

BEFORE THE ADVANCE RULING AUTHORITY: ODISHA SALES TAX TRIBUNAL,

CUTTACK

# 10  
No 21752  
d. 20.12.12

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**A.R.A.No.08 of 2012-13**  
**A.R.A.No.09 of 2012-13**  
&  
**A.R.A.No.10 of 2012-13**

Present Shri S.K. Paty, Shri G.C.Patnaik, & Shri C.Jena,  
1<sup>st</sup> Judicial Member. 2<sup>nd</sup> Judicial Member. Accounts Member-III.

**A.R.A.No.08 of 2012-13**

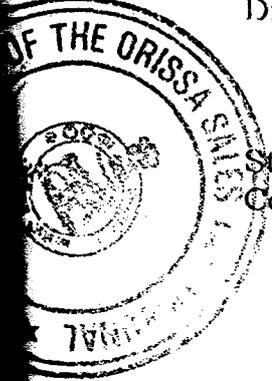
M/s. Sri Sairameswara Solvents (P) Ltd.,  
Vill: Majurmunda, P.O.Ambaguda,  
Dist: Koraput-764055.

... Applicant.

-Versus-

State of Odisha, represented by the  
Commissioner of Sales Tax(O),Cuttack.

... Respondent.



**A.R.A.No.09 of 2012-13**

M/s. Shiv Shakti Oils Pvt. Ltd.,  
Ambaguda-764055 (Via: Jeypore)  
Dist: Koraput.

... Applicant.

-Versus-

State of Odisha, represented by the  
Commissioner of Sales Tax(O),Cuttack.

... Respondent.

**A.R.A.No.10 of 2012-13**

M/s. Arihant Edible Oils Pvt. Ltd.,  
Ward No.12, P.O. Kesinga-766012  
Dist: Kalahandi.

... Applicant.

-Versus-

State of Odisha, represented by the  
Commissioner of Sales Tax(O),Cuttack.

... Respondent.

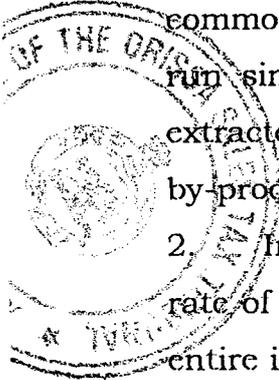
For the Applicants : ... Mr. Ravi Shankar Sistla, C/A.  
For the Respondents : ... Mr. R.K. Rout, S.R-I.

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Date of hearing: 10.10.2012 \*\*\* Date of order: 10.10.2012  
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**ORDER**

This common order arises out of the application filed by the applicants u/s.78-A of the O.V.A.T. Act read with Rule 117-A of the O.V.A.T. Rules by making a prayer before this Tribunal regarding the determination of the tax rate on specific purchases and also regarding the admissibility of the entire input tax credit in respect of their purchases of raw material under the O.V.A.T. Act. This common order is passed for the just decision of the case as all the applicants run similar solvent oil extraction units which produce crude edible oil being extracted from rice bran/oil seeds and the finished product is edible oil and the by-product is de-oiled rice bran.

2. In these applications, the applicants seek specific order to determine the rate of tax on the specific purchases and also regarding the admissibility of the entire input tax credit in respect of the raw materials purchased by them. In the applications, it is submitted that while making the extraction of oil they get the oil as the main finished product and the residue is called as de-oiled rice bran or de-oiled cake. According to them, the residue of the oil is termed as by-product and the District Industries Department issued the certificate of registration both on the finished product i.e. oil and the by-product i.e. de-oiled rice bran/cake. At the time of manufacturing the oil i.e. edible oil is mainly procured from the raw materials like the rice bran and other oil seeds. The by-product mainly accrues incidentally during the manufacturing process and it has got commercial use for



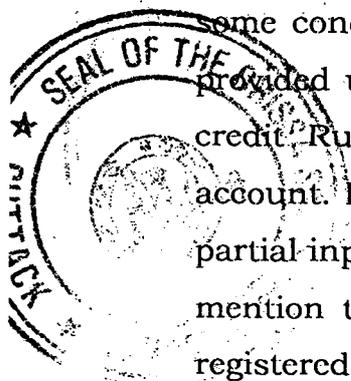
cattle feed, poultry feed etc. The main product i.e. oil is subject to tax under the O.V.A.T. Act whereas the by-product i.e. de-oiled rice bran is exempted from the tax as per the schedule of the O.V.A.T. Act. The applicants further submit that being the manufacturing units they are purchasing the raw materials but they are unable to know whether the tax exempted goods which is incidentally procured can have the input tax credit on the purchased raw materials. Further, it is contended that they are eligible to claim the entire input tax credit in respect of the purchases made from the registered dealers as per Rule 12 of the O.V.A.T. Rules. So, whether the said purchase made from the registered dealer is admissible to them in its entirety without applying the formula for partial input tax credit as per Rule 11 (1) (c) or whether any portion of the input tax credit as claimed in respect of the purchases from registered dealer is required to be reversed by applying the formula as per reversed tax credit provided in Rule 14(4) of the O.V.A.T. Rules. It is suggested by the applicants that they are the manufacturing units and supports to get the benefit of input tax credit under the Rules and sought clarification on this point by filing applications u/s.78-A of the O.V.A.T. Act i.e. Advance Ruling.

3. On the other hand, in order to counter the submission made by the applicants the Revenue also filed a written objection and contended that the rice bran which is a raw material is taxable commodity under the O.V.A.T. Act as per Sl.No.62 Part-II of Schedule-B of the rate chart. Most of the extracting unit of the oil get the main product oil i.e. rice bran oil which is taxable @ 5% as per Sl.No.125 of Part-II of Schedule-B and the other product is called de-oiled rice bran which is exempted. Regarding the input tax credit Section 12 of the O.V.A.T. Act is very clear and how it is admissible and under what circumstances one can avail the benefit. Further, it is submitted that the conditions and restrictions of admissibility of the input tax credit has been envisaged u/s. 20 of the O.V.A.T. Act and the procedure of calculation has been provided u/r.11, Rule-12 and Rule-13 of the O.V.A.T. Rules. The Revenue mainly contended that for manufacturing unit Section 20 (3)(b) has to be taken into account and for that purpose one can take the help for calculation of the ITC u/r.11 of the O.V.A.T. Rules. Hence, the Revenue contended that as per Rule 12(3) of the O.V.A.T. Rules read with Section 20(3)(c) the partial input tax credit

is admissible for the applicants by applying the principles as provided u/r. 11(1)(c) of the O.V.A.T. Rules. Further, it is argued that there is no such word like by-product under the O.V.A.T. Act except the finished product. In a similar case of extracting mustard oil from the mustard seeds the Hon'ble Apex Court in the reported case of Jai Bhagwan Oil & Flour Mills v. Union of India & Others have dealt the matter in details in case of oil cake. Further, the argument was strengthened by citing the reported judgment of the Hon'ble Apex Court in case of Jai Bhagwan Oil & Flour Mills v. Union of India & Others, Hon'ble Madras High Court between JMB S. United v. State Industries Promotion Corporation of Tamil Nadu reported in (2007) 6 VST 527, and also the decision of the Hon'ble Supreme Court in case of ITC v. State of Andhra Pradesh reported in 131 STC 276. So, the Revenue mainly harp on Section 20(3)(c) of the O.V.A.T. Act read with Rule 12(3) of the O.V.A.T. Rules and the applicants can claim partial input tax credit. Regarding the other issue as objected by the applicants and it is submitted that the rice bran being purchased from person other than the registered dealer comes under Section 12(b) of the O.V.A.T. Act i.e. "consumed or used in the manufacture of goods declared to be exempt from tax under this Act". By way of submitting the above grounds the Revenue prays before this forum that necessary orders may be passed by allowing partial input tax credit as admissible under this Act and regarding the levy of purchase tax, purchase tax shall be levied proportionately on purchase of rice bran not suffered with purchase tax.

4. By taking note of the rival contentions taken by the learned Chartered Accountant as well as the learned S.R. of the Revenue, it is to be addressed on two points i.e. whether the entire input tax credit in respect of the tax paid on purchase of raw materials like rice bran from the registered dealer inside the State is admissible or partial input tax credit is admissible as per Rule 12(3) of the O.V.A.T. Rules. The other point is determination of the rate of tax on purchase of raw materials i.e. rice bran from unregistered dealer. Before adverting into these two points, it is to be clarified that these applicants run solvent oil extraction units and the raw materials is rice bran and oil seeds. The raw materials rice bran is purchased both from inside the State from registered dealer and unregistered dealer and from outside the State. The rice bran is

subject to purchase tax @ 5% as per the Schedule and the finished product is oil i.e. taxable @ 5% as per Sl.No.125 of Part-II of the Schedule-B. While extracting the oil the manufacturer gets another product i.e. de-oiled rice bran which they claims to be a by-product is not subject to tax as per Sl.No.3 of Schedule-A. It was the main concern of the applicants that whether they can avail the input tax credit on the entire purchase of raw materials and the finished product oil and de-oiled rice bran and for which they have approach this Tribunal to give Advance Ruling on this point. Alongwith this the applicants also sought Advance Ruling on the next point i.e. levy of purchase tax on the purchase of rice bran from the unregistered dealers. So, basing on the above, doubts create in the minds of the applicants this Tribunal has to address them by taking the help of the Sections and Rules as provided under the O.V.A.T. Act. The input tax credit has been defined under Section-2(27) of the O.V.A.T. Act which speaks that in relation to any tax period means that setting off of the amount of input tax or part thereof under Section-20 against the output tax, by a registered dealer other than a registered dealer paying turnover tax under Section-16. There are some conditions and restrictions of admissibility of input tax credit have been provided under Section-20 of the O.V.A.T. Act. For calculation of the input tax credit Rule-11 of the O.V.A.T. Rules, Rule-12 and Rule-13 are taken into account. Rule-11 is related to calculation of input tax credit, Rule-12 related to partial input tax credit and Rule-13 is reversed input tax credit. Here we want to mention that Section 20(3)(c) of the O.V.A.T. Act clearly speaks that where a registered dealer sells or despatches goods, both taxable and exempt under this act, the input tax credit shall be allowed proportionately only in relation to the goods which are not so exempted. So, one has to reach Rule 12 alongwith Section 20(3)(c) to arrive at a conclusion whether these applicants can avail the entire input tax credit or partial input tax credit. Likewise Rule-11 of the O.V.A.T. Rules speaks about the formula for calculation and for partial input tax credit the Rule 12(3)(c) of the O.V.A.T. Rules is very clear. So, the part of the input of the raw materials which is actually utilized under processing or manufacturing the product and accordingly the manufacturer will get the benefit. Section-2(25) of the O.V.A.T. Act relates to the input for a manufacturer and Section-2(29) of the O.V.A.T. Act is related to output tax. Hence, by



analyzing the above Rules one can safely conclude that the partial input tax credit as per Rule-12 is only admissible to the applicants by applying the formula of calculation as per Rule-11(1)(c) of the O.V.A.T. Rules.

5. Now coming to the other point i.e. levy of purchase tax on the raw materials as per Section-12 of the O.V.A.T. Act. If the raw material is purchased from the registered dealer then the manufacturer need not pay tax on the purchase price but if they purchased from unregistered dealer then purchase tax will be levied at the same rate at which tax under Section-11 would have been levied on the sale of such goods, within the State. So, the contention raised by the applicants with regard to the levy of purchase tax is hereby clarified that as the raw materials has not suffered tax under Section-11 of the O.V.A.T. Act and used in the manufacturing process, we are of the opinion that the purchase tax shall be levied proportionately on purchase of rice bran. So, we have addressed both these points raised by the applicants by way of Advance Ruling under Section-78-A of the O.V.A.T. Act.

6. As discussed above, we are of the considered opinion that the applicants can claim partial input tax credit as per Rule-12 (3) of the O.V.A.T. Rules read with Section-20(3)(b) of the O.V.A.T. Act and for the levy of purchase tax it shall be levied proportionately on the purchase of raw materials not suffered with tax as per Section-11 of the O.V.A.T. Act.

Dictated & Corrected by me,

Sd/-  
(G.C.Patnaik)  
2<sup>nd</sup> Judicial Member.

Sd/-  
(G.C.Patnaik)  
2<sup>nd</sup> Judicial Member.

I Agree,

Sd/-  
(S.K.Paty)  
1<sup>st</sup> Judicial Member.

I Agree,

Sd/-  
(C.Jena)  
Accounts Member-III.

ATTESTED AS TRUE COPY  
Senior Member