
(2019) 07 JH CK 0151

In the Jharkhand High Court

Case No : Writ Petition (T) No. 2775 Of 2017

Brahmaputra Metallica Limited, Ranchi

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Jharkhand Value Added Tax Act, 2005 — Section 2(xxii), 18, 18(1), 18(3), 18(4), 18(6), 18(4)(iii), 18(6), 79, 80(2)(b)
Central Sales Tax Act, 1956 — Section 8(1), 8(3)(b)
Orissa Sales Tax Act, 1947 — Section 5(2)(a)(ii), 27(2)
Jharkhand Value Added Tax Rules, 2006 — Section 13, 35(2)

Citation : (2019) 07 JH CK 0151

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Sumeet Gadodia, Ranjeet Kushwaha, Ritesh Kumar Gupta, Atanu Banerjee, Apura

Final Decision : Allowed

Judgement

Deepak Roshan, J

1. The instant application is directed against the Order dated 09.02.2017 passed by the Commercial Taxes Tribunal, Jharkhand, Ranchi in Revision Petition bearing No. Hz 60 of 2016 pertaining to Assessment Year 2011-12, whereby the revision petition filed by the petitioner has been dismissed. The petitioner has further challenged the order dated 22.12.2015 passed in Appeal Case No. RG/JVAT/A-03/15-16 whereby the appeal filed by the petitioner against the assessment order dated 12.03.2015 has been rejected. The petitioner has also assailed the assessment order dated 12.03.2015 passed by the respondent No.4, the Assistant Commissioner of Commercial Taxes, Ramgarh Circle, Ramgarh to the extent claim of the petitioner for Input Tax Credit has been rejected.

2. In the instant writ application, two questions of law have been raised which is enumerated hereunder:-

(i) Whether the petitioner is entitled to claim Input Tax Credit (ITC in short) on tax paid by it on purchase of coal which is used by it for generation of electricity in its captive power plant and in turn, electricity so generated is used by the petitioner for manufacturing and processing of its finished goods for sale ?; and

(ii) Whether in absence of production of statutory declaration form JVAT 404, the claim of ITC can be denied to the petitioner inspite of the fact that the petitioner produced substantial evidence to demonstrate it has purchased goods i.e. inputs after payment of Input Tax ?

3. The petitioner is a Company registered under the Companies Act, 1956 and is primarily engaged in the business of manufacture of Sponge Iron and M.S. Billet and is having an integrated manufacturing unit situated in the district of Ramgarh. The integrated manufacturing unit of the petitioner comprises of the following, namely,

(i) Direct Reduced Iron Unit (DRI Unit) with 350 Tonne per day (TDP) Capacity;

(ii) Steel Melting Shop or Induction furnaces with a monthly capacity of 12500.00 M.T.; and

(iii) Captive Thermal Power Plant of 20 MW for generation and captive consumption of electricity.

4. The Captive Thermal Power Plant of 20 MW is exclusively used by the petitioner for generation of captive power. It is the case of the petitioner that the petitioner utilizes the electricity generated by its Captive Power Plant in its kiln of Sponge Iron Unit as well as for the purpose of fuelling of Steel Melting Induction Furnaces relating to its M.S. Billet plant. It is the case of the petitioner that the aforesaid process of manufacture undertaken by the petitioner is a continuous process and in absence of electrical energy which is being generated in its Captive Power Plant, it is not possible to manufacture the final product of the petitioner i.e. Sponge Iron and M.S. Billet, which are admittedly sold in the market on payment of tax. Thus, as per the petitioner, manufacturing activity to be undertaken by the petitioner is dependent on the electrical energy generated by it in its Captive Power Plant without which petitioner could not have undertaken the manufacturing activity of its finished product.

5. The petitioner for the purpose of generation of electrical energy for its Captive Power Plant purchases coal from registered dealers within the State of Jharkhand on payment of tax which is used by it for generation of power. As per provision of Section-18 of the Jharkhand Value Added Tax Act, 2005 (hereinafter referred to as "JVAT Act, 2005"), particularly Section- 18(4)(iii), a Dealer registered under the JVAT Act, 2005 is entitled to the benefit of ITC in respect of goods purchased by it within the State of Jharkhand, from a registered dealer holding a valid certificate of registration and, "which are intended for the purpose of use as Raw Material for direct use in manufacturing or processing of goods for sale".

6. It is further case of the petitioner that despite the fact that in terms of Section-18(4)(iii) of the JVAT Act, 2005, the petitioner was entitled to claim ITC on the coal utilized by it as raw material for generation of electrical energy, which in turn, was utilized for carrying out manufacturing activity, the Assessing Officer at the time of passing of assessment order pertaining to the Assessment Year 2011-12 denied benefit of ITC on coal purchased by the petitioner, and utilized by it for generation of electricity, which in turn, was utilized for carrying out the manufacturing activity.

The said Assessment Order to the extent of denial of benefit of ITC on purchase of coal utilized for generation of electricity was assailed by the petitioner by filing statutory appeal under Section- 79 of the JVAT Act, 2005 before the Appellate Authority, i.e., the Joint Commissioner of Commercial Taxes, Hazaribagh Division, Hazaribagh, vide Appeal Case No. RG/JVAT/A-03/15-16. However, the appeal of the petitioner was dismissed vide order dated 22.12.2015 and while dismissing the appeal, reliance was placed upon the definition of "Goods" as contained under Section- 2(xxii) of the JVAT Act, 2005 and it was held inter-alia that since "Electricity" is not "goods" as per the aforesaid definition, the petitioner is not entitled for benefit of ITC on the purchase of coal which is used for generation of electricity.

The petitioner further assailed the appellate order by filing Revision Application in terms of Section- 80(2)(b) of the JVAT Act, 2005 before the Commercial Taxes Tribunal, Jharkhand, Ranchi. During the hearing of said revision application, the petitioner relied upon the decision of the Hon'ble Supreme Court of India in the case of "M/s J.K.Cotton Spinning & Weaving Mills Co. Ltd Vs. Sales Tax Officer, Kanpur, reported in AIR 1965 SC 1310" as well as decision of the Hon'ble Supreme Court in the case of "Commercial Taxation Officer, Udaipur Vs. Rajasthan Taxchem Ltd, reported in (2007) 3 SCC 124", to contend inter-alia that if the process or activity is so integrally related to the manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially in expedient, goods intended for use in the process or activity, would be categorized as raw material intended for manufacture of ultimate finished goods. The petitioner further, while relying upon the decision of the Hon'ble Supreme Court in the case of Commercial Taxation Officer, Udaipur Vs. Rajasthan Taxchem Ltd (Supra), contended before the Commercial Taxes Tribunal, Jharkhand that almost identical issue was the subject matter of adjudication before the Hon'ble Supreme Court wherein the question to be decided was "Whether Diesel can be called raw material in the manufacture of polyester yarn? As per the petitioner, Hon'ble Apex Court in the said decision after considering several earlier decisions, held in categorical terms that Diesel which is being used for the purpose of running generator set for generation of electricity which is utilized for the purpose of manufacturing of Polyester Yarn, is to be treated as raw material and not otherwise.

7. The learned counsel for the petitioner submitted that despite the aforesaid

authoritative pronouncements of the Hon'ble Supreme Court, the learned Commercial Taxes Tribunal, Jharkhand posed unto itself a wrong question and answered the same wrongly, and thus, committed an error in law, in dismissing the Revision Application.

8. It is the case of the petitioner that the learned Commercial Taxes Tribunal distinguished the aforesaid judgments of the Hon'ble Apex Court which was directly applicable in the facts and circumstances of the petitioner's case, on an erroneous reasoning that ITC is only available in respect of such goods which when are sold within the State or by way of interstate sales, generates tax liability and if the goods is of such nature which does not generate any output tax liability, then ITC shall not be admissible. It is the submission of the learned counsel for the petitioner that said reasoning adopted by the Commercial Taxes Tribunal is wholly erroneous and is contrary to the very concept of Value Added Tax regime in the Country of India including promulgation of JVAT Act, 2005 by the State of Jharkhand.

9. The petitioner in order to buttress its contention that it is entitled for ITC on purchase of coal utilized by it for generation of electricity which in turn, is utilized for carrying out the manufacturing activity of Sponge Iron and M.S. Billet, has relied upon the following decisions before this Hon'ble Court, namely;

(i) Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan, reported in (1991) 4 SCC 473 (Relevant paragraph- 1,3,7, 5,17,20,21 and 26)

(ii) Collector of Central Excise New Delhi Vs. M/s Ballarpur Industries Ltd, reported in (1989) 4 SCC 566 (Relevant paragraph-13,17,18 and 19)

(iii) M/s J.K.Cotton Spinning & Weaving Mills Co. Ltd Vs. Sales Tax Officer, Kanpur, reported in AIR 1965 SC 1310: (1965) 1 SCR 900 (Relevant paragraph-9)

(iv) Commercial Taxation Officer, Udaipur Vs. Rajasthan Taxchem Ltd, reported in (2007) 3 SCC 124 (Relevant paragraph- 2,3,4,5,8 and 29)

(v) Maruti Suzuki Limited Vs. Commissioner of Central Excise, Delhi-III reported in (2009) 9 SCC 193 (Relevant paragraph- 29, 30, 31, 32, 43 and 45)

(vi) National Aluminium Company Ltd Vs. Deputy Commissioner of Commercial Taxes, Bhubneshwar III Circle, Khurda, reported in [2012] 56 VST 68 (Ori)

10. So far as the second issue is concerned, the counsel for the petitioner submitted that the petitioner during the relevant assessment year, made purchases within the State of Jharkhand of goods worth Rs.86,91,17,429/- and paid VAT on the said purchase of Rs.4,31,14,838/- and accordingly claimed ITC in respect of the same. The petitioner produced 39 numbers of JVAT 404 form of a value of Rs.84,40,83,955/- evidencing payment of VAT of Rs.3,97,76088/-. However, for the balance amount towards payment of VAT amounting to Rs.33,38,740/- the petitioner was not supplied copy of JVAT 404 form by the

registered dealer situated within the State from whom the petitioner purchased goods due to which claim of ITC of the petitioner to the extent of the aforesaid amount of Rs.33,38,740/- was rejected.

It is the submission of the counsel for the petitioner that the petitioner was in possession of original tax invoices in respect of aforesaid balance purchase of goods also, for which it could not produce JVAT 404 form, and as per provision of Section-18(6) of the JVAT Act, 2005, claim of ITC of the petitioner was required to be considered by the assessing officer on the strength of tax invoices in original produced by the petitioner showing payment of tax of Rs.33,38,740/- However, said claim of the petitioner was denied by the Assessing Officer by relying upon Rule- 35(2) of The Jharkhand Value Added Tax Rules, 2006 (hereinafter referred to as "JVAT Rules, 2006") which apart from prescribing the condition of production of original tax invoices also lays down additional condition of producing declaration in Form JVAT 404. It has been submitted by the counsel for the petitioner that Rule- 35(2) of the JVAT Rules, 2006 to the extent it provides for furnishing declaration Forms JVAT 404 for availing benefit of ITC cannot be treated to be mandatory in nature and the same can, at best, be treated as directory in nature, especially in view of fact that Section-18(6) of the JVAT Act, 2005 does not provide for furnishing of JVAT 404 forms for the purpose of claiming benefit of ITC and it only contemplates production of tax invoices in original and even in appropriate case, the Assessing Officer can even dispense with requirement of production of tax invoices in original for good and sufficient reason to be recorded in writing . In support of the said contention, learned counsel has relied upon the following decisions, namely;

(i) State of Orissa Vs. M.A. Tulloch & Co. Ltd, reported in AIR 1966 SC 365: (1964) 7 SCR 816 (Relevant paragraph-2,3 and 4)

(ii) Food Corporation of India , Patna Vs. The Commissioner of Commercial Taxes, Bihar, Patna, reported in (1993) 2 PLJR 625 (Relevant paragraph- 2,5,6,22, 27 and 28)

11. Per Contra, the counsel appearing for the respondent-State of Jharkhand has supported the decision of the Assessing Officer as upheld upto the Commercial Taxes Tribunal, Jharkhand on both the issues.

12. With respect to the issue no.(i), the counsel for the respondents submitted that ITC is in the nature of "Concession" extended by the State of Jharkhand and the conditions enumerated for availing benefit of ITC is necessarily required to be complied with by an Assessee in order to avail ITC credit. In support of said contention, the counsel for the respondent-State has relied upon the following decisions of the Hon'ble Supreme Court namely,

(i) Jayam and Company Vs. Assistant Commissioner and Ors, reported in (2016) 15 SCC 125

(ii) TVS Motor Corporation Ltd Vs The State of Tamil Nadu and Ors - Civil Appeal

No.10566 of 2018, decided on 12.10.2018.

(iii) M/s ALD Automotive Ltd, Civil Appeal No. 10412-13 of 2018, decided on 12.10.2018

13. The counsel for the respondents-State of Jharkhand has submitted that provisions of Section 18(4)(iii) of the JVAT Act, 2005, ITC is applicable to a registered dealer if the said registered dealer purchases goods within the State of Jharkhand from a registered dealer and which is utilized by it for use as raw material for direct use in the manufacturing or processing of goods for sale. It has been emphasised that word "for direct use" in the manufacturing or processing of goods for sale is intended to deny the benefit of ITC in respect of such goods which are though used as raw material, but is consumed in an anterior process of the manufacturing activity and is not found in the finished goods.

14. By raising the aforesaid contention, counsel for the respondents-State contended that admittedly coal has been utilized for generation of electricity which is not the finished good of the petitioner and which has not been sold by the petitioner in the market, but was utilized for further manufacturing process of Sponge Iron and Billet. In view of same, it was contended that coal was used as raw material for generation of electricity which was an anterior process of manufacture of finished goods i.e. Sponge Iron and Billet and, hence, the petitioner was not entitled to claim ITC on coal to the extent it was utilized for production of electricity.

15. The counsel appearing for the respondent-State further by relying upon the provision of Section- 18(3) of the JVAT Act, 2005, read with Assessment order, contended that Section-18(3) of the JVAT Act, 2005 permits the State of Jharkhand to lay down condition and restriction for allowing partial or proportionate ITC to a dealer in certain circumstances. While referring to the assessment order it was contended that from bare reading of assessment order, it would be evident that proportionate ITC has been granted to the petitioner and only ITC in respect of coal utilized for manufacturing of electricity has been denied, which is in accordance with law and the scheme of the JVAT Act, 2005.

16. The counsel for the respondent-State of Jharkhand further by relying upon the definition of "Goods" as contained under Section- 2(xxii) of the JVAT Act, 2005 has submitted that Electricity is not falling under the definition of "goods" under the JVAT Act, 2005 and hence, on that ground also the petitioner-Company is not entitled to the benefit of ITC on coal which is utilized by it for generation of electricity , especially when the electricity itself is not "Goods" under the JVAT Act, 2005.

17. The counsel for the State of Jharkhand by further relying upon the provisions of Section- 18(1) of the JVAT Act, 2005 has contended that since there is no generation of output tax liability in the process of manufacture of electricity from inputs i.e. coal and since electricity is consumed for further manufacturing of

Sponge Iron and Billet, under the scheme of the JVAT Act, 2005, in absence of any output tax liability payable on generation of electricity by utilizing coal, benefit of ITC on the tax paid on such coal cannot be extended to the petitioner.

18. The learned counsel for the State further while relying upon the registration certificate of the petitioner issued under the provisions of the JVAT Rules, contended inter-alia that from the said certificate itself it would be evident that the petitioner was entitled to purchase coal as a raw material for manufacture of Sponge Iron and not for the manufacture of electricity and, thus, it was contended that the petitioner is not entitled to benefit of ITC on the purchase of coal to the extent it has been utilized for the purpose of generation of electricity.

19. Further, while supporting the impugned orders on the second issue, it has been submitted by the counsel for the State that Rule- 35(2) of the JVAT Rule, 2006 mandates not only production of original tax invoices but also declaration in JVAT 404 forms for availing benefit of ITC. It has been submitted that the petitioner itself produced 39 numbers JVAT 404 forms and was, thus, extended benefit of ITC in respect of tax paid by it of Rs.3,97,76,088/-. However, since the petitioner in respect of balance amount of Rs.33,38,740/- has not furnished JVAT 404 forms, claim of ITC of the petitioner was rightly denied by the Assessing Officer which has been upheld up to the Commercial Taxes Tribunal.

20. The counsel for the respondent-State further while relying upon section-18(3) of the JVAT Act, 2005 has contended that it is open for the State of Jharkhand to prescribe certain conditions and/or restriction for grant of partial or proportionate ITC to an Assessee and it is in exercise of said power under Section - 18(3), Rule- 35(2) has been framed providing production of JVAT 404 forms as a condition precedent for availing benefit of ITC.

In view of aforesaid, it has been submitted by the counsel for the respondent-State that the impugned orders are perfectly justified in the eyes of law and have been passed in accordance with the provisions of the JVAT Act and Rules and do not require any interference by this Hon'ble Court.

21. Heard learned counsels for the parties. In order to properly appreciate the issues involved in the instant writ application, it would be appropriate to quote certain provisions of the Jharkhand Value Added Tax Act, 2005 and the Jharkhand Value Added Tax Rules, 2006 which are quoted hereunder:-

(I) Section-2 (xxii) "Goods" means all kinds of movable property (other than newspapers, actionable claims, electricity, stocks and shares and securities) and includes livestock, all materials, computer software sold in any form, Sim cards used in Mobile Telephony or for any other similar activation purposes, commodities and articles and every kind of property (whether as goods or in some other form) involved in the execution of a works contract, and all growing crops, grass, trees and things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(II) Section-2 (xxviii) "Input" means, goods purchased in course of business - (a) for resale in the same form; or (b) for use in manufacturing or processing of taxable goods for sale; or (c) for directly use in mining or use as containers or packing materials for taxable goods; or (d) for the execution of works contract, but excluding purchases of Petrol, Diesel, Furnace Oil and steam and Natural Gas and for use as Capital Goods as specified in Appendix-I of this Act.

(III) Section-2 (xxix) "Input Tax" means the tax paid or payable under this Act, by a registered dealer to another registered dealer on the purchase of goods, in the course of business for resale or for use in manufacturing or processing of taxable goods for sale, or for directly use in mining or use as containers or packing materials for taxable goods or for the execution of works contract;

Provided that input tax shall also include tax paid on the entry of goods into the local area as specified in Schedule-III.

Provided further that input tax shall also include tax paid on the capital goods for Registered Start-up-business and shall qualify for Input Tax Credit as prescribed.

Provided further, that tax charged at Maximum Retail Price; shall not be treated as Input Tax, for the purpose of resellers, when reselling medicines or drugs, specified in the Drugs (Prices Control) Order 1995.

(IV) Section- 16 Input Tax - Input tax in relation to a registered dealer means the tax charged under this Act by the selling dealer to such dealer on the sale to him of any goods for resale or for use in manufacturing or processing of goods for sale or for directly use in mining or use as containers or packing materials or for the execution of works contract. It shall also include the tax paid on entry of goods as mentioned in schedule III by a registered dealer.

(V) Section- 17 Tax Payable - (1) The tax payable by a registered dealer for any tax period shall be the difference between the output tax payable plus purchase tax, if any, and the input tax paid, which can be determined, from the following formula:

$$\text{Tax payable} = (O+P)-I$$

Where 'O' denotes the output tax payable for any tax period as determined under Section 15, 'P' denotes the purchase tax paid by a registered dealer for any tax period as determined under Section 10 and 'I' denotes the input tax paid or payable and includes tax paid on Entry of Goods, for the said tax period as determined under Section 15.

(VI) Section- 18- Input Tax Credit -

(1) Subject to the provisions of this Act, for the purpose of calculating the tax payable by a registered dealer for any tax period after being registered, an input tax credit as determined under this Section shall be allowed to such registered dealer for the tax paid or payable in respect of all taxable sales other than any other sales as may be prescribed, or purchases under Section 10 during that

period,

(2) The input tax credit to which the registered dealer is entitled shall be the amount of tax paid by the registered dealer to another registered dealer, on his turnover of purchases made during any tax period, intended to be used for the purposes and subject to the conditions as specified in sub Section (3), sub-Section (4), sub-Section (5) and sub-Section(6) and calculated in such manner as may be prescribed.

(3) Subject to such conditions and restrictions as may be prescribed, partial or proportionate input tax credit may be allowed in such cases as may be used (xxx) for their respective uses.

(4) Input Tax credit shall be allowed on purchase of goods made within the State of Jharkhand from a registered dealer holding a valid certificate of registration and which are intended for the purpose of-

(i)

(ii)

(iii) use as raw material and for direct use in manufacturing or processing of goods for sale, or for directly use in mining, or for use as capital goods, other than those goods exempt from tax under this Act and the goods specified in Part E of schedule II, intended for sale in the State of Jharkhand or in the course of interstate trade and commerce;

(VII) Section-18(6) - Input Tax credit shall not be claimed by the dealer until the tax period in which the dealer receives the tax invoice in original containing the prescribed particulars of the sale evidencing the amount of input tax paid.

Provided that input tax credit shall be claimed by a registered dealer on the tax paid, on the entry of goods mentioned in schedule III evidencing the amount of tax paid, as prescribed.

Provided further that for good and sufficient reasons, to be recorded in writing, where a registered dealer is prevented from producing the Tax Invoice in original or evidence of payment of tax paid on entry of goods, in original, the prescribed authority may allow, such input tax credit as prescribed.

(VIII) Rule- 35(2) of Jharkhand Value Added Tax Rules, 2006:-

35. Evidence in support of claims in respect of goods leviable to Output Tax at the First Point of Sale within the State of Jharkhand (2) Any VAT dealer, who claims Input Tax Credit under sub-section (4) of Section 18 of the Act and his Output Tax payable requires the Input Tax Credit, for the sales made at the stage(s) under sub-section (1) of Section 9 of the Act, shall substantiate for such claim before the authority prescribed, by producing a true Declaration in writing, issued by the preceding VAT selling dealer, in Form JVAT 404 evidencing that the goods in question have already been subjected to Tax at the preceding stage of

their sale in the State of Jharkhand.

22. From the reading of the aforesaid provisions of the JVAT Act, 2005 it would transpire that said provisions are in consonance with the scheme of Value Added Tax Regime introduced in the Country. From the scheme of JVAT, 2005 it would be thus evident that output tax liability of a dealer was required to be determined after subtracting therein the input tax paid by the dealer.

23. Section-18 of the JVAT Act, 2005 provides for determination of the Input Tax Credit which is available to a dealer in respect of input tax paid by it on the goods.

For the purpose of adjudication of the dispute pertaining to issue no. (i), provision of Section- 18(4)(iii) of JVAT Act, 2005 is relevant. A bare reading of provision of Section - 18(4)(iii) of the JVAT Act, 2005 it would be evident that the following conditions are required to be complied with by a dealer in order to avail Input Tax Credit on raw materials used by it in manufacture and /or processing of goods for sale, namely,

(i) Purchase of goods should be made within the State of Jharkhand.

(ii) Purchase should be made from registered dealer holding valid certificate of registration;

(iii) Goods purchased should be intended for the purpose of use as raw material for direct use in manufacturing or processing of goods for sale.

24. So far as condition no.(i) and (ii) aforesaid is concerned, there is no dispute that goods were purchased within the State of Jharkhand from Registered dealer holding valid certificate of registration. The only dispute for adjudication is "Whether Coal which was purchased on payment of input tax and was utilized for generation of electricity, which was in turn, utilized for manufacturing of finished products namely Sponge Iron and M.S. Billet, would meet the conditions prescribed aforesaid to be entitled to be claimed as Input Tax Credit"?

25. It is an admitted fact, that the petitioner is having an integrated manufacturing unit, wherein, it undertakes manufacturing of Sponge Iron and M.S. Billet and is having its captive power plant from which electricity is generated, which is, exclusively consumed by the petitioner for carrying out the manufacturing activity. The electricity so generated is utilized in its kilns of Sponge Iron unit and also for the purpose of fuelling of its steel melting induction furnaces relating to its M.S.Billet. The manufacturing process undertaken by the petitioner is a continuous process and in absence of electrical energy which is being generated in its captive power plant, it is not possible for the petitioner to manufacture final product i.e. Sponge Iron and M.S.Billet which is ultimately sold in the market on payment of tax.

26. The respondent-State of Jharkhand in its counter affidavit has not disputed the fact that generation of electricity by the petitioner by utilization of coal as

input is so integrally connected with the ultimate manufacturing process, that but for that process, manufacture or processing of goods would be commercial inexpedient. Further it has also not been disputed by the Respondent-State nor it was the case of the Respondent-State that the electricity produced by the Petitioner was not exclusively used for manufacturing the final product.

In the backdrop of aforesaid undisputed facts, it is required to be determined whether the petitioner is entitled to ITC under Section- 18(4)(iii) of the JVAT Act, 2005 on input tax paid by it on coal which was utilized for generation of electricity, which in turn, was exclusively used for manufacturing and processing of finished product of the petitioner for sale.

27. The Hon'ble Supreme Court in its decision in the case of "M/s J.K. Cotton Spinning & Weaving Mills Co. Ltd Vs. Sales Tax Officer, Kanpur, reported in AIR 1965 SC 1310: (1965) 1 SCR 900" as held as under:-

8..... The expression "in the manufacture of goods" should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connection with the ultimate production of goods that but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would, in our judgment fall within the expression "in the manufacture of goods". For instance, in the case of a cotton textile manufacturing concern, raw cotton undergoes various processes before cloth is finally turned out. Cotton is cleaned, carded, spun into yarn, then cloth is woven, put on rolls, dyed, calendered and pressed. All these processes would be regarded as integrated processes and included "in the manufacture" of cloth. It would be difficult to regard goods used only in the process of weaving cloth and not goods used in the anterior processes as goods used in the manufacture of cloth. To read the expression "in the manufacture" of cloth in that restricted sense, would raise many anomalies.....

9. In our judgment, if a process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially in expedient, goods intended for use in the process or activity as specified in Rule 13 will qualify for special treatment.

....."(emphasis supplied)

In the said judgment, the Hon'ble Supreme Court was considering the provision of Section- 8(1) and 8(3)(b) of the Central Sales Tax Act, 1956 which is almost parametria to the provisions of Section 18(4)(iii) of the JVAT Act, 2005 and has held, in substance, that if a process or activity is so integrally related to the ultimate production of goods so that without that process or activity manufacture would be commercially inexpedient, goods required in that process would fall within the expression " in the manufacture of goods".

28. Similarly, the Hon'ble Supreme Court in its judgment rendered in the case of "Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan, reported in (1991) 4 SCC 473" while following the decision of "M/s J. K. Cotton Spinning & Weaving Mills Co. Ltd Vs. Sales Tax Officer, Kanpur" (Supra), vide paragraph 20 of the said judgment has held as under: -

"20. A process is a manufacturing process when it brings out a complete transformation for the whole components so as to produce a commercially different article or a commodity. But, that process itself may consist of several processes which may or may not bring about any change at every intermediate stage. But the activities or the operations may be so integrally connected that the final result is the production of a commercially different article, Therefore, any activity or operation which is the essential requirement and is so related to the further operations for the end result would also be a process in or in relation to manufacture to attract the relevant clause in the exemption notification. In our view, the work 'process' in the context in which it appears in the aforesaid notification includes an operation or activity in relation to manufacture."

29. Further the Hon'ble Supreme Court in the case of "Collector of Central Excise New Delhi Vs. M/s Ballarpur Industries Ltd, reported in (1989) 4 SCC 566" differentiated between the expression "Used in the manufacture" and " Used as Input (raw material)". In the said judgment, it was held that undoubtedly the said two expressions are distinct and separate, but when an ancillary process aids the making of an end product, then ancillary process gets integrally connected to the end product.

Thus, from the ratio laid down from the aforesaid judgments it would be evidently clear that use of coal by the petitioner-Company for generation of electricity, which in turn, was used for manufacturing of finished product, was integrally connected with the ultimate finished goods. Under the said circumstances, coal used for generation of electricity is to be categorized as raw material for ultimate production of the finished goods of the petitioner i.e. Sponge Iron and M.S. Billet. Our aforesaid view is further fortified by the decision of the Hon'ble Supreme Court rendered in the case of "Commercial Taxation Officer, Udaipur Vs. Rajasthan Taxchem Ltd, (Supra). In the said judgment, specific question for consideration before the Hon'ble Supreme Court was "Whether diesel can be called raw material in the manufacture of Polyester yarn"? The Hon'ble Supreme Court in the said judgment noticed that Assessee in the said case was manufacturer of polyester yarn and it purchased diesel which was used by it for manufacturing electricity through Diesel Generator Set and the electricity so generated was used for manufacture of ultimate final product i.e. polyester yarn. In the aforesaid factual background, the Hon'ble Supreme Court in the said judgment held as under: -

"29. In view of the fact that the diesel is being used for the purpose of running the generator set for the production of the ultimate product which is also

required for the purpose of manufacturing the end product, the diesel can only be termed as raw material and not otherwise. The Rajasthan Tax Board was, therefore, justified in setting aside the orders passed by the Assessing authority as confirmed by the Deputy Commissioner (Appeal)"

30. The learned counsel for the respondent-State of Jharkhand, during the course of arguments, tried to distinguish the said judgment of Hon'ble Supreme Court by contending inter-alia that in the said judgment, Hon'ble Apex Court noticed that in the certificate of registration of the Assessee, diesel was entered as raw material and it is in that background alone the Hon'ble Supreme Court has held that diesel would be categorized as raw material for the manufacture of polyester yarn. We do not agree to the interpretation advanced by the learned counsel for the State. The Hon'ble Supreme Court in the said case specifically framed question as to whether diesel can be treated as raw material in the manufacture of polyester yarn and it answered the said question in affirmative. Incidentally, before the Hon'ble Supreme Court, it was also argued that diesel was even entered in the registration certificate of the Assessee as a raw material and on that basis, it was contended that diesel should be treated as raw material. The Hon'ble Supreme Court while delivering its judgment has even upheld the said submission of Assessee that once a commodity was already entered in its registration certificate as raw material, it would not be open for the Revenue to contend that said commodity/goods is not a raw material.

31. Incidentally, the ratio of the judgment of the Hon'ble Supreme Court rendered in the case of "Commercial Taxation Officer, Udaipur Vs. Rajasthan Taxchem Ltd, (Supra)" has been further discussed by the Hon'ble Supreme Court in its subsequent decision rendered in the case of "Maruti Suzuki Limited Vs Commissioner of Central Excise, Delhi-III reported in (2009) 9 SCC 193" wherein it was held as under: -

"43. In CCE V. Rajathan State Chemical Works, the test laid down by this Hon'ble Court is whether the process and the use are integrally connected. As stated above, electricity generation is more of a process having its own economics. Applying the said test, we hold that when the electricity generation is a captive arrangement and the requirement is for carrying out the manufacturing activity and the "input" used in that electricity generation is an input used in the manufacture of final product....."

32. Learned counsel for the State during his arguments has relied upon the finding of the Commercial Taxes Tribunal wherein the Commercial Taxes Tribunal, Jharkhand has held that Input Tax Credit shall not be admissible in respect of such goods which do not generate any output tax liability. By relying upon the aforesaid finding as well as provision of Section- 18(1) of the JVAT Act, 2005, it has been contended by the State-Respondent that since coal was utilized for generation of electricity which was captively consumed and not sold in the market generating any output tax liability, petitioner was not entitled to the benefit of Input Tax Credit. In our opinion, finding given by learned Commercial

Taxes Tribunal that Input Tax credit is only available in respect of such goods which generate output tax liability is wholly misplaced and beyond the scheme of JVAT Act, 2005. From a bare reading of Section- 18(4)(iii) of the JVAT Act, 2005 it would be evident that Input Tax Credit is available even in respect of goods which are "intended for use in mining" without there being any condition that mined goods should be sold. Similarly, under section- 18(4)(iii), Input Tax Credit is even available in respect of goods which are used as capital goods other than the goods exempted from tax under the Act. Thus, the legislature was conscious while extending the benefit of Input Tax Credit on goods used directly in mining, and has not provided that goods so used in mining should generate output tax liability. Further, the legislature while providing for Input Tax Credit on goods for use as capital goods, specifically denied ITC on such goods which are exempted from tax. Thus, it cannot be said that merely because coal was utilized by the petitioner for generation of electricity, which was not sold, benefit of ITC would not be available to the petitioner. Section-18(4)(iii) provides for grant of benefit of ITC if the goods are intended for the purpose of "use as raw material for direct use in manufacturing or processing of goods for sale". We have already held in preceding paragraphs of the instant judgment that coal was utilized by the petitioner for generation of electricity, which in turn, was utilized for manufacturing of finished goods and the said process was integrally connected with each other without which final product could not have been manufactured. We have further held that coal would be treated as raw material for manufacturing of finished product i.e. Sponge Iron and M.S. Billet. It is an admitted fact that Sponge Iron and M.S. Billet manufactured by the petitioner has been intended for sale and even output tax liability has been generated and thus, the petitioner is complying with the provision of Section- 18(4)(iii) of the JVAT Act, 2005 and is entitled for ITC accrued on coal utilized by it for generation of electricity.

33. The learned counsel for the respondent-State while relying upon the definition of goods under Section- 2(xxii) of the JVAT Act, 2005 has contended that since electricity is not "goods" under the Act, the petitioner would not be entitled to the benefit of ITC. We do not agree to the said arguments advanced by the learned counsel for the respondent-State as admittedly, the petitioner is not claiming Input Tax Credit on electricity, but is claiming ITC on tax paid by it on purchase of coal, and, admittedly coal is "Goods" as per definition as contained under Section- 2(xxii) of the JVAT Act, 2005. The contention of respondent-State for denying the benefit of ITC on electricity would have been justified, if, electricity would have been purchased by the petitioner and the petitioner would have claimed ITC on the input tax paid on it, if any. Under the said circumstances, the petitioner would not have been allowed the benefit of ITC on electricity in view of provision of Section- 18(4) of the Act which uses the term "Input tax Credit shall be allowed on purchase of goods".

34. The counsel for the respondent-State further contended inter-alia that since in the certificate of registration of the petitioner, coal is not shown as a raw

material for the purpose of generation of electricity, the petitioner cannot be extended benefit of ITC on tax paid on such coal. In this regard, we may hasten to state that in the preceding paragraphs of the present judgment, we have already enumerated three conditions which are required to be fulfilled by a dealer for claiming benefit of ITC, from which it would be evident that there is no stipulation under the JVAT Act, 2005 that Input Tax Credit shall be allowed only in respect of such goods which are enumerated in the certificate of registration of the petitioner. In absence of such condition being stipulated in the JVAT Act, 2005, we are unable to accept the arguments of the learned Counsel for the State in that regard.

35. Further, the counsel for the respondent-State has relied upon judgments to contend that ITC is a concession and the conditions are required to be fulfilled for availing such concession. We may hasten to add that there is no dispute regarding the aforesaid proposition of law that in order to avail benefit of concession, condition prescribed therein are required to be followed. However, for the reasons stated herein above, we are of the considered opinion that the petitioner has fulfilled requisite conditions of availing benefit of ITC on coal utilized by it for generation of electricity.

36. So far as the second issue regarding availability of benefit of ITC to the petitioner in absence of production of Statutory JVAT 404 Forms is concerned, it appears that from bare reading of Section- 18(6) of the JVAT Act, 2005 would reveal that ITC can be claimed by a dealer on production of tax invoices in original containing the prescribed particulars of sale evidencing the amount of tax paid. Further, said section contemplates that even for good and sufficient reasons to be recorded in writing where a dealer is prevented from furnishing tax invoices in original the prescribed authority may even then allow ITC by recording its reason. Thus, Section-18(6) of the JVAT Act, 2005 does not contemplate production of JVAT -404 Forms as a mandatory condition for availing benefit of ITC. However, Rule- 35(2) of the JVAT Rules, 2006 stipulates further condition of production of JVAT 404 Form as requirement for claiming benefit of ITC. To this extent, Rule- 35(2) of the JVAT Rules, 2006 is inconsistent with the provision of Section- 18(6) of the JVAT Act, 2005 and is required to be held directory in nature and not mandatory.

37. It would be relevant to state here that under the scheme of the JVAT Act, 2005 output liability is required to be reduced to the extent of Input Tax paid by a dealer. The State Government in order to protect its revenue and to ensure that benefit of ITC is not availed by a dealer without discharge of Input Tax liability, can lay down sufficient safeguards to ensure that credit of Input Tax is granted to a dealer only where such dealer has actually paid input tax liability. It is in that background that requirement has been prescribed under Section- 18(6) of the JVAT Act, 2005 itself mandating a dealer to claim ITC by "producing tax invoices in original containing the prescribed particulars of sale evidencing the amount of input tax paid". Once such documents are furnished by a dealer, the

State Government is required to extend benefit of ITC to such dealer subject to other provisions of the Act. Merely because a dealer has failed to produce JVAT 404 would not be sufficient to deny the benefit of Input Tax Credit.

38. It is always open for the State Tax Authorities on the strength of tax invoices produced before it by a dealer to verify the genuineness of said invoices and to ascertain that said dealer has in fact discharged liability of input tax on such invoices in respect of which ITC is being claimed. Thus, in our opinion, production of JVAT- 404 Form for the purpose of claiming ITC is merely directory in nature and not mandatory. Under similar circumstances, Hon' be Supreme Court in the case of "State of Orissa Vs. M.A. Tulloch & Co. Ltd, reported in AIR 1966 SC 365: (1964) 7 SCR 816, had occasion to interpret the provision of Section - 5(2)(a)(ii) of the Orissa Sales Tax Act, 1947 read with Rule- 27(2) of the Orissa Sales Tax Rules, 1947. The Hon'ble Supreme Court while interpreting almost similar provisions of the Act and the Rules, has held as under: -

".....,.. In our opinion, Rule 27(2) must be reconciled with the Section and the Rule can be reconciled by treating it as directory. But the rule must be substantially complied with in every case. It is for the Sales Tax Officer to be satisfied that, in fact, the certificate of registration of the buying dealer contains the requisite statement, and if he has any doubts about it, the selling dealer must satisfy his doubts. But if he is satisfied from other facts on the record, it is not necessary that the selling dealer should produce a declaration in the form required in Rule- 27(2), before being entitled to a deduction....."

39. The Division Bench of Hon'ble Patna High Court while following the ratio of Hon'ble Supreme Court in the case of State of Orissa Vs. M.A. Tulloch & Co. Ltd (Supra), in the case of Food Corporation of India, Patna Vs. The Commissioner of Commercial Taxes, Bihar, Patna, reported in (1993) 2 PLJR 625 has held similar provisions of furnishing declaration Form- IX-C under Bihar Sales Tax Rules, 1957 as directory in nature and not mandatory.

40. For the reasons stated hereinabove, our conclusion is as follows: -

(i) Coal used for generation of electricity in the captive power plant of the petitioner and electricity generated, in turn utilized exclusively for the manufacture of finished goods, is to be treated as raw material of the finished goods and, would qualify for the benefit of Input Tax Credit as per Section-18(4) (iii) of the JVAT Act, 2005. Accordingly, we direct the respondent-State of Jharkhand to extend the benefit of Input Tax Credit to the petitioner on tax paid by it on purchase of coal utilized by it for generation of electricity;

(ii) We further conclude and hold that the provisions of Rule-35(2) of the JVAT Rules, 2006 which prescribes the condition of furnishing of JVAT- 404 Forms for the purpose of claiming Input Tax Credit is merely directory in nature and not mandatory. However, the Assessee who fails to produce JVAT-404 Forms in terms of Rule- 35(2) of the JVAT Rules, 2006 is required to substantiate its claim of Input Tax Credit by producing documents as enumerated under Section 18(6) of

the JVAT Act, 2005. It is open for the respondent-State of Jharkhand to verify the genuineness of the said documents and to ascertain as to whether said Assessee, in fact, has discharged the liability of input tax at the time of procurement of inputs. Accordingly, we direct the respondent-State of Jharkhand to re-examine the claim of the petitioner towards its claim of Input Tax Credit amounting to Rs.33,38,740/- in respect of which the petitioner has not submitted JVAT-404

Forms, by verifying the said claim from tax invoices in original containing particulars of sale evidencing the amount of input tax paid and on being satisfied that the petitioner has paid input tax as aforesaid, extend the benefit of Input Tax Credit to the petitioner.

41. Accordingly, for the reasons and judicial pronouncements stated herein above, the impugned order dated 09.02.2017 passed in Revision Petition bearing No. Hz 60 of 2016 by the Commercial Taxes Tribunal, Jharkhand, Ranchi pertaining to the period 2011-12, Appellate Order dated 22.12.2015 passed in Appeal Case No. RG/JVAT/A-03/15-16 and Assessment Order dated 12.3.2015 passed by the Respondent no.4, the Assistant Commissioner of Commercial Taxes, Ramgarh Circle, Ramgarh, are hereby, quashed and the concerned Assessing Authority is directed to give effect to the order passed by this Court within a period of eight weeks from the date of receipt of copy of the order.

42. This writ application is accordingly, allowed, with the directions as above.