

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.
S.A.No. 80(C)/2014-15**

(From the order of the Id. JCST, Sundargarh Range, Rourkela, in
Appeal No. AA.30(RL-II-C) of 2012-2013, dtd.14.08.2014, confirming
the assessment order of the Assessing Officer)

Present: Sri S. Mohanty
2nd Judicial Member

M/s. Shree Ganesh Rolling Mills Pvt.Ltd.,
Goibhanga, Kalunga,
Dist. Sundargarh. ... Appellant

-Versus-

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

For the Appellant : Mr. P.S. Patra, Advocate

For the Respondent : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

Date of Hearing: 13.07.2018 Date of Order: 13.07.2018

ORDER

The present appeal is preferred against the order of learned First Appellate Authority/Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, FAA/JCST) dtd.14.08.2014 confirming thereby the order of Assessing Authority/Sales Tax Officer, Rourkela-II Circle, Panposh (in short, AO/STO) in a proceeding u/s.12(3) of the Central Sales Tax (Odisha) Rules, 1957 (in short, CST(O) Rules) raising tax due, penalty and interest against the dealer.

2. The assessee-dealer, M/s. Shree Ganesh Rolling Mills Pvt. Ltd., who engaged in manufacturing of M.S. Rod, M.S. Angles, M.S. Flats and M.S. Square Bars etc. was subjected to assessment u/s.12(3) of the CST(O) Rules basing on Audit Visit Report (AVR) submitted by Sales Tax Officer, Audit for the assessment period 01.04.2008 to 31.03.2010. During assessment, it was found that, the

dealer had claimed set off of total ITC on purchases against total inter-state sale. He had not adjusted the ITC on the purchase of raw materials to the extent of CST payable on the inter-state sale of finished products. So applying the provision u/s.20(3)(d) of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act), the AO determined the ITC eligibility of the dealer at Rs.19,458/-. Since the dealer had claimed set off of ITC of Rs.34,537/-, he was asked to reverse the ITC of Rs.15,079/-. Besides reversal of ITC, the dealer was asked to pay interest of Rs.4,676/- and penalty i.e. twice of the reversal amount such as Rs.30,158/-. Thus, the total demand raised to Rs.49,911/-.

3. The dealer carried the matter before the FAA challenging the validity of the order but the FAA in the impugned order which was passed ex-parte, confirmed the order of the AO. On this backdrop, the dealer as appellant has filed this appeal with the contentions like, the impugned order suffers from gross illegality. The order itself is confusing and it needs to be quashed as law does not permit calculation of ITC or proceeding under CST(O) Rules.

4. To dispose of this appeal, a question of law raised by the dealer which goes to the root of this appeal i.e. whether the reversal of ITC in a proceeding u/s.20(3)(d) of the CST(O) Rules is maintainable or not ? Learned Counsel appearing for the dealer vehemently argued that, reversal of ITC invoking the provision u/s.20(3) proviso (d) of the OVAT Act is not permissible in a proceeding u/s.12(3) of the CST(O) Rules, 1957. The calculation of the ITC and reversal as per Sec.20(3) proviso (d) came into force w.e.f.01.06.2008 and the same is to be made in Form VAT-201 only. The present proceeding itself covers the period of 01.04.2008 i.e. a period prior to the provision u/s.20(3)(d) came into force. There is a considerable force in the argument of the learned Counsel for the dealer. In a proceeding u/s.20(3)(d) of the OVAT Act during

assessment the taxing authority only can calculate the ITC eligibility of the dealer and there the dealer should be asked to reverse the ITC if taken in excess to the legitimate value. To the query made by the Bench both the sides failed to appraise the fact of the dealer's return under VAT covering the period from 01.04.2008 to 31.03.2010. No doubt taking into consideration of the fact that, the dealer is entitled to claim ITC on the inter-state sale only to the extent of CST payable but the provision under law as it contemplates, the calculation should be done in assessment proceeding under the OVAT Act. Learned Counsel for the dealer placed his reliance in the matter of **M/s. Jindal Stainless Ltd. Vrs. State of Orissa and Another (2012) 54 VST 1 (Orissa)** and argued that, when a statute requires to do certain things in certain way, the things must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. Keeping in view the circumstances discussed above, here the assessment and the reversal of ITC as done in this case, is not sustainable in law. In consequence thereof, it is held that, the demand against the dealer on the basis of the present proceeding is not enforceable. However, it is apt to mention here that, since the authority has proceeded under a different provision under different statute, that does not debar the authority to re-open or re-assess the dealer invoking the provision u/s.20(3)(d) of the OVAT Act for the assessment period in question in accordance to law in a proceeding under OVAT Act. Accordingly, it is ordered.

The appeal is allowed on contest. The impugned order is set-aside with the observation above.

Dictated and Corrected by me,

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

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