

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

S.A.No.287(VAT) of 2017-18

(From the order of the learned JCCT, Bhubaneswar Range,
Bhubaneswar, in Appeal case No.AA.106221722000155
dated 08.09.2017)

P r e s e n t :

**Shri Subrat Mohanty,
Judicial Member.**

M/s.Kunj Roller Flour Mills Pvt. Ltd.,
Plot No.171/A, Sec-A, Zone-A,
Mancheswar, Bhubaneswar.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant
For the Respondent

...Mr.B.N.Joshi, Advocate.
...Mr.S.K.Pradhan, Addl. S.C.(CT).

Period of Assessment: 01.04.2013 to 31.03.2015

Date of hearing: 13.09.2019 * * * Date of Order:16.09.2019

O R D E R

A confirming order of assessment under Section-42 of the OVAT Act raising balance tax due of Rs.12,077.00 and penalty of Rs.36,231.00 is under challenge by the dealer as appellant here in this second appeal with a prayer to delete the demand.

2. The allegations as per the audit visit report basing which the audit assessment under Section-42 for the tax period 01.04.2013 to 31.03.2015 relating to the appellant dealer was taken up are as follows:

(i) It was suggested for disallowance of ITC of Rs.49424.00 due to refraction on wheat 0.516% on the interstate purchase for the tax period 2013-14 and refraction at 0.706% for the tax period 2014-15.

(ii) Mis-match of ITC of Rs.56969.45 and

(iii) False claim of sale return.

With regard to allegation No.I the assessing authority denied ITC of Rs.49,424.00 for the tax period 2013-14 and of Rs.7333.00 for the tax period 2014-15.

With regard to allegation No.II, the assessing authority disallowed the ITC amounting to Rs.9778851.95 as per provision laid down under Section 20(3-a) of the OVAT Act.

So far as, the third allegation regarding wrong disclosure of sale return, the assessing authority, in absence of the details supporting documents like credit notes, dis-believed the sale return to the tune of Rs.241567.00.

In the result, the balance tax liability and penalty as mentioned above were raised in shape of demand notice under OVAT-312 against the dealer.

3. Felt aggrieved, the dealer carried the matter before the first appellate authority but, to the ill luck of the dealer, the first appellate authority did not interfere with the order of the assessing authority leading thereby confirmation of the demand towards the tax due and penalty.

4. When the matter stood thus, the dealer knocked the door of this forum.

5. It is pertinent to mention here that, at the inception, though the dealer has challenged the impugned order questioning the sustainability of the finding on each point of allegation but in the final hearing, the learned Counsel for the dealer fairly conceded to the findings of both the fora below save and the finding on the claim of sale return. It is contended that

the findings of the fora below is erroneous while dis-believing the claim of sale return by four number of purchasers on the basis of wrong claim of ITC by those purchasers in their regular return. It is further contended that, these purchasers had filed revised their return in a latter period. The appellant dealer is no way responsible for any wrong claim by the purchasing dealer when it is evident from the documents on record to show that these were sale return by these purchasing dealer. Thus, the present appeal became confined to the question of sale return by four numbers of purchasing dealers such as (i) M/s.Jay Maa Durga Enterprises, Rourkela (ii) M/s.Shree Hanuman Agency (iii) M/s.Arosa (iv) M/s.Sivashakti Enterprises.

6. In the argument, the learned Counsel for the dealer has categorically argued that, the findings of fora below is erroneous as the first appellate authority has gone by hypothetical assertion. Because, the sale returns relate to other dealers are duly established on the basis of returns filed by those dealers, in that event, non-disclosure of sale return and wrong claim of ITC particularly by four number of purchasing dealers no presumption can be formed that, there was no sale return by these four purchasers. If the sale return is proved otherwise it should not be denied mechanically. The view of the first appellate authority is not reasonable and conclusive as he is not adopted any procedure under law to enquire into the fact on the date of order in particular. Confirmation of order of the assessing authority in this case, it is found to be mechanical. In no case the dealer's claim should be denied if it is otherwise took place within the statutory time period as per Rule-7 of the OVAT Rules.

7. Thus, I am of the considered view that, in the peculiarity of facts here in above, the matter need to be remanded back to the assessing authority for assessment afresh

on due scrutiny of the documents relating to sale return and it is made clear that for the fault of purchasing dealer, the present dealer cannot scatter with liability to which has not lawfully liable. The present dealer cannot be imposed with tax liability against the goods returned without sale if it is established on fresh enquiry.

Accordingly, it is ordered.

The appal is allowed in part on contest. The matter is remanded back to the assessing authority for scrutiny of the documents and for assessment afresh as per the observation above.

Dictated and Corrected by me,

(Sri Subrat Mohanty)
Judicial Member.

(Sri Subrat Mohanty)
Judicial Member.