BEFORE THE FULL BENCH : ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 42 (VAT) of 2011-12

(Arising out of order of the learned DCST, Balangir Range, Balangir in First Appeal Case No. AA- 7 (KA) of 2010-11, disposed of on dt. 25.03.2011)

Present : **Smt. Suchismita Misra**, **Chairman**
Shri Subrat Mohanty, 2nd Judicial Member
&
Shri Prabhat Ch. Pathy, Accounts Member-I

M/s. Gayatri Agro Oil & Food Products,
At/PO- Kesinga, Dist. Kalahandi. . . . Appellant

- V e r s u s –

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

For the Appellant … N o n e.
For the Respondent … Mr. S.K. Pradhan, Addl. S.C. (CT)

Date of hearing: 25.03.2019 **** Date of order: 25.03.2019

O R D E R

This appeal is directed against the order dated 25.03.2011 passed by the Deputy Commissioner of Sales Tax, Balangir Range, Balangir (in short, "first appellate authority") in First Appeal Case No. AA- 7 (KA) of 2010-11 wherein he enhanced the assessment by `42,613.41 and directed the dealer-assessee to pay `11,846.00 for the tax period from 01.04.2005 to 30.09.2007.

2. As revealed from the case record the dealer-assessee runs a solvent extraction plant for manufacture of edible oil and de-oiled rice bran for which it uses boiled rice bran, raw rice bran and smooth bran as raw materials. Its establishment was visited by the Audit Team but no discrepancy was found in the Audit Visit Report (AVR) since there was no sale under the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act'). Then pursuant to an order of assessment u/S. 42 of the OVAT Act for the tax period from 01.04.2005 to 30.09.2007 the dealer appeared before the assessing officer and produced its books of account comprising purchase, sale and stock accounts for verification. On verification of returns and books of account produced by the dealer it was found that the dealer had made tax exempted sales of `9,14,42,984.18 and 4% taxable sales at `1,22,37,631.49 during the aforesaid tax period under assessment. The total sales calculated at `10,36,80,615.87. It was also found that the dealer had claimed creditable ITC of `83,83,253.71 on purchase of raw materials and `1,39,507.67 on purchase of capital goods. Thus as per Rule 11 of the OVAT Rules the assessing officer held that the proportional ITC to be allowed was `60,62,295.25 on purchase of raw materials and `80,916.81 on purchase of capital goods and as such the total amount of ITC was `61,43,212.06. On further verification of returns under the CST Act and books of account submitted by the dealer, the assessing

officer adjusted the ITC amounting to `30,08,131.84 against the CST due for the tax period from 06.07.2006 to 30.09.2007 after completing the assessment on the same day on which the order of assessment was passed. Thereafter the balance amount of ITC remained at `31,35,080.22. After adjusting the aforesaid ITC amount he found that the dealer had paid excess tax amounting to `26,45,574.97. Since the dealer was also assessed for the period 2005-06, for the period 01.04.2006 to 05.07.2006 u/R. 12(4) of the CST (O) Rules earlier and at that time an amount of `7,86,273.00 towards ITC had been adjusted against CST due, the said amount i.e. `26,45,574.97 was deducted in the present assessment order and then the balance amount of ITC remained at `18,59,301.99 at the end of the tax period assessed i.e. 30.09.2007. As the assessing officer on verification of the return of the dealer-assessee under the OVAT Act for the tax period of September, 2007 found that the dealer had carried forward ITC of `18,69,212.02 which was adjusted against CST due in subsequent tax periods and the dealer was also found to have paid excess VAT at `21,307.25 besides paying `9,460.00 at checkgates the assessing officer concluded that a sum of `30,767.25 was to be refunded to the dealer as per the provisions of law.

3. The dealer-assessee being aggrieved with the said order preferred an appeal asserting that the assessing officer had

disallowed his claim for refund u/R. 66 in Form VAT-321 dated 07.04.2008 (year 2005-06) for `8,59,081.32 and dated 23.04.2009 (year 2006-07) for `9,48,058.78. The dealer-assessee had applied for refund u/R. 66 for the ITC carried forward beyond 24 months from the end of the year of the aforesaid period and the same was not considered. Thus, the dealer was entitled to get refund and interest as per Rule 66 of OVAT Rules which should have been allowed in its favour. The first appellate authority considering the grounds raised by the dealer-appellant before him vis-à-vis the materials available on record came to a conclusion that the total creditable ITC of the dealer-assessee came to `85,22,761.38 out of which the assessing officer had allowed proportional ITC as per Rule 11 of the OVAT Rules. The dealer-appellant was also allowed creditable ITC of `61,43,212.06 in total during the relevant period out of which `37,94,404.84 and `4,89,505.25 was adjusted towards its CST and VAT dues respectively. Thereafter the balance amount of ITC in favour of the dealer-assessee remained at `18,59,301.97 and further as the assessing officer had allowed credit of tax paid by the dealer-appellant at checkgates, the dealer-appellant was allowed `18,68,761.97 in total towards ITC carried forward for the relevant period. On verification of the return for the month of September, 2007 the first appellate authority found that the dealer had disclosed regarding ITC carried forward at `18,80,608.13. Thus he (first

appellate authority) found that the dealer-appellant had taken more carried forward ITC of `11,846.16 at the end of September, 2007. As the assessing officer had allowed refund of `30,767.25 for the period the first appellate authority found the same to be wrong on account of the dealer-appellant's taking more carried forward ITC of `11,846.16. Thereafter before enhancing the assessment the first appellate authority had issued a show-cause notice to the dealer-assessee and then while enhancing the assessment by `42,613.41 he directed the dealer-assessee to pay `11,846.00 for the relevant period.

4. Being aggrieved with the aforesaid order of the first appellate authority the dealer preferred this appeal on the ground that it had paid CST amounting to `20,000.00 for the quarter ending 12/2005 and as such CST remained available for adjustment upto September, 2007 comes to `37,75,216.92. However, the assessing officer as well as the first appellate authority without referring to the GTO, TTO statement submitted by the appellant took its CST due adjustment at `37,94,404.84 and as such determined the ITC carried forward at `18,59,301.97 instead of `18,85,549.90. This finding by both the authorities below made their orders absolutely illegal. That apart the dealer had advanced claim for refund u/R. 66 of the OVAT Rules as no discrepancy was found by the Audit Team in their report, but both the assessing officer as well as the first appellate authority totally

overlooked this matter while passing their respective orders. In the instant case the State has not filed any cross-objection.

5. The dealer-assessee being the appellant in this case remained absent despite service of notice on it and, therefore, the case was heard exparte. It is also found from the case record that while enhancing the assessment the first appellate authority had sent a show-cause notice to the dealer-assessee. On perusal of the order of the first appellate authority it is found that he came to his aforesaid conclusion after verifying the books of account as well as returns submitted by the dealer-assessee during those relevant periods. He could also notice the error committed by the assessing officer while calculating the carried forward ITC and deduction therefrom. Under such circumstance when the dealer-assessee without any justifiable reason did not even appear before this forum to controvert or challenge the findings of the first appellate authority and further does not putforth any material to find as to in what manner the order of learned first appellate authority who came to a different conclusion than the assessing officer is not legally tenable it is felt that there is absolutely no reason to interfere with the order of the first appellate authority. Accordingly the impugned order is confirmed.

6. In the result, the appeal is dismissed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Prabhat Ch. Pathy)
Accounts Member-I