

**BEFORE THE JUDICIAL MEMBER: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

S.A. No. 360 (V) of 2014-15

(Arising out of the order of the learned DCST (Appeal), Sambalpur Range, Sambalpur, in First Appeal Case No.AA 8/Bgh/VAT/2014-15, disposed of on dtd.26.11.2014)

P r e s e n t : Shri A.K. Panda,
1st Judicial Member

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

- V e r s u s -

M/s. Shree Shyamji Industries,
At:- Turunga, P.O.- Deogaon,
Bargarh. ... Respondent

For the Appellant ... Mr. M.L. Agarwal, S.C.
For the Respondent ... Mr. B.N. Agarwal, Advocate

Date of hearing: 14.05.2018 **** Date of order: 20.11.2018

ORDER

This appeal is directed against the order dtd.26.11.2014 passed by the learned Deputy Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (hereinafter referred to as, the learned DCST) in First Appeal Case No. AA 8/Bgh/VAT/2014-15, wherein and whereby, he has allowed the first appeal by setting aside the order of the learned Sales Tax Officer, Bargarh Circle, Bargarh (hereinafter referred to as, the learned STO) passed in an assessment u/s.42 of the of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) in respect of the respondent-dealer for the assessment period from 01.04.2011 to 31.03.2013 raising a tax demand and penalty amounting to Rs.44,766.00.

2. The respondent-dealer bearing TIN-21451701228 is a manufacturer and processor of rice and in course of business transaction, it used to sale rice, broken rice and rice bran etc. Basing upon an Audit Visit

Report (in short, the AVR), the learned STO initiated a proceeding u/s.42 of the OVAT Act against the respondent-dealer for its assessment for the period from 01.04.2011 to 31.03.2013 and issued a notice in form VAT-306 to appear and to produce the books of account and in response to the notice, the authorized representative of the respondent-dealer along with his Advocate appeared and produced the books of account which were duly examined. As per the allegation of the AVR, the respondent-dealer has advanced wrong claim of ITC in connection with husk obtained in course of processing of rice and further being used in the boiler for generation of heat. During assessment, though the respondent-dealer put forth its contention through a written submission, it failed to clarify the allegation leveled in the AVR and as such the learned STO found out that, the claim of ITC on husk is violative of the provision mentioned u/s.20(3) of the OVAT Act and accordingly disallowed the claim in this regard which is 27% of the total claim of ITC amounting to Rs.55,265.00 and finally the order of the learned STO resulted in a balance tax demand of Rs.14,923.00. Then, the learned STO also imposed penalty of Rs.29,846.00, equal to twice of the balance tax demand u/s.42(5) of the OVAT Act and as such both the balance tax demand and penalty came to be Rs.44,769.00 in total, to be paid by the respondent-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the respondent-dealer preferred an appeal before the learned DCST bearing First Appeal Case No. AA 8/Bgh/VAT/2014-15. On hearing and on examination of the materials available on record, the learned DCST accepted the contention of the respondent-dealer and accordingly allowed the appeal by setting aside the order of the learned STO. Thus, thereafter being aggrieved with the order of the learned DCST, the Revenue as appellant has preferred this second appeal.

4. Cross objection has been filed by the respondent-dealer supporting the order of the learned DCST.

5. Heard both the sides. The learned Standing Counsel appearing for the appellant-Revenue submitted that, the learned DCST has not considered the fact and law in its proper perspective and has passed the

order by allowing ITC on husk used in the rice mill boiler for generation of heat, which is violative of the provision mentioned u/s.20(3)(b) of the OVAT Act. He further submitted that, as the order passed by the learned DCST is erroneous and is not based upon the proper appreciation of the materials available on record, the same is liable to be set aside and the order passed by the learned STO being proper and justified, the same is liable to be restored. On the other hand, the learned Counsel appearing for the respondent-dealer supported the order of the learned DCST and urged for dismissal of the appeal.

6. Perused the orders of both the learned forums below and the other materials on record. As per the allegation of the AVR, the respondent-dealer had advanced a wrong claim of ITC in connection with the husk obtained in course of processing of rice and further being used in the boiler for generation of heat. On consideration of the materials on record, though the learned STO found out the claim of ITC on husk by the respondent-dealer to be illegal, the learned DCST allowed the same by relying upon in the case of **Commissioner of Central Excise v. Jawahar Mills Ltd. (2002) 125 STC (SC)**. But, on perusal of the materials on record, it is seen that, the learned DCST has not considered the matter in its proper perspective and has allowed the ITC on husk which has been used as fuel for generation of heat and no taxable goods has been sold. The case law relied upon by the learned DCST has no relevance to the facts and circumstances of the present case. Further, as per the provisions of law as mentioned in the OVAT Act and the Orissa Value Added Tax Rules, no ITC can be claimed by a dealer on that part of goods which are used as raw materials in manufacturing of finished products liable to be taxed under the Act. On consideration of the entire facts and circumstances and on scrutiny of the materials available on record, it can clearly be said that, the learned DCST has not considered the provisions of law properly and has allowed ITC on husk obtained by the respondent-dealer during processing of rice and used in the boiler for generation of heat. On the other hand, the learned STO has considered the matter properly and has passed the order in a proper and justified manner which is required to be restored.

7. In the result, the appeal is allowed. The cross objection is disposed of accordingly. The order passed by the learned DCST is set aside and the order passed by the learned STO is hereby restored.

Dictated & corrected by me,

Sd/-
(A.K. Panda)
1st Judicial Member

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