

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

✓ A.R.A. No.14 of 2012-13

Present: Sri A.K. Mohapatra, Sri P. Mishra, & Sri J. Pradhan,
1st Judicial Member 2nd Judicial Member Accounts Member-II

M/s. Orissa Industries Ltd.,
At/P.O.- Barang - 754005,
Dist.- Cuttack (Odisha). Applicant

- V e r s u s -

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

For the Applicant . . . Mr. R.N. Behera, Authorised Person
For the Respondent . . . Mr. M.S. Raman, A.S.C. (C.T.)

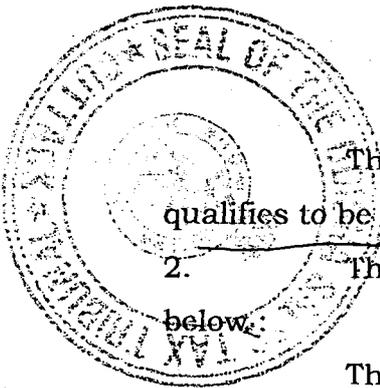
Date of hearing: 12.08.2013 **** Date of order: 14.08.2013

ORDER

The petitioner, in this petition calls in question whether 'coal' qualifies to be "input" for the purpose of availing input tax credit ?

2. The fact which give rise to the present petition are set out below:

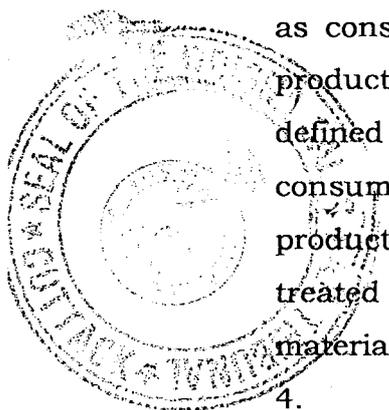
The petitioner in the present case is a SSI unit registered under the Value Added Tax Act, 2004. (in short, the Act) vide TIN - 21031305699. It manufactures refractories fire bricks. It uses "coal" exclusively in its chamber kiln upto a temperature of 1450°C for firing of green refractories fire bricks and after firing and cooling it is unloaded



and used as sellable production of fire bricks and dispatched to various customers. The Government of Odisha in its extra ordinary notification No.6785-Legis-35/11/L published on June 27, 2012 has amended the Act vide Odisha Act 4 of 2012 whereby has taken away the input tax credit on purchase of coal when used for generation of electricity for sale and captive use. This amendment creates a doubt in the mind of appellant and therefore, has approached this forum to clarify whether it should be entitled for input tax credit on purchase of coal as raw material as is used for firing of fire-Bricks.

3. The Authorized Person appearing on behalf of the appellant submitted that coal is used as a consumable directly in processing or manufacture of finished product. "Input" is defined as any goods purchased by the dealer in course of his business for resale or for use in execution of works contract in process or manufacturing, where such goods goes into the composition of finished product or packing goods for sale and includes consumable directly used in such process or manufacture. 'Coal' is used as a consumable for firing of grean bricks in the chamber kiln to get the finished refractory Bricks. Thus 'Coal' is used as consumable directly in the processing or manufacturing of finished product, namely "Refractories Brick". He further submitted that input as defined in Section 2(25) of the Act should not be meant as only consumables which should directly go into the composition of end-product. In fine, the Authorized Person submitted that coal should be treated as consumable and qualifies to be input for the purpose raw materials of availing input tax credit.

4. Mr. M.S. Raman, learned Standing Counsel (C.T.) appearing on behalf of the Revenue in reply, submitted that coal cannot be treated as 'input' as per provision of Section 2(25) of the Act and tax paid on purchase of 'coal' cannot be included in input tax for adjustment against VAT payable on sale of finished product. According to him, provision contained in Section 2(25) of the Act envisaged that goods directly go into



composition of finished product and consumables which are directly used in such manufacturing or processing would qualify for being treated as input. He further argued that consumables must partake character of goods which go into composition of finished product but the same being consumed in the process of manufacture does not have its trace remnant in the ultimate finished product. The articles which are put into process or manufacturing with raw materials will only be taken as input. Speaking differently, the articles which get consumed indirectly in the process of manufacturing used for providing energy/electricity or heat to facilitate process of manufacturing would not qualify to be treated as an input. The coal is merely used as a fuel and therefore, the same cannot be called as a consumable, directly used in the process of manufacturing.

5. In view of such rival contentions the contentious issue, as no question of fact is involved, is only the interpretation of Section 2(25), 2(26) and 2(27) of the Act. The question involved is whether coal used in the process of manufacture of refractories fire brick is to be treated as 'input' as defined under section 2(25) of the Act and the input tax as defined under section 2(26) paid on purchase of coal can be claimed as "input tax credit" under section 2(27) against the tax payable on finished product?

6. In order to resolve the aforesaid contentious issue, it contextualizes to have a understanding what is "input", "input tax" and "input tax credit" which have been provided in Section 2(25), 2(26) and 2(27) of the Act respectively. The said sections are culled for herein below:-

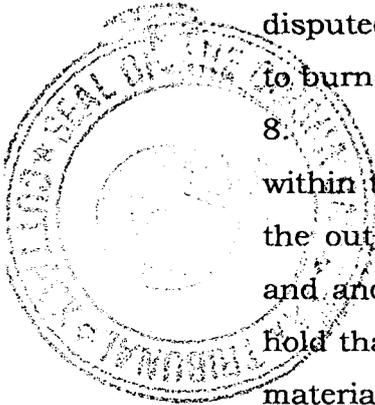
"(25) **"INPUT"** means any goods purchased by a dealer in the course of his business for resale or for use in the execution of works contract, in processing or manufacturing, where, such goods directly goes into composition of finished products or packing of goods for sale, and includes consumables directly used in such processing or manufacturing;

- (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 in the course of his business.
- (27) **"INPUT TAX CREDIT"** in relation to any tax period means the 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;

On a conjoint reading of these sections of law it is abundantly clear that a registered dealer under the Act shall be entitled to set off the tax paid on the purchase of goods effected by such dealer either for resale or for use in the execution of works contract or for manufacture and processing against the output tax, that is the tax payable on sale of any taxable goods.

7. In the case in hand the appellant is a registered dealer under the Act and is engaged in manufacture of refractories Fire-Bricks. It is not disputed that in order to manufacture refractories Fire-Brick coal is used to burn the green bricks to connect refractories Fire-Brick.

8. Now, it perpend to decide whether 'coal' is a "consumable" within the meaning of Section 2(25) of the Act or a raw material. We, at the outset relying on Bhusan Power and Steel Ltd. Vrs. State of Orissa and another reported in (2012) 56 VST 50 (Orissa) have compunction to hold that coal used in manufacturing refractories Fire-Brick, is not a raw material on the lone reason that in the process of burning coal is burnt in the chamber kiln for producing flames to convert green refractories to refrctgorie-Fire-Brick. Thus, it is used for ancillary purpose as fuel and it is not transferred into the end product. For the purpose of manufacture, raw material has ultimately to get a raw identity by virtue of manufacturing process either of its own or in conjunction with the raw material. Therefore, the coal is not a raw material of end product i.e.

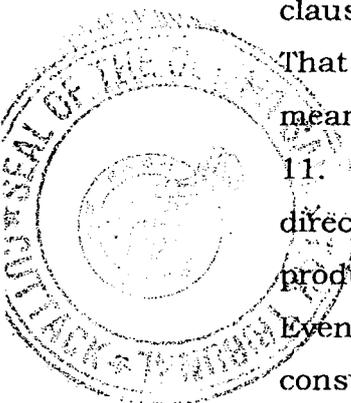


refractories-Fire-Bricks. Accordingly, the contention of the appellant that coal is a raw material being sophistry is not tenable.

9. Now we are constrain to dwell on the alternative is whether coal is a "consumable" within the meaning of Section 2(25) of the Act. The expression "consumables" has not been defined in the Act. Therefore, it has to be discerned in the meaning assigned to it by various dictionaries and how it is comprehended in trade and commerce "consumable", according to Webster Dictionary means that which can be consumed, a consumable commodity. "Consume" means capable of being consumed by fire. The term "fuel" according to Webster Dictionary means any material as coal, oil, gas, wood, etc. which is burnt to supply heat or power. According to Shorter Oxford Dictionary "fuel" means material for burning combustible matter for fires. The process of manufacturing as indicated in the engineering flow-chart reveals that the process is a continuous one and coal is directly used in the II stage for converting green refractories into refractories Fire-Brick after being made from raw materials to make it marketable/sale. Thus the contention of Revenue that coal used by the dealer is to produce flame and therefore, it is fuel and not consumable which is directly used in processing or manufacturing of finished product is totally unsustainable. On the other hand it leads to inescapable conclusion that coal is one of the primary and essential commodities which has a directly relation in the manufacturing process and "direct relation" means without which the manufacturing of finished product is not possible at all. In that view of the matter, we are of the considered view that coal used by the dealer in the process of manufacture without which production of refractories Fire-Brick is impossible is nothing but consumable.

10. 'Input' has been defined to mean any goods purchased by a dealer in the course of his business for resale or for use in execution of works contract, in processing or manufacturing where such goods directly goes into composition of finished products and includes consumables

directly used in such processing or manufacturing. From this definition it appears that "input" comprises for different types of articles, viz. articles or goods for resale, goods used in the execution of works contract goods used in processing or manufacturing where such goods directly go into composition of finished products and consumables directly used in such process or manufacturing. Separately, by an inclusive definition consumable which are directly used in such processing or manufacturing have been included. Therefore, the inclusive definition does not refer to any goods which must be used in processing or manufacturing where such goods directly go into composition of finished products. As per inclusive definition, the only requirement is that the consumables are directly used in such processing or manufacturing. Consumables need not be required to directly go into composition of finished products. The very expression "consumables" suggests that such articles are destroyed or used upon the processing or manufacturing of goods. It is because of this reason that while "consumables" by an inclusive definition are included in the definition of "input" under Section (2(25) of the Act, the Legislature did not insist upon the requirement which appears in earlier clauses that such goods must go into composition of finished products. That being the law giving other meaning runs contrary to the very meaning assigned to "input" under Section 2(25) of the Act.



11. We have already held that coal is consumable which is directly used in the manufacturing process for production of finished product, albeit, does not directly go into composition of finished product. Even otherwise, since "input" as defined u/s.2(25) of the Act includes consumables which are directly used in manufacturing of the end-products, coal is nothing but an "input" and tax paid on purchase of such input certainly shall qualify for set off against the output tax.

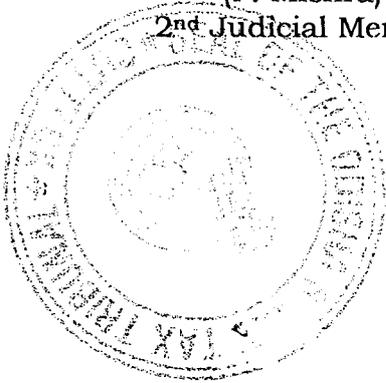
12. In the ultimate analysis, we are of the view that coal which is used in the process of manufacture of refractories Fire-Brick is to be treated as an "input" as defined in Section 2(25) of the Act and the input

tax which will be paid on purchase of coal could be claimed as input tax credit under Section 2(27) of the Act against the tax payable on finished product i.e. refractories Fire-Brick.

13. Accordingly, the petition is disposed of. There will be no order as to costs.

Dictated & corrected by me,

Sd/-
(P. Mishra)
2nd Judicial Member



I agree,

Sd/-
(P. Mishra)
2nd Judicial Member

Sd/-
(A.K. Mohapatra)
1st Judicial Member

I agree,

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

TRUE COPY ATTESTED

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