BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No.263(V)/2019

(Arising out of order of the ld. Addl. CST (Appeal), Rourkela, in First Appeal Case No. AA.12(V) Range/2017-18, disposed of on dtd.10.09.2019)

Present: Sri S.K. Rout
2nd Judicial Member

Sarvesh Refractories Pvt. Limited,
Kuarmunda, Dist. Sundargarh. .... Appellant

-Versus-

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

For the Appellant : Mr. S.C. Agarwal, Advocate
For the Respondent : Mr. D. Behura, Standing Counsel

(Assessment Period : 01.04.2006 to 31.03.2008)

Date of Hearing: 02.04.2022 *** Date of Order: 02.05.2022

ORDER

Challenge in this appeal is the Order dtd.10.09.2019 passed by the learned Addl. Commissioner of Sales Tax (Appeal), Rourkela (in short, ld.ACST/FAA) in First Appeal Case No.AA.12(V) Range/2017-18 allowing the appeal in part, reducing the demand to Rs.6,26,033/- and penalty to Rs.12,52,066/- against the assessment order dtd.06.05.2010 passed by the learned Joint Commissioner of Sales Tax/Assessing Officer Sundargarh Range, Rourkela (in short, ld.JCST/AO) u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) for the period 01.04.2006 to

31.03.2008 raising an extra demand of Rs.20,93,577/- including penalty of Rs.12,90,498/- and interest of Rs.1,57,830/-.

2. The appellant in the instant case, is a manufacturer and seller in Refractories Bricks. The learned AO assessed the dealer-appellant raising a tax demand of Rs.6,45,249/- u/s.42 of the OVAT Act on the basis of an Audit Visit Report (in short, AVR) disallowing the ITC amounting to Rs.19,216/0 towards purchase of goods such as Gas, Mobil, Cotton waste and laboratory equipments being the goods not consumables and effecting reversal of ITC of Rs.19,19,206/- towards branch transfer of goods valued Rs.12,45,00,180/- and goods given away by way of free issue (replacement against warranty) of Rs.1,03,23,381/-. Further, the LAO also imposed a penalty of Rs.12,19,498/- and levied interest of Rs.1,57,830/- raising the total demand to Rs.20,93,577/-.

3. Being aggrieved with the order of assessment passed by the learned AO, the dealer-appellant filed first appeal before the ld.Addl. CST (Appeal), Rourkela, who reduced the assessment.

4. Being further aggrieved with the order of the learned FAA/ACST, the dealer has preferred the present second appeal before this Tribunal.

5. Cross objection is filed by the State-respondent in this case.

6. Heard the contentions and submission of both the parties in this regard. On perusal of case record, it is evident that

the LAO has disallowed ITC of Rs.19,216/- towards purchase of consumables items such as Gas, Mobil, Cotton waste and laboratory equipments. Now questions comes whether the consumables purchased by the dealer had the direct use in processing or manufacturing of finished goods ? Because the settled principle is that, in order to claim ITC on consumables, the item must be used directly in manufacture. In this regard, Hon'ble High Court of Orissa has categorically entailed that the use must be integrally connected in the process of manufacture while deciding the case of Orissa Power Generation Corporation Ltd. Vrs. Commissioner, Commercial Taxes and Others, reported in (2008) 15 VST 587 (Ori). After have a glance to the scenario of the instant case, it becomes clear that the goods purchased by the dealer-appellant are integrally connected in the process of manufacture. So, it can certainly be told that when those goods are directly used in the process of manufacture, obviously claim of ITC on those goods is to be allowed. The main issue in the instant case is, the reversal of ITC on free issue of refractory bricks to its customers as per the contract of sale wherein a warranty clause is made available as regards the goods supplied and sold found to be defective or unfit for use are to be replaced free of cost. The goods were supplied to customers on free of cost basis against warranty is not taxable under the VAT Act. The law does not provide from claim of ITC when inputs are used in manufacturing of goods which are not sold but disposed of otherwise by way of sale i.e. replacement of defective and rejected goods. Moreover, the inputs

used in manufacturing of goods within the State for "SALE" is wholly entitled for claim of ITC. If under any circumstances, there is no element of sale or output price and tax is not leviable, then ITC cannot be claimed or allowed. In the facts and circumstances of this case, ITC has been claimed on input used in manufacturing of finished products to have been given away as free/warranty replacement of goods as per the agreement of sale made with the buying dealer.

The dealer-appellant has availed ITC on inputs used in manufacturing finished products which was sold and subsequently found to be defective and rejected by the purchasing dealer. It is pertinent to mention here that the output tax generated in the said transaction on the strength of tax invoice by the present dealer-appellant has been acted upon and utilized as ITC by the purchasing dealer. The defective and rejected goods are only replaced free of cost and the said rejected goods move outside the scope and ambit of the sale transaction. Now the question arises, whether ITC claimed on inputs in manufacturing of finished products admittedly given away otherwise sale is in conformity with the settled position of law as enumerated in the OVAT Act or not. If ITC accrued against inputs of the value of goods given away free replacement warranty, is accepted; then there would be double allowance of ITC i.e. the first ITC of inputs used in the manufacturing of finished products sold as found to be defective and rejected. The ITC on input used in manufacturing of finished products, admittedly given away free of cost as warranty

replacement of defective and rejected goods. As defective and rejected goods have been replaced by new goods, the defective and rejected goods remain unsold as damaged goods and are liable for reversal of ITC. So, in view of such, the LAO has rightly reversed the ITC in respect of goods given away by the dealer-appellant to its customers on free of cost in terms of provision u/s.20(8) of the Act.

Apart from this, with regard to levy of Rs.1,57,830/- on the impugned amount of demanded tax, interest is automatic when there is default in payment of admitted tax u/s.34 of the OVAT Act. In the instant case, dealer-appellant has not withheld the admitted tax. Moreover, interest on demand tax is payable after the same becomes due pursuant to demand notice issued. If such is the position, interest cannot be changed on the demanded tax in the assessment order before it becomes fallen due. Leaned FAA has appreciated this aspect giving due regard to the verdict of the Hon'ble Apex Court decided in the case of **J.K. Synthesis Ltd. Vrs. CTO (1994) 94 STC 422 (SC)** and rightly deleted the interest levied at Rs.1,57,830/-. So, reducing of demand to Rs.6,26,033/- and penalty to Rs.12,52,066/- by the learned FAA is genuine. The order dtd.03.02.2018 passed by the Hon'ble Division Bench in S.A.No.84/2014-15 has no application as the same relates to dispute under OST Act, 1947 for the assessment year 2004-05. But the present dispute relates to reversal of ITC under OVAT Act, 2004 relating to tax period 01.04.2016 to 31.03.2008 and also the concept of law in the present case is different.

All the aspects in this case have rightly been adjudicated upon by the ld.FAA in consonance with the settled proposition of law and hence the same needs no interference.

7. In the result, the appeal preferred by the dealer-appellant is dismissed and the order of the learned FAA is hereby confirmed. The cross objection is disposed of accordingly.

Dictated and Corrected by me,

Sd/-
(S.K. Rout)
2nd Judicial Member

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