BEFORE THE ACCOUNTS MEMBER-I, ODISHA SALES TAX TRIBUNAL, KATAKA.

S.A. No.32(V) of 2019.

(Arising out of the order of the learned JCST (Appeal) Sundargarh Territorial Range, Rourkela, in First Appeal Case No. AA V 6 of 2015-16, disposed of on dt.22.10.2018)

P r e s e n t: Shri A. Bhoi, Accounts Member-I

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

- V e r s u s –

M/s. Passary Mineral Limited, At: Bijabahal, Kuarmunda, Dist- Sundargarh ... Respondent

For the Appellant: : Mr. N.K. Rout, Addl. S.C. (C.T.)
For the Respondent: : Mr. U.C. Pandey, Authorized Representative.

Date of hearing :24.09.2026 * Date of order :30.09.2026**

O R D E R

The instant appeal of the State appellant has been directed against the impugned order of the Learned Joint Commissioner of Sale Tax (Appeal), Sundargarh Range, Rourkela (herein after referred to as Learned First Appellate Authority/FAA) passed on 22.10.2018 in First Appeal Case No. AA V 6 of 2015-16, allowing refund amount to ₹14,144.00

against the assessment of ₹8,61,676.00 made by the Sales Tax Officer, Rourkea II Circle, Panposh, (herein after referred to as ld. Assessing Authority/ AA).

2. The brief facts of the case are that M/s. Passary Minerals Limited, Bijabahal, Kuarmunda, Sundargarh, (hereinafter called as 'dealer'), is engaged in the manufacturing of all types of refractories goods and refractories bricks, blocks and tiles. The dealer company has effected purchase of goods from outside the State as well as inside the State of Odisha. It has effected export sale and branch transfer of goods. On the basis of Audit Visit Report the Assessing Authority initiated assessment proceeding U/s. 42 of the OVAT Act, for the tax period from 1.4.2012 to 31.3.2014. On verification of books of accounts the Assessing Authority found that the dealer has claimed the ITC of ₹39,21,874.00 for the material period. The Assessing Authority allowed the ITC of ₹36,19,854.00 after reduction of ITC of ₹3,02,020.00. After adjustment of creditable ITC, the balance tax payable calculated to ₹38,264,384.00. Further, adjustment of ₹35,46,424.00 being paid at the time of filing of periodical returns, the balance tax calculated to ₹2,77,960.00. Penalty of ₹5,55,920.00 and interest of

₹27,796.00 levied to the dealer company. Accordingly, the balance tax, penalty and interest together calculated to ₹8,61,676.00 against the dealer company for the material period.

3. On being aggrieved by the assessment order of the ld. Assessing Authority, the respondent-dealer has preferred an appeal before the Learned. Joint Commissioner of Sales Tax, (Appeal), Rourkela, who being the First Appellate Authority allowed the appeal in full and reduced the demand to Nil raised in the assessment order.

4. The State being dissatisfied by the order of ld. FAA preferred an appeal before this Tribunal on the following main grounds:-

a) Less reversal of ITC of ₹12,68,520.00 on branch transfer of goods.

b) Less reversal of ITC of ₹52,555.00 on CST sale during the period 2012-13.

` c) Less reversal of ITC of ₹ 9,64,126.00 on CST sale during 2013-14.

d) Less reversal of ITC of ₹52,274.00 on branch transfer during 2013-14.

e) The appeal order passed by the First Appellate Authority is erroneous and prejudicial to the interest of Government Revenue.

5. Memorandum of Cross Objection has been filed by the dealer-respondent against the appeal preferred by the State.

6. Learned Additional Standing Counsel appearing for the State contends that payments made after submission of AVR were not voluntarily compliance. Once the tax assessed is correctly determined, the question of penalty must be considered on that footing. Further he submits that imposition of penalty on the balance tax due is mandatory in nature. The Additional Standing Counsel for the State submits that the order of the First Appellate Authority is found improper and requested to set-aside the appeal order and remand the matter to the Assessing Authority to reassess the dealer after correctly determining the GTO/TTO, output tax and reversal of ITC under proviso (a), (c) and (d) to Section 20 (3) of the OVAT Act giving credit for genuine payments.

7. On the contrary, the Learned Authorized Representative appearing for the Respondent Dealer contends that the Learned First Appellate Authority allowed payment of ₹2,96,616.00 made

prior to the completion of the Audit Assessment wherein the Assessing Authority was not considered the payments. Further he submitted that reversal of ITC determined by the Learned Assessing Authority was never a point of dispute. Further he submits that Learned First Appellate Authority has passed the appeal order which required no interference.

8. Heard the averments of both parties. Gone through the orders of the fora below vis-à-vis the materials available on record. The sole issue in the case regarding adjustment of payment made by the dealer before completion of assessment and reversal of ITC on CST sale.

9. On perusal of AVR record it is revealed that, the audit officials suggested to pay the balance tax of ₹78,345.00 under the OVAT Act for the tax period from 1.4.2012 to 31.3.2014. Further, the Departmental Audit Officer suggested ITC reversal of ₹2,13,758.00 for the tax period 2012-13 and ITC reversal of ₹88,262.00 for the tax period 2013-14. The Sales Tax Officer, Rourkela II Circle, Panposh, being the Departmental Audit Officer, suggested for levy of interest of ₹4513.00 for the material period. The Respondent Dealer submitted E-Receipt of ₹78,345.00 deposited on 7.2.2015 vide transaction

No.CK60393082, E-Receipt of ₹2,13,758.00 vide transaction No.CK60471672 dated 9.2.2015, E- Receipt of ₹4,473.00 vide transaction No.CK61796403 dated 7.3.2015 and E-Receipt of ₹40.00 vide transaction No.CK61797121 dated 7.3.2015 in support of payment of tax under the OVAT Act before the completion of assessment proceedings. The dealer has also paid ₹1,38,708.00 vide transaction No.CK60390555 dated 7.2.2015 in support of CST payment and ITC reversal under CST Act.

10. On perusal of assessment order it is found that the Assessing Authority has determined the balance tax of ₹2,77,960.00, interest of ₹27,796.00 and penalty of ₹5,55,920.00 for the tax period from 1.4.2012 to 31.3.2014. The First Appellate Authority determined the Gross Turnover and Taxable Turnover under the OVAT Act at ₹15,63,28,973.00 and ₹14,88,84,735.00 respectively. Tax @5% on the TTO calculated at ₹74,44,237.00. After adjustment of ITC towards CST payable, reduction of ITC due to despatch of goods to consignment sale, reversal of ITC due to CST sale, the Net ITC determined at ₹36,19,854.00. After deduction of Net ITC and adjustment of payment of tax amount from the output tax, the

First Appellate Authority found excess payment of ₹14,144.00 by the dealer and allowed refund as per provisions of law.

11. In the instant case, the Respondent Dealer has paid tax under the OVAT Act as per the Audit Visit Report except ₹88,262.00 for the year 2013-14 towards CST reversal. On careful observation of the case it is found that the Respondent Deale has deposited ₹1,38,708.00 on dated 7.2.2015 towards reversal of ITC for the year 2013-14. But the said amount is not verified by the Assessing Authority as well as by the First Appellate Authority. On perusal of Audit Visit Report, in case of CST Act, the Departmental Audit Officer suggested to pay tax of ₹1,59,002.00 towards CST payable. It is seen that ITC of ₹4,85,137.00 has been reversed by the First Appellate Authority towards CST sale and ITC of ₹7,27,658.00 is adjusted against CST payable. As per proviso (d) to Section 20 (3) of OVAT Act, ITC on purchase when sold in course of inter-State trade and commerce shall be allowed only to the extent of CST payable under the CST Act.

12. In the facts and circumstances of the case, the tax amounts deposited by the dealer are to be verified properly and to be adjusted against the output tax by the Assessing Authority

taking into account of the GTO and TTO and output tax and Net ITC including reversal of ITC for the material period. Thus, this forum thinks it proper to remand the case back to the Assessing Authority to reassess the respondent dealer.

13. In the result, the appeal filed by the State is allowed. The case is remitted back to the Assessing Authority for reasses the respondent dealer for the material period as per observations mentioned above within a period of three months from the date of receipt of this order. The Cross Objection is disposed of accordingy.

Dictated and corrected by me.

Sd/-
(A. Bhoi)
Accounts Member-I

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