

**BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.**

**S.A.No. 72(V)/2011-12**

(Arising out of order of the Id. DCST, Jajpur Range, Jajpur Road,  
in Appeal No.AA-310-CU-III-10-11,  
disposed of on dtd.8.4.2011)

**Present:** Miss S.Mohapatra & Sri B.K.Behera  
Judicial Member-I Accounts Member-II

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

... Appellant

**-Versus-**

M/s.Anada Export, Golagaon,  
Pankalpal, Jajpur.

... Respondent

For the appellant : *Mr. Mark Wright, Adm*  
For the respondent : *None*

Date of Hearing: 24.04.2015 \*\*\* Date of Order: 28.05.2015

**ORDER**

The present second appeal has been directed against the order of the learned Deputy Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short, 'DCST') passed in Appeal Case No. AA-310-CU-III-10-11 dtd. 8.4.2011 allowing the appeal on order of assessment passed by the learned Sales Tax Officer, Jajpur Circle, Jajpur Road (in short, STO) for the period from dt.01.04.2007 to 31.03.2009 U/s.42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT' Act) .

2. The brief facts of the case is like this :

That the respondent is a partnership concern engaged in the manufacturing of chrome ore concentrate from chrome ore through beneficiation process. Basing one AVR (Audit Visit Report), the Id.STO issued notice for assessment U/s.42 of the OVAT Act for the period from dt.01.04.2007 to 31.003.2009 and examined the books of account produced by the respondent. In their report, the Audit pointed out that the respondent

had effected purchase of some goods i.e. battery, channel, steel sheets, IIR plate, electrical spares, DG spares, electrical goods etc. and claimed input tax credit on those goods although the goods in question did not cover under 'capital goods'. The Audit suggests disallowance of ITC on those goods. Further the Audit pointed out that during the period under assessment, the respondent has shown processing/manufacturing loss of ore to the tune of 14692.015 MT valued Rs.9,23,228.00 and 15272.450 MT of ore valued Rs.1,79,840.00 for which he is not entitled to avail ITC U/s.20(9)(b) of OVAT Act. The Id.STO after due verification agreed with the findings of the Audit Report and after confronting the allegations in the report raised a demand of Rs.7,46,493.00 which is inclusive of penalty of Rs.4,97,661.76 imposed U/s.42(5) of the OVAT Act.

3. Being aggrieved with the order of assessment the respondent filed appeal before the Id.DCST challenging the order as illegal, arbitrary and bad in law. The Id.DCST at appeal observed that the goods in question like Battery, Volite liner, spare of motors transformer, electrical panel board gear reducer/Motor, succession hose, grease EP, 33KU lighting Arrester, TQ oil, V Belt, Poluthes pipe, SC lighting arrester, screen deck, drive panel, spare of electrical panel grease, machinery spare parts, Roller bearing, cover plate, channel, Roller bearing, pump spare, tools, spring steel sheet, IIR plate Iron steel, electrical goods, DG spare, Rubber liner, connection etc. are all capital goods included in Schedule B, hence the dealer is entitled to get benefit of ITC which was disallowed by the Id.STO at assessment. The Id.DCST therefore quashed the assessment to that extent and allowed the appeal.

4. Being aggrieved with the order, the Revenue filed appeal before this forum challenging the order of appeal as illegal on the following grounds:

- (a) The order of the STO disallowing ITC to the category of goods suggested in the audit visit report and loss for beneficiation is correct and be restored.
- (b) Order of the ACST allowing ITC be quashed.

5. Heard the appeal. Gone through the impugned order of appeal and the order of assessment. For the appellant-Revenue, the Id.Addl.Standing Counsel (C.T) appeared and argued his case. Nobody appeared for the respondent in spite of the opportunities extended.

The only point to decide at this forum is whether goods like battery, volute liner, spare of motors, transformer, electrical panel, board gear reducer/motor succession hose, Grease EP, 33 KV lighting Arresto, TQ oil, V Belt, Poluthes pipes, SC lighting arrester, screen deck, drive panel, spare of electrical panel, grease, machinery spare parts, roller bearing, cover plate, channel, Roller bearing, pump spares, tools, spring, steel sheet, HR plate, Iron steel, electrical goods, DG spares, Rubber liner, connection etc. are inputs and eligible for input tax credit.

Section 20 of OVAT Act deals with Input tax credit. It is relevant here to quote section 20(3)(b) which is applicable in the instant case.

**Section 20(3)(b)**

Input tax credit 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 – use as inputs or as capital goods in the manufacturing of goods other than those specified in Schedule 'A' and Schedule 'C' and Schedule 'D' for sale.

"Input" is defined U/s.2(25) of the OVAT Act as any goods purchased by a dealer in course of his business for resale or for use in the execution of works contract, in processing or manufacturing, where such goods directly goes into composition of finished products or packing of goods for sale and includes consumable directly used in such processing or manufacturing.

"Capital goods" is defined in Section 2(8) of the OVAT Act as follows :

Means plants, Machinery and equipments used directly in the process of manufacturing but does not include such plant, machinery and equipments which are used for the purpose and in the circumstances specified in schedule 'D'.

It is relevant here to mention that "components" and "spare parts" were included in the definition of capital goods by an amendment w.e.f. 1.6.2008. The period of assessment in the instant case relates to the tax period 1.4.2007 to 31.3.2009. Going by the definition of "input" and "capital goods" till 31.5.2008 the goods in question for which this appeal has been made are neither input nor are capital goods for which the respondent dealer is not entitled for availing input tax credit. From 1.6.2008 to 31.3.2009 some of the goods in question may cover under capital goods i.e. components and spare parts for which the respondent is eligible for input tax credit. For this the ld.STO is to conduct an inquiry and after giving the respondent a reasonable opportunity to explain his stand on the matter is to allow only those goods as 'capital goods' which fulfil the criteria of capital goods after 1.6.2008.

6. In the result, the appeal is allowed. The matter is remanded back to the ld.STO for fresh assessment as per the observation made above.

Dictated & corrected by me,

Sd/-  
(B.K. Behera)  
Accounts Member-II

Sd/-  
(B.K. Behera)  
Accounts Member-II

I agree,

Sd/-  
(S.Mohapatra)  
Judicial Member-I

ATTACHED AS TRUE COPY

Computer Stenographer