

a demand of `13,96,46,292.00 in respect of the dealer-assessee u/S. 43(1) and (2) 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 the business in purchasing, processing and selling of certified seeds, oil seeds, pulses, etc. on wholesale basis. The assessment u/S. 42 of the OVAT Act for the tax periods 01.04.2005 to 31.03.2009 in respect of the dealer-assessee was completed basing on the Audit Visit Report (AVR) on 27.11.2009. However, during scrutiny of the assessment record of the dealer it was detected by the A.G. (Audit) that the dealer had effected purchases of Q. 960880.15 of paddy valued at `1,16,37,19,087.45 from unregistered dealers inside the State of Odisha. Then after such purchases without effecting any sales thereof within the State the dealer-Corporation had processed the same in the Seed Testing Laboratory for preparation of "paddy seeds". Then referring the provision under Section 12(b) of the OVAT Act the A.G. (Audit) opined that since the goods were neither consumed nor used in manufacture of goods tax was supposed to have been levied at the same rate at which tax u/S. 11 of the OVAT Act would have been levied.

When this allegation of the Audit Team was confronted to the dealer, the Managing Director of the dealer-Corporation stated that the dealer had purchased only certified paddy seeds from unregistered dealers (growers) as per the guidelines determined by the State and Central Government from time to time after maintaining necessary procedure of seed certification and then the paddy seeds were sold to the Agriculture Department for distribution among the farmers of the State. The assessing officer, however, after going through the assessment record, averments of the Managing Director, A.G. (Audit) report and the written submission of the dealer did not accept the contention of the dealer-assessee. He rather went with the views expressed by the A.G. (Audit) regarding purchase of paddy seeds by the dealer which was liable for levy of purchase tax u/S. 12 of the OVAT Act. He thus held the dealer liable to pay OVAT @ 4% on the entire purchase of paddy by it. Accordingly, he (the assessing officer) determined the escaped turnover at `1,16,37,19,087.45 as taxable turnover and then calculating the tax @ 4% thereon at `4,65,48,764.00 and penalty twice the amount of tax due which came to `9,30,97,528.00 made a total demand of `13,96,46,292.00 from the dealer for that tax period.

3. Being aggrieved by the said order of assessment the dealer preferred an appeal before the first appellate authority raising the following grounds :

- (i) Reopening of assessment (escaped turnover) passed u/S. 43(1) of the OVAT Act by the assessing officer was most arbitrary and illegal.
- (ii) The original assessment was completed u/S. 42 of the OVAT Act on 27.11.2009 for the period commencing from 01.04.2005 to 31.03.2009 raising a demand of tax, penalty and interest at `40,00,695.00 against which the dealer had preferred an appeal.
- (iii) The assessing officer basing on the A.G. (Audit) objection had reopened the case and raised huge amount of tax and penalty amounting to `13,96,46,292.00 in total which is absolutely incorrect as the assessing officer had wrongly reassessed treating the certified seeds as simple seeds/grains which is not exempted from tax under the law.

It was further submitted on behalf of the dealer that Odisha State Seeds Corporation Ltd. was established under National Seeds Project for production and supply of quality certified seeds with the object of increasing the productivity and to enhance national GDS in Agriculture Sector. The assessee-Corporation has been subjected to

assessment since 01.08.1989 onwards treating "Seeds certified by Certification Agency under the Seeds Act, 1966" and marked 'Poison' as exempted goods but surprisingly the A.G. (Audit) team being merely non-technical persons could advise so wrongly that the assessing authority having failed to consider the written submission and arguments of the officers of the assessee-Corporation placed before him in course of assessment raised the demand of tax and imposed the penalty with a malafide intention in order to reach their target of collection. In the aforesaid circumstances while describing the order of assessment as most illegal the dealer-assessee had urged before the first appellate authority to set aside the same.

However, the first appellate authority considering all the aforesaid grounds and materials available on record vis-à-vis the order of assessment came to a conclusion that the dealer-appellant was engaged in purchasing, processing and selling of certified seeds i.e. oil seeds and pulses etc. on wholesale basis. The A.G. (Audit) had raised objection in view of the provision u/S. 12(b) of the OVAT Act since the dealer-appellant had effected purchases of Q. 9,60,880.15 of paddy valued at `1,16,37,19,097.45 from unregistered dealers from inside the State of Odisha which was neither consumed nor used in manufacture of goods. Therefore, tax was to be levied at the same rate at which tax u/S. 11 of the OVAT Act should have been levied. This apart the first

appellate authority also held that the assessing officer on proper analysis of the case had taken the view that the dealer had purchased grains (not seed) from unregistered growers inside the State of Odisha and after such purchases had processed the grain in the seed testing laboratory to term it as 'seed' for exempted sale. Therefore, the first appellate authority found enough force in the analysis made by the assessing officer in not declaring the purchased paddy as seed material. He thus arrived at a conclusion that the dealer-assessee had contravened the provision contained u/S. 12(b) of the OVAT Act and as such was liable to pay OVAT @ 4% on its entire purchase of paddy. In the aforesaid circumstances he confirmed the order of assessment.

4. The dealer-Corporation then brought this appeal against the aforesaid order of the first appellate authority before the Tribunal assailing the same on the grounds that since the dealer-assessee was entrusted to sell only certified seeds i.e. after being duly certified by Seeds Corporation Agency under the Seeds Act, 1966 and marked 'poison' as exempted goods the forums below had wrongly reassessed it (the dealer-assessee) by treating the "certified seeds" as 'grains' basing on the A.G. (Audit) objection. They simply raised huge demand of tax and penalty against it arbitrarily without any rhyme and reason. Thus while reiterating almost the same grounds for the appeal as was raised by it before the first appellate authority the dealer urged for quashing the impugned order.

5. The State has filed cross-objection in this appeal mentioning therein that this second appeal is not maintainable being devoid of merit. The assessing officer has rightly completed the assessment and the first appellate authority has decided the appeal basing on the statutory provisions under the Act and Rules. Further the dealer had failed to submit any documentary evidence to substantiate its claim. Therefore, the impugned order should be maintained.

6. In course of hearing learned Counsel appearing on behalf of the dealer-assessee besides filing a written note of submission also placed xerox copy of a letter sent by the Director of Odisha State Seeds & Organic Products Certification Agency, Government of Odisha (Agriculture & F.E. Department) to the Managing Director, Odisha State Seeds Corporation Ltd., Bhubaneswar requiring certain information on the mandate and activities of the Seed Certification Agency (Odisha State Seeds & Organic Products Certification Agency) being observed with regard to Production/Certification of different crop varieties of Foundation as well as Certified class of seeds. He further contended that both the assessing officer as well as the first appellate authority had acted in a very whimsical and arbitrary manner while considering the real issue involved in the case. As per Sl. No.43 of Schedule-A relating to List of Goods Exempted from VAT, seeds of oil seeds certified by the Certification Agency and Truthfully labeled seeds of oil seeds having prescribed standard and carrying prescribed label under the Seeds Act,

1966 and all seeds excluding oil seeds are absolutely exempted from any sort of tax liability w.e.f. 01.09.2007. He also pointed out a letter written by the Managing Director of the dealer-assessee to the Regional Manager, National Seeds Corporation Ltd., Calcutta with a request to furnish necessary certificate on body of the bills which were to be submitted before the Sales Tax Authorities for deduction of penalty imposed on the dealer by the Sales Tax Authorities. He further pointed out the statement which was given by the Managing Director of the dealer-assessee before the Sales Tax Officer, Circle-I, Bhubaneswar with certain explanations relating to the activities of the dealer (enclosed alongwith his written note of argument in the instant appeal) to apprise the Bench as to how and under what circumstances the certified paddy seeds purchased by the dealer is exempted from tax.

7. Learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that in this case the dealer had not purchased seeds from the unregistered dealers inside the State but it had purchased paddy and then after processing it to be fit for seeds sold the same without collecting sales tax on such sales on the pretext that those were exempted sales. There is no doubt that seeds are exempted goods and not exigible to tax but so far paddy is concerned the dealer has to pay purchase tax to the State authority in the process of procuring the same from the local cultivators and unregistered sellers.

8. Perused the order of assessment as well as the impugned order, written note submitted on behalf of the dealer- assessee alongwith copies of letters as mentioned above and the statement of the Managing Director of the dealer-Corporation regarding production and purchase of Certified Paddy Seeds. Also perused the LCR elaborately which indicates that the dealer had purchased paddy seeds as revealed from its purchase bills and receipt challans. The dealer had also furnished the details of seeds purchased by it during the years 2005-06 to 2008-09 quite clearly before the assessing officer as well as first appellate authority. Necessary certificate was also given by the Odisha State Seeds Certification Agency to that effect. From these purchase bills (as found in the record) it can be gathered that the dealer had purchased only paddy seeds and never paddy as held by the assessing officer as well as the first appellate authority in the instant case. The dealer is a Seed Corporation of Government of Odisha. No evidence or material is placed before this forum by the State- respondent to come to a conclusion that the dealer had brought paddy for some other purposes than processing the same as seeds to be sold as seeds only. Obviously one cannot purchase anything else other than paddy for preparation/ processing of paddy seeds. Under such circumstances, we find no reason as to why the order passed by the first appellate authority confirming the order of assessment will be considered as correct and in conformity with the provisions of law when

the correspondences between the Odisha State Seed and Organic Products Certification Agency, Government of Odisha (Agriculture & F.E. Department) and the Managing Director, Odisha State Seeds Corporation Ltd., Bhubaneswar (Letter No. 1442 dated 25.10.2019); Managing Director of Odisha State Seeds Corporation Limited (A Government Undertaking) and the Regional Manager, National Seeds Corporation Ltd., Calcutta (Letter No. 3312 dated 08.07.2019) and the letter written by the Managing Director, Odisha State Seeds Corporation Ltd. to the Government Department of Public Enterprises, Government of Odisha (No. 5104 dated 27.08.2013) remained uncontroverted and unchallenged by the State-respondent. Accordingly the same is hereby set aside.

9. In the result, the appeal is allowed. Cross-objection is disposed of accordingly.

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