

BEFORE THE ADVANCE RULING AUTHORITY, ODISHA SALES TAX
TRIBUNAL: CUTTACK.
(FULL BENCH)

A.R.Application No.01 of 2012-13

Present : Shri B.N.Das, Chairman.
Shri S.K.Paty, 1st. Judicial Member.
&
Mr.P.C.Mishra, Accounts Member-II.

M/s. Kisan Industries,
Kantabanjhi, Bolangir.

...Applicant.

-Versus-

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

...Respondent.

For the Applicant
For the Respondent

: Mr.R.K.Jain, Manager.
: Mr.R.Rout,SR-I.

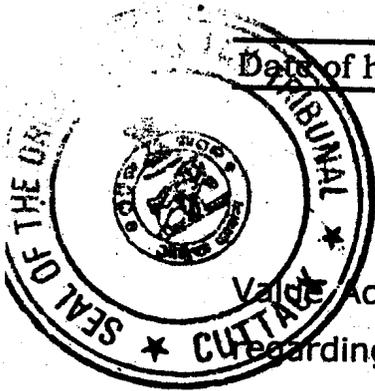
Date of hearing : **08.08.2012**

Date of order : **04.09.2012**

ORDER

This is an application under section 78(A)(1)(i) of Orissa Value Added Tax Act, 2004 (in short, the OVAT Act) for advance ruling regarding determination of VAT on 'mustard oil cake' the business-commodity of the dealer applicant.

2. The brief fact necessary for disposal of the present application is that the dealer is a registered dealer bearing TIN No.21501800383. He deals in mustard oil cake on wholesale basis. As per petitioner, he purchases mustard oil cake from M/s.Mahalalxmi Traders, Hyderabad in State of Andhra Pradesh and after transporting the same from Hyderabad to Nawahat in the district of Puri, Odisha, he sales it to cultivators at Nawahat. This item of commodity namely mustard oil cake is an organic manure acutally used for beetle vines and vegetable crops for increasing the yield besides its general use as cattle



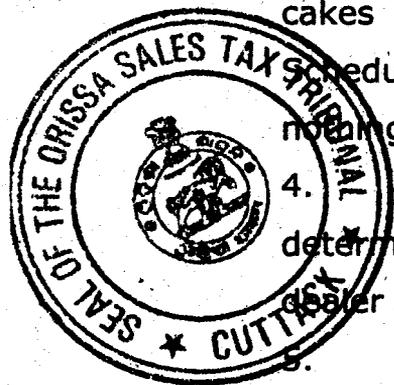
feed. As per the entry in serial no.26 of Schedule-A of the OVAT Rate Chart organic manure is exempted from tax whereas as per serial no.81 of Schedule-B part-II of the same rate chart, oil cake is exigible to tax @4%. As per the dealer, he deals in mustard oil cake as organic manure used in agriculturature which is exempted from levy of tax. Hence he has come up with the present application to get clarification as to whether the sale of mustard oil cake at Nawahat in the district of Puri as organic manure is liable for exemption under the OVAT Act or is exigible to tax.

3. The State respondent has filed written notes of objection contending therein that the petitioner has claimed that he sells mustard oil cake as organic manure. But basing upon judicial pronouncements of the Hon'ble Courts, it should be accepted that the use to which any goods must be put is immaterial and does not bear on its character as a particular category of goods. Accordingly, the rate of tax of mustard oil cakes should be imposed @4% in view of specific entry no.81 of Schedule-B Part-II of the OVAT Rate Chart as mustard oil cake is nothing but oil cake.

4. In view of the above contentions of the parties, it is to be determined; whether the goods mustard oil cake being dealt with by the dealer are exigible to tax under the OVAT Act.

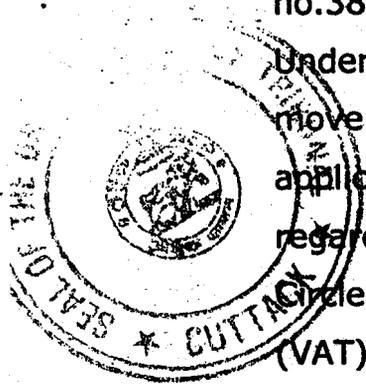
5. It is not dipusted that the dealer is a registered dealer and it deals in mustard oil cake. As per the dealer he purchases mustard oil cake from M/s.Mahalaxmi Traders, Hyderabad and sales the same at Nawahat in the district of Puri, Odisha. The dealer has filed this application seeking clarification as to whether sale of mustard oil cake at Nawahat is liable to be taxed under the OVAT Act or the same is exempted from VAT.

6. The dealer has submitted written notes of application relying upon the documents like copy of memo no.21430 dtd.6.5.2011 which is addressed by Under Secretary to Government of Odisha, Finance Department forwarding the representation of the present



petitioner to CCT (O), Cuttack for necessary consideration. In this letter the copies of three representations of the present petitioner were forwarded to CCT (O) Cuttack for taking necessary action in the matter. In these representations the dealer had prayed for three reliefs; namely granting exemption to the mustard oil cake used as organic manure, clarification as to whether oil cakes of mustard, sal, Karanj etc. used as organic manure are exempted or taxable under the VAT Act and thirdly issue of way bill and 'C' declaration forms. The dealer has also relied upon the copy of memo no.22841 dtd.17.5.2011 which is forwarding letter of the Under Secretary to Government of Odisha regarding earlier letter no.13066/F.dtd.30.3.2011 and no.21429/F. dtd.6.5.2011 addressed to the CCT (O), Cuttack on the matters stated above. Although the petitioner has relied upon another document i.e. order no.38725/F. Dtd.7.9.2011, the copy of such document is not being available in the record which appears to have not been filed by the dealer but the dealer has also relied upon copy of letter no.16676 dtd.1.10.2011 given by the DCCT (VAT) of the Office of CCT (O), Cuttack addressed to Under Secretary to Government of Odisha, Finance Department, Bhubaneswar with reference to the aforesaid letter no.38725/F. dtd.7.9.2011 wherein the DCCT (VAT) has reported to the Under Secretary that the present dealer has already been advised to move this Tribunal to seek clarification with regard to rate of tax applicable to the commodity and also to approach appropriate authority regarding issue of statutory forms. That apart Id. ACCT, Kantabanjhi Circle and the JCCT, Bolangir Range have been requested by DCCT (VAT) by the Office of CCT (O), Cuttack to enquire into the above matters and to submit a detailed report in this regard. It appears that the crux of the prayer of the dealer is that he seeks clarification as to whether mustard oil cake sold by him as organic manure is exempted from tax or is liable to tax under the provision of OVAT Act.

7. Along with the aforesaid documents the dealer has also filed copy of assessment order dtd.13.7.2011 in Form VAT-312 which



reveals that the dealer has been assessed for the period from 1.4.05 to 31.3.10 on receipt of audit visit report in Form VAT-303 from Id. ACST, Kanatabanjhi and in his audit visit report Id. ACST, Kantabanjhi has requested the Id. assessing officer for initiating the assessment proceeding under section 42 of the OVAT Act read with Rule-49 of the OVAT Rules and accordingly the dealer has been noticed and the said order of assessment has been passed. The dealer has also relied upon copy of the assessment order under section 9-C of the Odisha Entry Tax Act passed on dtd.13.7.2011 by the LAO i.e. Assistant Commissioner of Sales Tax, Bolangir Range, Bolangir for the aforesaid period from dt. 1.4.05 to 31.3.2010. From the aforesaid materials it is revealed that the dealer has come up with the present application under section 78-A of the OVAT Act on dtd.9.4.2012 i.e. after he has been assessed under OVAT Act and OET Act vide orders dtd. 13.7.2011. Section 78-A(3) of the OVAT Act reads as follows:

78A. Advance Ruling on disputed questions.-

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xxx

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(3) An application seeking advance ruling by any registered dealer shall not be entertained on the following grounds, namely:

(i) if the disputed question on which advance ruling has been sought is the subject-matter of any assessment or appeal proceeding concerning the said dealer, or

(ii) if the disputed question arises from any order already passed under this Act.

8. In view of the aforesaid facts and circumstances, it is crystal clear that the dealer has come up with the present application after an order of assessment has been passed by the competent authority. In view of the prohibition contained in Section 78(A)(3)(b) of the OVAT Act stated supra at this stage i.e. when orders of assessments are passed under OVAT and OET Act, the present application of the dealer before this forum under section 78-A of the Act is not



maintainable. The dealer has not whispered what step, if any, is taken by either party after the orders of assessments are passed on dtd.13.7.2011. It is true that in the order of assessment under the OVAT Act there is observation that organic manure is exempted from levy of tax as per entry vide serial no.26 of Schedule-A but as per revenue this item being dealt with by the dealer is liable to VAT @4% as per entry in Sl. No.81 of Part II Schedule-B, OVAT Rate Chart. The dealer is silent as to why it has come up with the present application when assessment orders are passed in his favour regarding mustard oil cake as tax exempted commodity. The state respondent is silent if it has taken any step after the order of assessment is passed by the Id. ACST dtd.13.7.2011. When the matter in dispute is already in question under the orders of assessments passed by the learned assessing authority, in our considered opinion, the Tribunal cannot invoke its jurisdiction at this stage under section 78-A of the OVAT Act.

9. In the ultimate analysis, the A.R. application filed by the dealer is not entertained and the same is hereby rejected.

dictated & corrected by me,



(S.K.Paty)
(S.K.Paty)
1st. Judicial Member.

(S.K.Paty)
(S.K.Paty)
1st. Judicial Member.

I agree,

(B.N.Das)
(B.N.Das)
Chairman.

I agree,

ATTESTED AS TRUE COPY

(P.C.Mishra)
(P.C.Mishra)
Accounts Member-II.

(Senior Stenographer)
Senior Stenographer.