the rival contention of the parties, gone through the grounds raised in the memorandum of appeal vis-a-vis the impugned orders of the forums below and the materials on record. The sole dispute centres round the principle of methodology to be adopted for reversal or reduction of ITC on account of sale of goods in course of inter-State trade and commerce. The relevant Rules have been broadly outlined in sub-rule (3) of Rule 11 of the OVAT Rules, 2005, which runs thus :-

> "(3)(a) Where a dealer effects sale of goods in the course of inter-State trade and commerce, the creditable input tax shall be calculated limiting the same to the extent of CST payable under the CST Act 1956 as provided in clause (d) of the proviso to sub-section (3) of Section 20 of the Act.
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> (b) In case of sale of goods in any tax period in the manner referred to in clause (a) above, the registered dealer making such sales, while filing return under the Act for the tax period, shall furnish the particulars of such sales and the corresponding

purchases of goods made from the registered dealers inside the State in Annexure-II of Form VAT-201.

(c) 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.

(d) 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.

(e) xx xx xx

(f) In case, the sale goods in the manner referred to clause (a) above during the tax periods referred to in clause (e) 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 as calculated in Annexure-II-A of Form VAT-201."

7. But, having gone through the orders of the forums below, it is observed that neither the forum of assessment nor appeal attempted to observe these principles. Rather, they have quantified the same in their own methods. Further, it is also seen that learned assessing

authority without making any further examination of the findings of audit with respect to quantification of reversal of ITC for the CST sale has shifted his responsibility in saying that the dealer-assessee failed to provide any documentary evidence or any logical calculation of the ITC reversal and accepted the findings of the audit. Besides, the assessing authority failed to ascertain whether the disclosure made by the dealer-assessee in Form VAT-201 is correct or not.

8. Even at the appellate forum, no proper method of calculation of reversal of ITC has been adopted. The forum below failed to quantify the proportionate value of input tax involved in the goods manufactured which were subsequently sold in course of inter-State trade and commerce. Further, by taking only ITC of the current month into account (without taking the O.B. or C.B.), and by examining only 2/3 periods instead of complete periods (2011-12 and 2012-13), calculation of reversal is done which is out of the statutory premises. Besides, learned first appellate authority has also failed to ascertain the ratio and quantum of the inter-State and intra-State transactions of the dealer for the impugned period. In such a scenario, in

absence of any concrete purchase and sale figures, the methods adopted for reversal of ITC is unacceptable.

9. Law is well settled that when the statute requires to do certain thing in a certain way, the thing must be done in that way or not at all. Other methods or modes of performance are impliedly and necessarily forbidden. In the instant case, natural justice will prevail only if the case is remanded back to the assessing authority for fresh examination of the case and to adjudicate the issue of the principle of methodology to be adopted for reversal or reduction of ITC on account of sale of goods in course of inter-State trade and commerce by following the principles enumerated in the OVAT Act and Rules thereof affording opportunity of being heard to the dealer-assessee.

10. In view of the discussions made above, the appeal filed by the dealer-assesee is allowed, the impugned orders of the forums below are hereby set-aside and the matter is remitted back to the assessing authority to adjudicate the issue of eligible ITC keeping in view the observations made herein above and by following the principles enumerated in the OVAT Act and Rules thereof affording opportunity of being heard to the dealer-assessee

as expeditiously as possible preferably within a period of three moths from the date of receipt of this order.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman