

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

S.A. No. 228 (VAT) of 2013-14

(Arising out of the order of learned DCST (Appeal), Bhubaneswar Range, Bhubaneswar, in First Appeal Case No. AA- 106110811000126/BHI/10-11, disposed of on dt. 27.01.2011)

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

M/s. Odisha State Seeds Corporation Ltd.,
Samantarapur, Bhubaneswar. . . . Appellant

- V e r s u s -

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

For the Appellant ... Mr. N. Panda, Advocate
For the Respondent ... Mr. M.S. Raman, Addl. S.C. (CT)

Date of hearing: 25.11.2019 *** Date of order: 18.12.2019

O R D E R

This appeal is directed against the order dated 27.01.2011 passed by the Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, "first appellate authority") in First Appeal Case No. AA- 106110811000126/BHI/10-11 confirming the order of assessment passed by the Assessing Authority, Bhubaneswar-I Circle, Bhubaneswar (in short, 'assessing officer') wherein he had raised a demand of `40,00,695.00 in respect of the dealer-assessee u/S. 42 of the

Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') for the tax periods from 01.04.2005 to 31.03.2009.

2. The facts as revealed from the case record are as follows :

The dealer-assessee M/s. Odisha State Seeds Corporation Ltd., Samantarapur, Bhubaneswar carries on business in purchasing, processing and selling of certified seeds, oil seeds, pulses and tender paper etc. on wholesale basis. The Tax Audit Team of Bhubaneswar Range, Bhubaneswar had conducted tax audit of the dealer-Corporation pertaining to the tax periods i.e. from 01.04.2005 to 31.03.2009 and in course of that audit they had verified the books of account of the dealer-assessee. They had noticed that the dealer had purchased paddy seeds from the cultivators which were collected from different depots existing in the State of Odisha and sold the paddy seeds to different Deputy Directors of Agriculture as certified seeds showing the same as exempted sale. On verification those Audit Team also found that the dealer had purchased paddy seeds of Q. 960880.15 valued at `1,16,37,19,087.45 from unregistered dealers inside the State of Odisha. Thus they mentioned in their Audit Visit Report (AVR) that the dealer had sold 69,396 numbers of gunny bags valued at `9,28,242.00 showing those sales to registered dealers and as such had not collected tax on those goods which was irregular. The dealer had not reflected those sales of gunny bags in its VAT

return for which those sales of gunny bags were taxed @ 4% for the reasons that those were purchased from outside the State and such sales to registered dealers were not admissible under the OVAT Act. The assessing officer after considering all these aspects which included the claim of the dealer towards Input Tax Credit (ITC) ultimately determined the GTO of the dealer at `2,20,21,63,450.00 and after allowing deduction to the tune of `1,68,88,71,742.00 towards sale of tax exempted goods, i.e. certified seeds, determined its (the dealer's) TTO at `51,32,91,708.00. He then taxed @ 4% after allowing admissible ITC of `29,70,774.00 and VAT of `1,62,43,737.00 which was paid by the dealer and thus determined the net VAT payable by the dealer for that tax periods at `13,26,099.68. He imposed penalty of `26,52,199.36, twice the amount of tax due, u/S. 42(5) of the OVAT Act and interest of `22,396.34 to be paid by the dealer-assessee besides the tax due and penalty as described above.

3. The dealer-assessee being aggrieved with this sort of assessment preferred an appeal before the first appellate authority challenging the legality of the order of assessment while contending further that as per the purchase order, placed with the suppliers outside the State for supply of HDPE/gunny bags, it was the responsibility of the

supplier to make arrangement for delivery of the goods such as HDPE/gunny bags in the godown of the dealer-appellant and the invoice for the same should have included all charges like transportation, insurance etc. but the assessing officer held the dealer liable to pay the penalty as well as interest without any cogent reason. Further the assessing officer disallowed the ITC of `1,27,455.00 during the year 2005-06 on the ground that original tax invoices were not produced before him by the dealer. The dealer had purchased the certified seeds from National Seeds Corporation, a Govt. of India undertaking who could not issue tax invoices till the date of audit visit and at that time those invoices were likely to be obtained from it (National Seeds Corporation) shortly. However, no opportunity was given to the dealer by the assessing officer to clarify the position regarding the ITC claimed by it in its return. The first appellate authority considered all these grounds alongwith the materials on record vis-à-vis the order of assessment and held that the dealer had contravened the relevant provision by not disclosing sale of 69,396 numbers of gunny bags worth `9,28,242.00 showing those sales to registered dealers and further failed to produce the original tax invoice as required u/S. 20(6) of the OVAT Act justifying its claim for ITC of `12,07,455.00. Therefore, the assessing officer had rightly passed the order of assessment and also imposed penalty as per the provisions of law since the dealer had contravened its

statutory obligations as per the relevant law. He thus confirmed the order of assessment.

4. The dealer-Corporation then carried an appeal against the obovesaid order of the first appellate authority before this Tribunal assailing the same on the grounds that the order passed by the first appellate authority is illegal and arbitrary. The dealer is a Government of Odisha undertaking established for distribution of quality certified seeds to the farmers of the State as a part of social welfare activities of Government. The assessing officer failed to consider the documents and purchase invoices placed before him relating to purchase of gunny bags in course of inter-State transactions. As per the purchase order placed with the suppliers outside the State for supply of HDPE/gunny bags it was the responsibility of the supplier to make delivery of the goods in the godown of the appellant-Corporation and the sale invoice includes all charges like transportation, insurance etc. Thus while reiterating almost the same grounds of appeal which were raised by it before the first appellate authority the dealer contended before the Tribunal to quash the impugned order.

No cross-objection has been filed on behalf of the State in this appeal.

5. In course of hearing the appeal learned Counsel appearing on behalf of the dealer-assessee, however, instead of raising the aforesaid points and justifying its assertions in the memorandum of appeal

submitted that the dealer was not able to find the required documents to substantiate its claim. Therefore, it (the dealer) has got nothing to say in respect of the assessment done u/S. 42 of the OVAT Act in respect of its business transactions for the relevant tax periods. Learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that in view of such submission from the side of the dealer before the Tribunal there is no other option but to confirm the order of the first appellate authority which has confirmed the order of assessment in the instant case.

6. In the result, as per the discussion made above it is held that the appeal deserves to be dismissed in limine. Accordingly the order passed by the first appellate authority is hereby confirmed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Smt. Sweta Mishra)
2nd Judicial Member

I agree,

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