BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 244 (VAT) of 2018

(Arising out of order of the learned JCST, Angul Range,
Angul in Appeal No. 106211821000010,
disposed of on 27.07.2018)

Present: **Shri G. Sharma, Chairman**

M/s. J.B. Distributor,
At- Gandhimarg, Gujuratipada,
Dist. Anugola ... Appellant

-Versus-

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

For the Appellant : Sri P.K. Jena, Advocate
For the Respondent : Sri N.K. Rout, Addl. S.C. (CT)

Date of hearing: 09.09.2026 *** Date of order : 08.10.2026

O R D E R

Challenging the legality and propriety of order dated 27.07.2018 passed by the Joint Commissioner of Sales Tax, Angul Range, Angul (hereinafter referred to as 'First Appellate Authority') in Appeal No. 106211821000010, this appeal has been filed by M/s. J.B. Distributor (hereinafter referred to as 'Dealer').

2. The brief facts relevant for disposal of this appeal run thus–

The Dealer is engaged in trading of agarbatti, coconut oil, edible snacks, papad, biscuit, besan, soap, disinfectant, ghee, etc.. Basing on the Audit Visit Report (AVR), the Sales Tax Officer, Angul

Circle, Angul, (in short, 'Assessing Authority') initiated the assessment proceeding u/s. 42 of the Odisha Valued Added Tax Act, 2004 (for brevity, 'OVAT Act') for the period 01.04.2014 to 30.09.2015. The audit team suggested for disallowance of ITC on the ground of mismatch detected from the returns filed by the sellers. On verification, the Assessing Authority disallowed the ITC and calculated the VAT due at ₹25,231.41 besides levied with penalty and interest, which resulted in demand of ₹75,879.00 for the period under assessment. Being aggrieved with the order of assessment, the Dealer preferred first appeal before the learned First Appellate Authority. The First Appellate Authority confirmed the assessment and dismissed the appeal, hence this appeal.

3. The State filed cross-objection.

4. Learned Counsel appearing on behalf of the Dealer submitted that disallowance of ITC by the fora below on the ground that the output tax has not been shown by the selling dealer in the returns filed amounting to ₹24,993.81 basing on the OVAT (Amendment) Act, 2015 having been effective from 01.10.2015 is arbitrary and bad in law. He further submitted that the imposition of penalty without assigning any reason thereof is liable to be deleted. Supporting the argument, learned Counsel relied on the decisions of the Hon'ble Apex Court in the cases of ***Hindustan Steel Ltd. v. State of Orissa***, **[1970] 25 STC 211 (SC)**; and ***State of Madhya Pradesh v. BHEL***, **[1997] 106 STC 604 (SC)**.

5. Per contra, the learned Addl. Standing Counsel (CT) appearing for the State in terms of cross-objection supported the orders of the fora below to be just and proper. He submitted that the input should be claimed if the corresponding output tax collected and paid to the Govt. exchequer, as such, the First Appellate Authority has rightly disallowed the ITC claimed by the Dealer in view of provision of

Section 20(3a) of the OVAT Act. He argued that penalty is automatic irrespective of mensrea proved. Relying on the decisions of the Hon'ble Apex Court in the case of ***Union of India v. Dharmendra Textile Processors***, **[2008] 18 VST 180 (SC)**; and Hon'ble High Court of Orissa in the case of ***Jindal Stainless Steel v. State of Orissa***, **[2012] 54 VST 1 (Orissa)**, he prayed for dismissal of appeal having no merit.

6. On perusal of record, it transpires that the Assessing Authority verified the suggestion of the Audit Team and disallowed the ITC claimed amounting to ₹22,056.00 against the purchase made from M/s. Swastik Traders as the selling dealer had filed 'nil' return and not paid any tax during the year 2014-15. Further, the Assessing Authority disallowed ITC to the tune of ₹2,539.40 against purchase made from M/s. Paras Corporation as the selling dealer had not shown one Bill No. 02 dated 09.04.2014 and also shown less in Bill No. 13 dated 23.04.2014. Consequently, the assessment resulted in demand of tax along with interest and penalty as aforesaid. In appeal, the First Appellate Authority in view the provision of Section 20(3a) of the OVAT Act upheld such demand observing that the output tax collected was not actually paid into the Govt. Treasury.

It is felt apposite to refer Section 20 of the OVAT Act, which deals with ITC. Sub-section (3) of Section 20 of the Act provides that ITC shall be allowed for purchases made within the State from a registered dealer holding a valid certificate of registration in respect of goods intended for the purpose of sale or resale inside the State and under other contingencies stated therein. Sub-section (6) of Section 20 of the Act specifies that ITC shall not be claimed by a dealer for any tax period, until it receives tax invoice in original evidencing the amount of input tax. It is also provided in sub-Section (7) thereof that a dealer who intends to claim ITC shall, for the purpose of determining

the amount of ITC, maintain accounts and such other records as may be prescribed in respect of purchases and sales effected and stock held. The circumstances under which ITC shall not be claimed stand clearly enumerated in sub-Section (8) of the Section 20 of the Act. From the above, it is amply clear that there is no statutory obligation one the part of the buying dealer not to avail ITC unless the selling dealer deposited the entry tax in the Government exchequer. Furthermore, as per Section 95 of the Act, burden of proof always lies on the dealer, who claims ITC, which can be discharged on production of invoices for having purchases made. In other words, once invoices are produced by a dealer showing payment of entry tax, the burden of proof, as envisaged u/s. 95 of the Act, stands satisfactorily discharged for the purpose of availing ITC which cannot be disallowed for the selling dealer's default in depositing the tax.

Section 20(3a) of the OVAT Act r/w. Rule 11A(1) of the OVAT Rules provide that no amount of ITC shall be allowed to a registered dealer on any purchase of goods in excess of the amount of such tax actually paid under the Act, which has come into effect w.e.f. 01.10.2015. The present dispute relates to the pre-amended period, i.e. 01.04.2014 to 30.09.2015, as such, the amended provision has no application to the present case in view of the cardinal principle of law is that a statutory obligation introduced by way of an amendment carrying a disability shall have to be applied prospectively and not from an anterior date. It appears that the authorities below disallowed the ITC claimed by applying the provision of Section 20(3a) of the OVAT Act, which is not applicable to the present period under assessment. Therefore, this forum is of the considered opinion that for any such alleged default of the selling dealer in filing less return or showing nil output tax, the instant Dealer cannot be penalized and denied the ITC

adjustment to the tune of ₹25,232.00, for which it can safely be concluded that the authorities below fell into error and thus, warrants interference in appeal. The above view finds support from the decision of this Tribunal (Full Bench) in **S.A. No. 389 (VAT) of 2015-16** dated 15.09.2020 (***State of Odisha v. M/s. CMM Infra Project Ltd.***).

7. In the result, the appeal filed by the Dealer stands allowed and the impugned order of the First Appellate Authority is hereby set aside. The matter is remanded to the Assessing Authority for computation of tax liability of the Dealer afresh as per law keeping in view the observations made supra within a period of three months from the date of receipt of this order. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman