

**BEFORE THE ADVANCE RULING AUTHORITY: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

Advance Ruling Application No.02/2013-14

Present : Shri M.S. Dhal & Shri A.K.Mahapatra & Shri J.Pradhan
Chairman Judicial Member-II Accounts Member-II

M/s.Rayagada Minerals & Chemicals (P) Ltd.,
Rayagada. ... Applicant

- Versus -

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

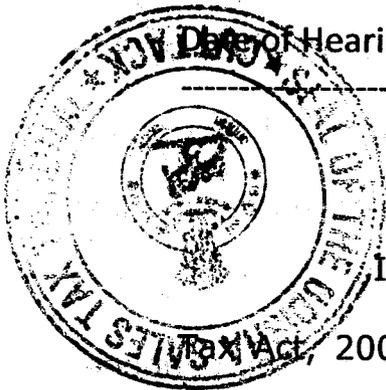
For the Appellant ... Mr. D.K. Mohanty, Advocate
For the Respondent ... Mr. M.S. Raman, Addl. Standing Counsel (CT)

Date of Hearing ... 14.02.2014 **** Date of Order ... 04.03.2014

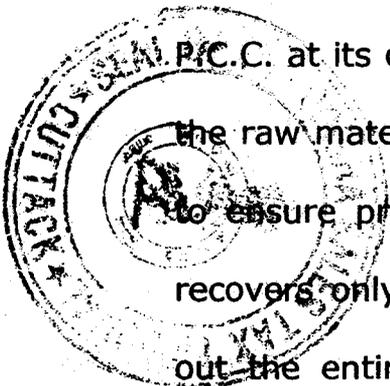
ORDER

Invoking the provision of Sec.78-A of Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act'), the present application has been filed by the applicant seeking a clarification by way of advance ruling from this authority as to entitlement of the applicant for the input tax credit on the goods purchased by it within the State of Odisha for the purpose and claim for refund of tax already paid while purchasing the goods from the registered dealers.

2. Bereft of unnecessary details the relevant facts for the disposal of this application are as under :



The applicant under the name and style M/s. Rayagada Minerals & Chemicals Pvt. Ltd. (in short, Rayagada Minerals) is a registered dealer under OVAT Act and CST Act. It (the applicant) was approached by M/s. J.K. Corporation Ltd. (in short, J.K. Paper) a leading manufacturer of printing, writing and coated paper products having its plant located at J.K.Pur, Rayagada, to set up the facility for conversion of raw materials to be supplied by J.K. Paper to obtain precipitated calcium carbonate (PCC). The applicant has also set up such facility in the premises of J.K.Paper for conversion of raw materials supplied by the J.K. Paper to P.C.C. The lime and the carbon dioxide are the principal raw materials for manufacturing of P.C.C. The said raw materials are supplied by J.K. Paper free of cost to the applicant. Besides, other facilities like water, electricity, fuel, gas etc. are also provided by J.K. Paper to the applicant free of cost for the above purpose. However, the applicant uses some chemicals in the process of conversion of lime into P.C.C. at its cost which is very negligible compared to the overall cost of the raw materials of the product. It is the responsibility of the petitioner to ensure production of the PCC in specified quantity and quality and recovers only the conversion charges/cost from J.K. Paper for carrying out the entire job. According to the applicant the overload relay are purchased and used in the manufacture of P.C.C. and the cost thereof is debited to the business of the applicant. Further, the process undertaken by the applicant qualifies to be manufacture since the conversation process for transformation of lime to P.C.C. results into a new distinct article. Again the overload relay purchased by the applicant being spare

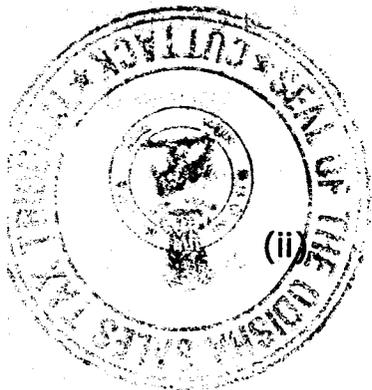


parts for the plant and machineries, are used in the process of manufacturing by the applicant. The said item can be termed as capital goods and the same being used in the process of manufacture qualifies as an input. Again according to the applicant the aforesaid goods being taxable and VAT having been charged thereon by the selling dealer namely M/s. Vdeal Systems, Bhubaneswar and such goods being used in course of business of the applicant in conversion of raw materials to PCC, the applicant is entitled for the ITC. Under the aforesaid facts and circumstances, the applicant has sought for clarification from this authority on the following disputed questions :

(i) Whether on the facts and in the peculiar circumstance of the case the applicant is eligible to claim input tax credit on the goods purchased within the State of Odisha and used in the process of conversion of lime to PCC ?

(ii) Whether on the facts and circumstances of the case, the applicant is otherwise eligible to claim refund of tax, i.e. the amount of VAT paid by the applicant while purchasing the goods from the registered dealers inside the State of Odisha?

3. During the course of hearing on the Advance Ruling Application, the learned counsel for the applicant has filed certain documents like invoice for conversion charges issued by the petitioner on the customer (J.K.Paper Ltd.) and invoice of purchase of overload relay. It is strenuously urged by Sri Mohanty, the learned counsel for the applicant that though the applicant recovers the cost from J.K.Paper for conversion of lime to PCC, yet in the process undertaken



by him some chemicals and spare parts like overhead relay are used at the cost of the applicant. It is further submitted by him the aforesaid overhead relay purchased by the applicant is being used as capital goods in the process of manufacture and the same qualifies as an input. Once again it is contended by him that since the said item is taxable goods and VAT has been charged by the selling dealer namely M/s.Vdeal Systems, Bhubaneswar, the applicant is entitled for ITC as per provision of Sec.20 of the OVAT Act. Thus, it is urged by him that in the aforesaid background of facts the clarification sought for by the applicant as per his application should be answered by this Forum in his favour in the interest of the justice.

4. On the other hand, the learned Addl. Standing Counsel (CT), Mr. Raman appearing for the Revenue has vehemently opposed the aforesaid contentions raised on behalf of the applicant and contends that the application is not maintainable in the eye of law. It is further submitted by him that in view of candid admission by the applicant that it only renders service of conversion of raw materials to PCC, the said raw materials are supplied free of cost by M/s.J.K.Paper, there is no transfer of property in goods to the contractee i.e. M/s.J.K. Paper Ltd. Once again it is argued by him that there being no taxable event having occurred in the hands of the applicant in the process, the question of claiming input tax credit by him does not arise and so also he is not entitled for refund of any amount of VAT claimed to have been paid by him. Accordingly, it is submitted by him to reject

the advance ruling application filed on behalf of the applicant, the same being devoid of any merit.

5. Having regard to the aforesaid rival contentions advanced on behalf of both the parties, now it is to be examined as to if the applicant herein is entitled to claim for the input tax credit on the goods purchased by it and also eligible to claim refund of tax already paid by him. So far as the clarification on the first point, i.e. on input tax credit, is concerned, at the outset it would be profitable to bear in mind the relevant provisions in this regard before adverting to the detail discussions thereon. The term 'input tax' having defined under Sec. 2(26) of the QVAT Act as follows :-

"Sec.2(26) : Input tax in relation to any registered dealer means the tax collected and payable under this act in respect of sale to him of any taxable goods for use the in course of business."

Similarly the term "input tax credit" has been defined under the said Act U/s.2(27) as-

"The setting off the amount of input tax or part thereof U/s.20 against the output tax, by a registered dealer other than a registered dealer paying turnover tax U/s.16".

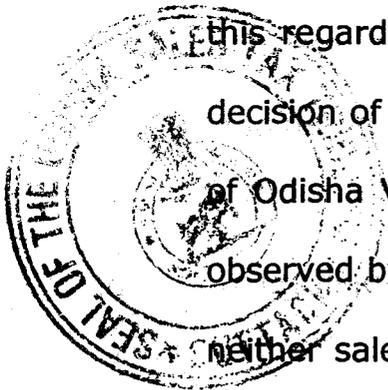
In view of the aforesaid definition of "input tax credit", it is now to be understood the meaning of the term "output tax" which has been defined U/s.2(29) of the said Act as -

clearly mentioned in para-18 of the application that no taxable event under the OVAT Act occurs in the hands of the applicant while rendering such service to the contractee. Thus, it has been rightly argued on behalf of the Revenue that in the face of such admission when there is no taxable event there is no scope for claiming input tax credit by the applicant. It is also an admitted fact that the entire transaction between the applicant and its contractee is a works contract, wherein there is no transfer of property of goods, since the applicant processes the PCC only on receiving the raw materials by the contractee i.e J.K. Paper and thereafter supplies the said products to the contractee. Thus, the said transaction can neither be considered as "sale" nor "deemed sale". In

this regard a reference has been made on behalf of the Revenue on a decision of our Hon'ble High Court in STREV.No.28/2002 in case of State of Odisha Vrs. M/s. Nava Bharat Ferro Alloys Ltd., wherein it has been observed by their Lordships that "in absence of transfer of goods there is neither sale nor deemed sale so as to attract sales tax". Such finding of

the Hon'ble Court is with reference to the issue which cropped up during the assessment before the Taxing Authority as to whether conversion of chrome ore and coke into high carbon ferrochrome involved sale or works contract. This Tribunal answered the said issue holding that no transfer of property in goods has been taken place and the transaction only involves execution of works contract and in absence of transfer of goods, there was neither any sale nor deemed sale to attract sales tax.

The said view of this Tribunal has been confirmed in case of State of



Odisha Vrs. M/s. Nava Bharat Ferro Alloys Ltd. (Supra). The aforesaid ratio decided in the case negatives the claim of the applicant.

7. That apart, the application filed by the applicant does not disclose as to if the applicant maintains any accounts and such other records as prescribed in respect of purchases and sales made by it and stock in trade held as per the requirement of the provision U/s.20(7) of the OVAT Act. Admittedly, no such accounts or records have been produced along with the application nor during the course of hearing before this forum on behalf of the applicant in support of its claim. Thus, in absence of any such relevant documents the claim of the input tax credit by the applicant also cannot be entertained. Again in absence of any realisation of output tax by the applicant within the purview of Sec.2(28) of the OVAT Act, the question of setting off the amount of the input tax or part thereof U/s.20 of the OVAT Act against the output tax or in other words the claim of input tax credit by the applicant does not arise.

8. Now coming to the question of refund of the VAT said to have been paid earlier by the applicant, Sec.57 & 58 of the OVAT Act deal with the said matter. As it has been admitted by the applicant there is no liability for payment of VAT for the activities undertaken by it since the transaction undertaken by the applicant happens to be a works contract and does not result any transfer of property in goods as mentioned paragraph in 16 of the application. The VAT paid by the applicant for purchase of the overload relay to be used in the manufacturing process of the PCC, cannot be refunded in view of the fact that the applicant does

not satisfy the conditions as provided U/s.57 & 58 of the OVAT Act. Rather the payment of VAT for the said item purchased by the applicant is like purchasing of goods for its self use on payment of VAT, for which the question of refund of the same does not arise.

9. Thus, taking into consideration the aforesaid discussions, this forum comes to a definite conclusion that the application filed by the applicant seeking advance ruling on the points is devoid of any merit and accordingly, the same is liable to be rejected.

10. In the result, the application filed by the applicant is hereby rejected.

Dictated & corrected by me,

Sd/-
(M.S. Dhal)
Chairman

I agree,

I agree,

Sd/-
(M.S. Dhal)
Chairman

Sd/-
(A.K.Mahapatra)
Judicial Member-II

Sd/-
(J.Pradhan)
Accounts Member-II

TRUE COPY ATTESTED
Dr
Computer Stenographer