

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 9(V)/2018**

(From the order of the Id.JCST (Appeal), Cuttack-II  
Range, Cuttack, in Appeal No. AA/59/OVAT/CUII/2016-  
17/106131713000047, dtd.24.10.2017 modifying the  
assessment order of the Assessing Officer)

**Present: Smt. Sweta Mishra  
2<sup>nd</sup> Judicial Member**

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

.... Appellant

-Versus-

M/s. Aditya Steel Industries Ltd.,  
Dist. Cuttack.

.... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)  
For the Respondent : Mr. R. Chhapolia, Advocate

(Assessment Period : 01.04.2005 to 30.11.2005)

Date of Hearing: 19.06.2019 \*\*\* Date of Order:20.06.2019

**ORDER**

The present second appeal has been directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack (in short, FAA/JCST) in reducing the extra demand of Rs.3,71,178/- raised on the dealer to Nil, passed by the Assessing Authority/Deputy Commissioner of Sales Tax, Cuttack-II Circle, Cuttack (in short, AA/DCST) in the assessment order for the assessment period from

01.04.2005 to 30.11.2005 u/s.43 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The fact of the case in nutshell is that :

The instant dealer, M/s. Aditya Steel Industries at Telengapentha in the district of Cuttack carries on business in manufacturing and sale of MS Rod, MS Flat etc. by using raw materials such as Pig Iron, Sponge Iron and Scrap. The dealer was initially assessed u/s.42(4) of the OVAT Act by the AA, but subsequently after being found allowed irregular ITC, excess and unauthorised collection of tax by the AG (Audit) leading to under-assessment, the dealer was further re-assessed u/s.43 of the OVAT Act and was issued notice to appear before the AA with proper documents for necessary verification. But the dealer during the course of hearing chose to remain absent, which propelled the AA to set the dealer ex-parte. As per the provisional assessment u/s.42 of the OVAT Act, the dealer's GTO and TTO were found at Rs.6,17,52,014/- and Rs.5,93,59,623/- respectively. As the original assessment order reveals, the dealer was allowed deduction of Rs.23,92,391/- towards collection of VAT in lieu of his total tax liability i.e. Rs.23,74,384/-. Hence, an excess tax of Rs.18,007/- was found leviable on the dealer. Apart from that, the dealer was allowed ITC of Rs.20,61,955/- and Rs.3,12,429/- was adjusted towards tax deposited by him. But subsequently a corrigendum order u/s.81 of the OVAT Act was passed by the AA revising the

ITC extended to the dealer at Rs.21,85,681/- and given adjustment of Rs.2,06,710/- in lieu of Rs.3,12,429/-, which is based on the payment details available in the PCR. However, no reason for such unexplained enhancement was mentioned in the assessment record. When the dealer after receipt of notice for re-assessment u/s.43 of the OVAT Act remained absent during the hearing, the Assessing Authority basing the allegations brought against the dealer as true and correct, found the dealer guilty of allowed excess ITC of Rs.1,23,726/- and the ITC in the original assessment order became ultimately established. Accordingly, the GTO of the dealer is calculated at Rs.6,17,52,014/- and TTO after deduction of Rs.23,92,391/- towards collection of VAT, stood at Rs.5,93,59,623/-. Tax @4% on TTO including excess collection of Rs.18,007/- calculated at Rs.23,92,391/-. Since the dealer is found liable for paying less payment of tax of Rs.1,23,726/-, penalty twice of that u/s.42(5) of the OVAT Act became calculated at Rs.2,06,710/-. Thus, total tax due and penalty together comes to Rs.3,71,178/-, which the dealer is now found liable to pay as per the order of assessment.

3. Being dis-satisfied with the order of assessment passed by the AA, the dealer-appellant preferred first appeal before the learned FAA as JCST, Cuttack-II Range, Cuttack. The learned FAA-cum-JCST after thorough scrutiny of the assessment order and careful consideration

of argument from the counsels of both sides, allowed the appeal in full and reduced the entire tax demand raised by the AA on the dealer from Rs.3,71,178/- to nil.

4. Being aggrieved with such reduction from the entire demand to nil, the State-appellant preferred second appeal before this Tribunal challenging the order passed by the learned FAA as illegal, unjust, arbitrary and against the law.

5. The vital questions needs to be decided by this Tribunal in this appeal revolves around two points i.e. (i) Whether the excess collection of VAT at Rs.18,007/- during the assessment period in question is justified ? (ii) Whether the dealer has availed enhanced ITC of Rs.1,23,726/- as claimed by the State is legally sustainable or not ?

6. The appeal is heard in presence of both the counsels with the requisite materials available on record. Learned Addl. Standing Counsel Mr. S.K. Pradhan was present for the State and learned Counsel Mr. R. Chhapolia made his appearance on behalf of the dealer-respondent. Learned Counsel Mr. Chhapolia vehemently argued on the points raised by the State that, excess collection of VAT worth of Rs.18,007/- by the dealer has no legs to stand, as the dealer has already shown the said amount as his carry forward ITC to the next tax period. Secondly, the dealer is found liable to avail excess amount of ITC to the tune of Rs.1,23,726/- as claimed by the State-

appellant is completely redundant and groundless as the assessing officer in the original assessment order allowed the dealer with ITC of Rs.20,61,955/-, but consequent upon a corrigendum order passed by him, he has revised/enhanced the initial allowance of ITC to Rs.21,85,681/- applying to the best of his judgment, for which the dealer cannot be held liable as he is not a wilful defaulter for the same. Moreover, the learned STO has not given a justified reason for such illegal enhancement in the revised assessment order passed by him.

Conversely, the learned Addl. Standing Counsel for the State, Mr. Pradhan advanced his argument by drawing the attention of the Court to the following sections under OVAT Act for consideration:

**19. Net tax payable.-**

(1) The net tax payable by a registered dealer for a tax period shall be the difference between the output tax (plus purchase tax, if any), and the input tax, which can be determined from the following formula :

$$\text{Net tax payable} = (\text{O} + \text{P}) - \text{I}$$

(2) xx xx xx

(3) If the amount calculated under sub-section (1) is negative, the same shall be carried forward to the next tax period or periods for adjustment against the output tax payable.”

Learned Addl. Standing Counsel, Mr. Pradhan also in order to fortify further his stance has cited the following provision under OVAT Act which is reproduced below :

**43. Turnover escaping assessment.-**

(1) Where, after a dealer is assessed under Section 39, 40 [42 or 44] for any tax period, the assessing authority, on the basis of any information in his possession, is of the opinion that the whole or any part of the turnover of the dealer in respect of such tax period or tax periods has -

- (a) escaped assessment, or
- (b) been under-assessed, or
- (c) been assessed at a rate lower than the rate at which it is assessable;

or that the dealer has been allowed –

- (i) Wrongly any deduction from his turnover, or
  - (ii) input tax credit, to which he is not eligible,
- the assessing authority may serve a notice on the dealer in such form and manner as may be prescribed and after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he deems necessary, proceeded to assess to the best of his judgment the amount of tax due from the dealer.

(2) If the assessing authority is satisfied that the escapement [or under-assessment of tax on account of any reason (s) mentioned in sub-section (1) above] is without any reasonable cause, he may direct the dealer to pay, by way, a sum equal to twice the amount of tax additionally assessed under this section.

(3) xx xx xx”

7. Perused the assessment order, first appeal order as well as the lower court records. Gone through the materials available on record. Regarding the first point raised by the State, it is found that the dealer has already disclosed the collection of excess VAT amount as his carry forward ITC to the next tax period and it has already been allowed by the FAA in his first appeal order. So, at this point this Tribunal is not going to interfere with the same.

Coming to the next question regarding allowance of ITC availed by the dealer as against the total tax liability i.e. sum of Rs.1,23,726/-, it is pertinent to mention here that, the FAA in his order has allowed ITC of Rs.21,85,681/- after careful scrutiny of the books of accounts and other related documents and found the dealer is not a wilful defaulter and in no way responsible for the refund of excess ITC as already availed by him. Accordingly, it is ordered.

The appeal is dismissed on contest as of no merit.

Dictated and Corrected by me,

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

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