(2009) 07 OHC CK 0036

In the Orissa High Court

Paradeep Phosphates Ltd. APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:
Orissa Value Added Tax Act, 2004 — Section 2(25), 42

Citation : (2009) 2 OLR 769

Hon'ble Judges : I. Mahanty, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Mr. B.K. Mohanti, learned senior counsel for the petitioner and Mr. R.P. Kar, learned Additional Standing Counsel for the Revenue.

2. The petitioner, which is a limited company and a TIN dealer and is engaged in manufacturing of different types of fertilizer, has filed this writ petition challenging the order of assessment dated 21.2.2007 passed by the Assistant Commissioner of Sales Tax, Cuttack II Range, Cuttack, for the period from 1.4.2005 to 30.9.2006 u/s 42 of the Orissa Value Added Tax Act, 2004, vide Annexure-1.

3. The limited ground of challenge to the order of assessment is against the rejection of the input tax credit claimed by the petitioner on purchase of furnace oil worth Rs. 9,27,53,164/- on the ground that the furnace oil is not directly used in manufacturing of finished products.

4. Mr. Mohanti for the petitioner submits that the Assistant Commissioner of Sales Tax in the order of assessment on one hand has given a finding that the material, i.e., furnace oil, is used in the manufacture of finished product, but on the other hand, refuses to give the input tax credit, which according to him, is self-contradictory. Mr. Mohanti relies upon the decision of this Court in Reliance Industries Ltd. v. Assistant Commissioner of Sales Tax and Ors. 2008 (Supp) OLR 1101 : (2008) 15 VST 228 (Ori), wherein it has been decided that furnace oil

which is used in the process of manufacture of P.S.F. is to be treated as an input as defined in Section 2(25) of the OVAT Act and the input tax, which has been paid on purchase of furnace oil, can be claimed as input tax credit u/s 2(27) of the OVAT Act against the tax payable on finished product, i.e., P.S.F. Relevant paragraphs 12 & 16 of the said judgment are quoted hereunder:

12. The process of manufacturing as indicated above in the Engineering Flow Chart reveals that the process is a continuous one and furnace oil is directly used in such process of manufacture. The lis between the parties in the case at hand is that while the petitioner claims that furnace oil which is a consumable directly used in the processing/manufacturing of PSF, the Revenue''s stand is that furnace oil is not a consumable which directly used in the manufacturing process, but is a fuel for burning. As stated above, the ACST in his order dated 28th June, 2006, inter alia, held that furnace oil is not an input which directly goes into composition of the finished products. It is a fuel in preparation of PSF.

16. xxx xxx On the other hand, it boils down to an irresistible conclusion that furnace oil is one of the primary and essential commodities which has a direct relation in the manufacturing process and ''direct relation'' means without which the manufacturing of end-product is not possible at all. In that view of the matter, we are of the considered view that furnace oil used by the petitioner in the process of manufacture without which production of PSF is not feasible is nothing but consumable.

5. As the aforesaid judgment was delivered by this Court on 15.5.2008, the same was not available with the Assessment Officer when the impugned order of assessment was passed on 21.2.2007.

6. Mr. Mohanti also relies upon the decision rendered by the apex Court in State of Gujarat and Anr. v. AMI Pigments Pvt. Ltd. and Ors. (2009) 22 VST 615 (SC), in which it was decided that the important test that would be applied is the "test of essentiality" or the "test of dependency" in deciding the question as to whether the expression "raw materials" or "processing materials" or "consumable stores" would cover various fuels like naphtha, liquid diesei oil, natural gas, etc. The same test has been applied by the apex Court in J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer (1965) 16 STC 563 and in Collector of Central Excise v. Ballarpur Industries Ltd. (1990) 77 STC 282.

7. Basing upon the aforesaid judgments, learned Counsel for the petitioner submits that the furnace oil used by the petitioner in manufacturing different types of fertilizer is also directly goes into the compensation of finished product, for which this writ petition should be allowed. Admittedly, the judgment of this Court in Reliance Industries (supra), was not before the Assessing Authority while passing the order of assessment dated 21.2.2007 and the said judgment was delivered on 15.5.2008.

8. In such view of the matter, we set aside the order of assessment dated 21.2.2007 passed by the Assistant Commissioner of Sales Tax (LTU), Cuttack-II

Range, Cuttack, vide Annexure-1 and the consequent notice of demand. The Assistant Commissioner of Sales Tax, O.P.2, is directed to go for assessment for the period from 2.4.2005 to 30.9.2006 afresh taking into consideration the decision rendered by this Court in M/s. Reliance Industries Ltd. (supra) and the decision of the apex Court in AMI Pigments Pvt. Ltd. (supra).

9. We direct the petitioner to appear before the Assistaot Commissioner of Sales Tax on 10th August, 2009 along with a certified copy of this order and in that event, the Assistant Commissioner shall fix a date of hearing and conclude the re-assessment within a period of three months thereafter.

10. The writ petition is accordingly allowed. Misc. Case Nos. 3560/ 2007 & 3561/2007 also stand disposed of.

11. The original documents so annexed to this writ petition be returned to the petitioner on being substituted by photocopy thereof.

12. Let a copy of this order be supplied to the learned Counsel for the Revenue.

13. Issue urgent certified copy.

