
(2010) 08 OHC CK 0009

In the Orissa High Court

Case No : Writ Petition (C) No's. 9782, 10957, 11212, 11673, 11674, 12414, 12628, 12649, 13048, 13049, 13114, 13637, 13904, 14664, 15009, 15233, 15234, 15235, 15448, 15601, 15602, 15603, 15796, 15842, 15841, 15889, 16106, 17673, 17674, 17598, 17772, 18253, 18258,

Visa Steel Ltd.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Orissa Value Added Tax Act, 2004 — Section 11, 11(3), 12, 14, 16
Orissa Value Added Tax Rules, 2005 — Rule 11

Citation : (2010) 110 CLT 892 : (2010) 2 OLR 792 : (2011) 41 VST 238

Hon'ble Judges : V. Gopala Gowda, C.J.;Indrajit Mahanty, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Gopala Gowda, C.J.—In these matters hearing was closed on 12.8.2010 and the following order was passed:-

We are of the considered view that the impugned notification SRO No. 34/2009 dated 27.1.2009 in all the writ petitions declaring "coal" and "furnace oil" as goods is illegal and therefore the impugned notification is liable to be quashed to the aforesaid extent and is accordingly quashed.

Reasons to follow.

2. Accordingly, we note the reasons in support of the aforesaid order as hereunder:

3. The Petitioners herein have filed the present batch of writ petitions seeking to challenge the legality and validity of the Notification S.R.O. No. 34/2009 dated 27.1.2009 issued by the State of Orissa in the Finance Department published in the Orissa Gazette dated 27.1.2009 in terms of which the Petitioners, who are registered dealers under the Orissa Value Added Tax Act, 2004 have been

disallowed from claiming any "input tax credit" in respect of VAT paid by them on their purchase of "Coal" and "Furnace Oil", on the basis of the impugned notification issued u/s 20(8), Clause (m) of the Orissa Value Added Tax Act, 2004 (here-in-after referred to as "OVAT Act") on the ground that the OVAT Act does not vest in the Finance Department of the Government of Orissa with the necessary authority in law for issue of such a notification and a further prayer has been made seeking a writ declaring Clause (m) of Sub-Section 8 of the Section 20 of the OVAT Act as ultra virus the Constitution of India as it suffers from the vice of excessive delegation.

4. For the purpose of convenience the impugned notification is extracted herein, which runs thus:

The Orissa Gazette Extraordinary Published by Authority

No. 96, Cuttack, Tuesday, January 27, 2009/Magha 7, 1930

Finance Department Notification The 27th January 2009

S.R.O. No. 34/2009-In exercise of the powers conferred by Clause (m) of Sub-section (8) of Section 20 of the Orissa Value Added Tax Act, 2004 (Orissa Act 4 of 2005), the State Government, having been satisfied that it is necessary so to do, hereby specify that no input tax credit shall be allowed to the registered dealers in respect of the goods description of which is given in the Schedule below.

SCHEDULE

Sl. No. Description of goods (1) (2) 1. Coal except when purchased for resale 2. Furnace oil except when purchased for resale 3. Kerosene except when purchased for resale 4. All Automobiles including commercial vehicle/two wheelers/three wheelers required to be registered under the Motor Vehicles Act 1988 and including tyres and tubes, spare parts and accessories for the repair and maintenance thereof; except when purchased for resale. 5. Air conditioning units other than those used in plant and laboratory except when purchased for resale. 6. Earth moving equipment such as dozers, loaders and excavators; and proclain, dumpers and tippers etc. except when purchased for resale. 7. Machinery and equipments including accessories and component parts thereof purchased for use in mining. 8. Machinery and equipments including accessories and component parts thereof purchased for use in construction activities such as mixer, road roller, paver, vibrator etc. [No. 4762/CTA-63/08-F] By order of the Governor P.K. Rout Under-Secretary to Government

5. Mr. A.K. Ganguly, learned Senior Advocate appearing for the Petitioner-M/s Tata Refractories Limited submitted that the impugned notification purportedly issued by taking recourse to Section 20(8)(m) is ultra virus Section 20(3)(b) read with Section 2(25) of the OVAT Act. It was submitted that while the OVAT Act declares that "input tax credit" should be allowed on purchases made within the State from a registered dealer holding a valid registration certificate in

respect of goods intended for the purpose of "use as input" which includes (consumables directly used) in respect of manufacture of finished products. The impugned notification is clearly contrary to the said legislative mandate since it purports to declare that, no input tax credit is to be allowed on "coal" and "furnace oil", even though they are either raw materials or consumables directly used in the processing and manufacturing of finished goods, i.e., refractory bricks. It is further submitted on behalf of the Petitioner that the impugned notification is also ultra virus of Clause (m) of Sub-section (8) of Section 20 as the same exceeds the limits of the power conferred on the State Government to specify only a circumstance or eventuality similar to those spelt out in Clauses (a) to (1) of Sub-Section 8 of Section 20 and purports to altogether deny input tax credit for the raw materials/consumables like Coal and Furnace Oil and that too, without specifying any circumstance/eventuality similar to those contained in Section 20(8)(a1) of the OVAT Act, under which such credit could be denied.

6. The Petitioners further submits that the impugned notification is a "colourable device" since in effect it seeks to nullify the judgments rendered by this Court in the case of *Reliance Industries Limited v. Assistant Commissioner of Sale Tax and Ors.* (2008) 15 VST 228 (Ori). By way of an alternative arguments it was further submitted by the Petitioners that, if the impugned notification is held to be within the ambit of Clause (m) of Sub-section (8) of Section 20 of the OVAT Act, then the said provision, i.e., Section 20(8)(m) of the OVAT Act would be liable to be quashed and declared unconstitutional for suffering from the vice of excessive delegation of legislative power.

7. Mr. N. Venkat Raman, Senior Advocate appearing for the Petitioner-M/s Visa Steel Limited submitted that his client was essentially in the business of manufacture of Sponge iron. It is further submitted by him that in the process of manufacture of sponge iron, "coal" is a raw material since sponge iron cannot be manufactured without use of coal in the process of its manufacture. While adopting the arguments addressed by Mr. A.K. Ganguly, Senior Advocate as noted hereinabove, learned Counsel submitted that, the legislative mandate of Section 20(8) of the OVAT Act there are various circumstances or situations in which a registered dealer could not claim or would not be allowed input tax credit in each of the situations/circumstances narrated in Clauses (a) to (1) contained therein. If an analysis is made of all the circumstances covered u/s 20(8), it would be clear that each of such situation resulted in a circumstance when there was no question of any accretion or additional VAT payable/Collectable in the circumstances contemplated therein. The impugned notification and the denial of claim of input tax credit for specific items such as coal and furnace oil in the circumstances that the Petitioners are in, i.e., manufacture, the manufactured product itself was in the present circumstances subject to levy of VAT and therefore, there was no situation in which such raw material on which input tax credit is sought for escaping from VAT, since the final product produced by the Petitioners, i.e., sponge iron would be also liable for VAT. In other words, learned Counsel submitted that the notification issued by the Finance Department

purportedly in exercise of its power under Clause (m) of Sub-section (8) of Section 20 of the VAT Act is clearly beyond the authority and/or competence of the executive i.e. Finance Department. Learned Counsel further submitted that in the present case the impugned notification is clearly an attempt by the executive to overreach the legislative mandate contained in the OVAT Act which specifically permits a registered dealer u/s 20(3) to claim for input tax credit in terms thereof.

7.1 Learned Counsel further submitted that the principle of ejusdem generis rule has to be applied to the scope of Clause (m) of Sub-section (8) of Section 20 and, therefore, submitted that it is well established principle that where general terms have been used following particular expression, the said general term would take that colour and meaning as that of preceding expression and in support of the aforesaid proposition he placed reliance on a judgment of the Hon"ble Supreme Court in the case of Collector of Central Excise, Bombay v. Maharashtra Fur Fabric Ltd. (2002) 7 SCC 444. Reliance is also placed on the principle of ejusdem generis on a judgment of the Hon"ble Supreme Court in the case of State of Karnataka and Others Vs. Kempaiah, , wherein the expression "in any other manner" takes in it fold the last-mentioned categories of administrative actions. In the said judgment it was held that the expression "in any other manner" contained general words which construed literally, should receive their full and natural meaning but when they follow the specific and particular words of the same genus, it will be presumed that the legislature has used the general words in a limited sense to convey the meaning implied by the specific and particular words used.

8. Mr. A.K. Mohanty, learned Advocate General appearing for the State relied upon the averments made on behalf of opposite party as contained in the counter affidavit filed through Mr. Sudhansu Mohan Das, Assistant Commissioner of Commercial Taxes (Law). Learned Advocate General submitted that the power u/s 20(8)(m) of the OVAT Act, 2004 is neither conditional upon framing of rules nor is there any excessive delegation of power to the Government which can be either be termed as wide unchanellised or unguided. It is further submitted that the allegation that the opposite party was trying to overcome the judgment in the case of Reliance Industries Ltd. v. Assistant Commissioner of Sales Tax in which it was held that "furnace oil" is an "input" u/s 20 of the OVAT Act is totally misconceived and inappropriate in the present circumstances. It was contended that the words and phrases contained in the definition clauses of the OVAT Act cannot override the provisions of the statute and the definition of the term "input" u/s 2(25) of the OVAT Act ought not to be read independent of the context in which it appears.

8.1 Learned Advocate General submitted that no absolute right to award "input tax credit" can flow from an independent reading of Section 2(25) of the OVAT Act and also placed reliance on the judgment of the Hon"ble Supreme Court in the case of Special Officer and Competent Authority, Urban Land Ceilings,

Hyderabad and Another Vs. P.S. Rao, as well as in the case of The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another, . In order to canvass the State's contention that, it is well settled law that, when the application of the definition to a term in a provision makes it unworkable and otiose, it can be said that the definition is not applicable to that provision because of the context being contrary to the main statutory provision. Accordingly, he submitted that Section 2(25) of the OVAT Act cannot form the fountain head of an absolute right being claimed for by a petition for availing input tax credit.

9. It was further submitted that notwithstanding the provision of Sub-section (3) of Section 20 which allow a registered dealer to avail input credit on the goods used as input, the same was subject to the rider contained in Sub-section (8) of Section 20. Since Clause-(m) of Sub-section (8) of Section 20 of the OVAT Act empowers the State Government to issue necessary notifications disallowing input tax credit in certain cases, such power is a "plenary power" and cannot be limited to the type of circumstances similar to the other spelt out in Clauses (a) to (1) of Sub-section (8) of Section 20. It was urged on behalf of the State Government that the impugned notification was issued by exercise of power u/s 20(8)(m) of the OVAT Act and since there was no element of sale in respect of these commodities when the registered dealer used the same coal/and furnace oil as input for manufacturing finished product, the Government of Orissa in Finance Department after a through deliberation has thought it fit to place restriction by "disallowing input tax credit" In such circumstances. It was further submitted that in the matter of taxation it is the prerogative of the State, to pick and choose objects, persons, methods and rates for taxation and that the Petitioners are not entitled to challenge the notification, since it is based on rational consideration and it was decided to disallow input tax credit in respect of "coal" and "furnace oil" and other items covered in the notification to the registered dealer, who use and consume the same for manufacturing of finished products and such input tax credit was allowable only when such items, i.e. coal and furnace oil were resold. It was also submitted that the contention raised by the Petitioners that the impugned notification dated 27.1.2009 of the Finance Department seeks to over reach and nullify the judgment of this Court in the case of M/s. Reliance Industries Limited (supra) in which it was held that furnace oil was an input u/s 2(25) of the OVAT Act is incorrect. It was submitted that the same was misconceived since the definition of "input" given u/s 2(25) of the OVAT Act is altogether different from the definition of "input tax credit" u/s 2(27) of the Act and in terms of said Sub-section, the same was subject to Section 20 of the OVAT Act. Therefore, since this Court in the case of M/s Reliance Industries dealt with Section 2(25), the said case has no applicability to a case u/s 2(27) of the OVAT Act and that two definitions are mutually exclusive.

10. In the light of contentions advanced by the learned Counsel for the rival parties as noted herein above it becomes imperative at this stage to take note of various relevant provisions in Sections 2(25), 2(26), 2(27) and 2(28) and

Sections 12 and 20 of the OVAT Act, 2004 and Rule 11 of the OVAT Rules, 2005, Those are quoted below:

2. Definitions-In this Act, unless the context otherwise requires.

(1) to (24) xx xx xx xx xx

(25) "Input" means any goods purchased by a dealer in the course of his business for resale or for use in the execution of words 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, but does not include tax collected on the sale of goods made to a commission agent purchasing such goods on behalf of such dealer.

(26) "input tax credit" in relation to any tax period means the setting off of 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;

(28) "Manufacture" means any activity that bring out a change in an article or articles as result of some process, treatment, labour and result in transformation into a new and different article so understood in commercial parlance having a distinct name, character and use, but does not include such activity of manufacture as may be notified.

12. Levy of tax on purchase - Every dealer who, in the course of his business, purchase or receives any goods-

(i) from a registered dealer, in the circumstances in which no tax u/s 11 is payable by that registered dealer on such goods, or

(ii) from any person other than a registered dealer.

shall be liable to pay tax on the purchase price or prevailing market price of such goods, if after such purchase or, as the case may be, receipt, the goods are not sold within the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India, but are-

(a) sold or disposed of otherwise; or

(b) consumed or used in the manufacture of goods declare to be exempted from tax under this Act; or

(c) after their use or consumption in the manufacture of goods, such manufactured goods are disposed of otherwise than by way of sale in the State or in the course of inter-State trade or commerce or export out of the territory of India; or

(d) used or consumed otherwise,

and such tax shall be levied at the same rate, at which tax u/s 11 would have been levied, on the sale of such goods within the State on the date of such purchase or receipt.

20. Input tax credit - (1) Subject to the provisions of this Act, for the purpose of calculating the net tax payable by a registered dealer for any tax period, an input tax credit as determined under this Section shall be allowed to such registered dealer against the tax paid or payable in respect of all sales or purchase taxable under this Act, other than sales or purchase of goods specified in Schedule C and Schedule D.

(2) The input tax credit to which a registered dealer is entitled under Sub-section (1) shall be the amount of tax paid by the registered dealer to the seller on his turnover of purchase of goods during the tax period, calculated, subject to the provisions contained in Sub-sections (3), (4) and (5), in such manner as may be prescribed.

(3) Input tax credit shall be allowed for purchases made within the State from a registered dealer holding a valid certificate of registration in respect of goods Intended for the purpose of-

(a) sale of resale by him in the State;

(b) use as inputs or as capital goods in the manufacturing or processing of goods, other than those specific in Schedule A and Schedule C and Schedule D for sale;

(c) sale of goods subject to levy of tax at zero rate u/s 18;

(d) for use as containers for packing of goods, other than those exempt from tax under this Act, for sale or resale; or

(e) "transfer of stock of taxable goods other than by way of sale, to any place outside the State;

Provided that -

(a) the input tax credit on purchases for the purpose of Clause (e) shall only be allowed in respect of the amount of tax paid or payable in excess of tax at the rate of four per centum;

(b) if goods purchased are used partially for the purpose specified in this Sub-section, input tax credit shall be allowed proportionately to the extent they are used for such purposes; and

(c) where a registered dealer sells or dispatches 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 exempt.

(4) Notwithstanding anything contained in this Section or elsewhere in this act, and subject to such conditions and restrictions and in such manner, as may be prescribed, input tax credit may be allowed partially or in phased manner, in respect of such goods or such class of dealers or in such cases, as may be prescribed.

(5) (a) Input tax credit on capital goods shall be allowed from the date of first sale of taxable goods produced or manufactured after the commencement of such production and shall be adjusted against the output tax over a period not exceeding three years:

Provided that no-input tax credit shall be allowed on such capital goods used for the purpose and in the circumstances specified in Schedule "P".

(b) input tax credit under Clause (a) of this Sub-section shall be allowed in lump sum provided the value of such capital goods in rupees one lakh or less.

(c) Input tax credit on capital goods shall be allowed only on purchases of such goods made on or after the appointed day.

(d) In case of closure of business before the commencement of commercial production, on input tax credit on capital goods shall be allowed and input tax credit carried forward, if any, shall be forfeited.

(e) In case where there is production of both taxable goods and goods exempt from tax, the input tax credit admissible on capital goods shall be determined in the manner prescribed.

(f) Where the used capital goods are sold, the same shall be subject to tax under this Act.

(6) Input tax credit shall not be claimed by the dealer for any tax period until the dealer receives the tax invoice in original evidencing the amount of input tax:

Provided that for good and sufficient reasons to be recorded in writing, the Commissioner may, in the prescribed manner, allow such credit subject to such conditions and restrictions as may be specified in the order allowing the credit.

(7) A registered dealer who intends to claim input tax credit shall, for the purpose of determining the amount of input tax credit, maintain accounts and such other records as may be prescribed in respect of the purchases and sales made by him and stock in trade held.

(8) No input tax credit be claimed by or be allowed to a registered dealer-

(a) In respect of any taxable goods purchased by him from another registered dealer for resale but given away by way of free sample or gift;

(b) who makes payment of turnover tax as provided in Section 16;

(c) in respect of capital goods used for the purpose and in the circumstances as

specified in Schedule "D";

(d) in respect of goods brought from outside the State against the tax paid in any other State;

(e) in respect of stock of goods remaining unsold at the time closure of business;

(f) in respect of goods purchased on payment of tax, if such goods are not sold because of any theft, damage and destruction;

(g) where the tax invoice is not available with the dealer or there is evidence that the same has not been issued by the selling registered dealer from whom the goods are purported, to have been purchased;

(h) in respect of goods purchased from a dealer whose certificate of registration has been suspended;

(i) in respect of sale of goods specified in Schedule A;

(j) in respect of sale of goods specified in Schedule C;

(k) in respect of raw material used in manufacture or processing of goods, where the finished products are exempt from tax; and

(l) executing works contract, in relation to works contracts executed by him, where he has exercised option under Sub-section (3) of Section 11 to pay tax by way of composition; and

(m) in any other case as the Government may, by notification, specify.

Rule 11. Calculation of Input Tax Credit-

(1) where a dealer effects sales of goods both, subject to tax and exempt from tax, under the Act, the following calculation for claiming input tax credit shall apply-

(a) where all the sales effected by a dealer in a tax period are subject to tax under the Act, the whole of the input tax may be claimed as credit.

(b) where all the sales effected by the dealer for a tax period are exempt from tax under the Act, no input tax may be claimed as credit.

(c) where a part of the sales effected by a dealer in a tax period are subject to tax and the remaining part of the sale are exempt from tax under the Act, the amount that can be claimed as input tax credit shall be calculated from the following formula-

$P \times Q / R$

Where-

"P" is the total amount of input tax;

"Q" is the taxable turnover of sales including zero-rated sales; and

"R" is the total amount of all sales including exempt sales:

During the tax period.

(d) where the fraction Q/R , is less than 0.05, the dealer may not claim any input tax credit for that period.

(e) where the fraction Q/R is more than 0.95, the dealer may claim the entire Input tax as credit for that period.

(2) Input tax credit on capital goods under Clause (e) of Sub-section (5) of Section 20 shall be allowed in the following manner:

(a) the total input tax eligible for credit on capital goods for each tax period shall be equally apportioned over a period of thirty six months and

(i) in case of a start up or new business input tax credit shall be allowed as apportioned for each tax period, beginning from the first sale after commencement of commercial production;

(ii) in case of a continuing business, input tax credit shall be allowed as apportioned for each tax period following the taxperiod during which such input tax credit accrued.

(b) the input tax credit, admissible under Clause (a), where there is sale of both taxable and tax exempt finished products, shall be determined on application of the principles as provided under Sub-rule (1) in respect of each tax period.

Explanation - For the purpose of this sub-rule, the expression "total input tax" referred to in Sub-rule (1) shall be the input tax as apportioned in respect of a tax period:

Provided that for the purpose of calculating input tax credit under this sub-rule, if the value of the capital goods is within rupees one lakh in a tax period, the input tax credit claimed on such amount shall be allowed in one instalment."

11. It is clear from the pleadings of the parties that this Court had the occasion to deal with the definition of "input" in Section 2(25) of the OVAT Act, 2004 in the case of M/s: Reliance Industries Limited (supra) and came to a conclusion that the definition of the term "input" in Section 2(25) of the OVAT Act was an "inclusive" definition by which legislature clearly covered the following:

(i) goods purchase by a dealer in course of his business for resale;

(ii) for use in the execution of works contract;

(iii) in processing or manufacturing, where such goods directly go into composition of the finished products or packing of goods for sale; and

(iv) includes consumable directly used in such processing or manufacturing.

11.1. Accordingly, the Court came to a conclusion in terms of the "input"

definition that, the only requirement is that the consumables are directly used in such processing and/or manufacturing and the term of "consumable" was not limited to those goods which directly go in composition of the finished products alone. The term "consumable" postulates that such articles may be destroyed or completely used in course of the processing or manufacturing of such goods and for such reason since the term "consumable" was used by the legislature, the said definition was held to be an "inclusive definition". Therefore, after referring to various judgments in the said case, the Court came to a conclusion that input comprises of two types of commodities, i.e. (i) those commodities which directly go into the composition of finished product and (ii) the consumables used in the manufacturing process for production of finished product and concluded that for "consumable" to qualify as an "input" it is not at all necessary that in order for consumable to qualify as "input" should directly go into the composition of the finished product. What is required is that consumable should be directly used in the manufacturing process for production of the finished product. In that view of the matter Court concluded that "furnace oil" used by the Petitioner in the process of manufacturing of PSF was to be treated as "input" as defined u/s 2(25) of the OVAT Act and the credit for input tax which has been paid by the dealer on the purchase of furnace oil can be claimed u/s 2(27) of the OVAT Act against the tax payable on finished product, i.e. PSF.

12. In the present case, we are required to deal with the issue of impugned notification and in particular relating to "coal" and "furnace oil". In the case at hand, clearly such items i.e., coal and furnace oil are clearly covered under Sub-sections (25), (26) and (27) of Section 20 of the OVAT Act. Apart from the above, in terms of Section 12 of the OVAT Act, 2004 Petitioners are liable to pay the OVAT on their purchase as stipulated u/s 12 at the rate prescribed u/s 14 of the OVAT Act. At this juncture it become important to note herein that in term of Section 20(1), there is no dispute in the present case that the Petitioners are entitled there under to claim input tax credit since neither coal nor furnace oil has been specified neither in Schedule-C nor Schedule-D of the Act. In terms of Sub-Section 2 of Section 20 the input tax credit is to be limited to the amount tax paid by the Petitioner dealer on the purchase of the "input" as stipulated under Sub-section (2) and most importantly u/s 20(3) the legislative mandate is that input tax credit shall be allowed when purchase is made within the State from a registered dealer holding a valid certificate of registration in respect of goods intended for the purpose stipulated in terms thereof. It is also an admitted fact that although power is vested in the State Government under Sub-section (4) of Section 20 of the OVAT Act to prescribe condition and restriction where input tax credit may be allowed partially or in a phased manner in respect of such goods for such classes of dealer as may be prescribed, admittedly no such rule under Sub-section (4) of Section 20 has been enacted by the State Government.

13. Further more importantly none of the circumstances described under Sub-section (8) of the Section 20 and Clauses (a) to (l) thereof are attracted in the

present case. Therefore, the State having relied on Clause (m) of Sub-section (8) of Section 20 to issue the impugned notification, the only remaining issue that arises for our consideration is as to whether the State Government was competent to issue notification of a nature impugned herein in terms of the said provision.

14. The scope of our enquiry and determination herein revolves round the question of adjudicating as to the scope and power vested in State Government under Clause (m) of Sub-section (8) of Section 20 of the OVAT Act. In terms thereof it is clear that the Government is authorized to notify "any other case" as may be deemed appropriate in terms of Sub-section (8) of Section 20 of the OVAT Act.

14.1 At the outset on an analysis of the circumstances contained in Sub-section (8) of Section 20 it is clear that whereas Clause (a) deals with the situation where the taxable goods purchased by the registered dealers is not re-sold in course of his business but given away as a free sample or gift. In other words the case in which there is no further resale of the purchased goods consequently there is no scope of giving a right to the situation for any further levy thereon. Since no levy of VAT is permissible in the event of a free sample or a gift, the benefit of input tax credit for inter State purchase by such a dealer ought not to be claimed.

14.2 So far as Clause (b) of Sub-section (8) of Section 20 is concerned, since the registered dealer contemplated therein had opted for payment of "turnover tax" u/s 16 (composite tax), obviously thereby no question of claiming of credit input tax can arise. Under Clause (c) where a registered dealer purchases capital goods, input tax credit thereon is permissible under Sub-section (5) of Section 20 to the extent and in the manner stipulated therein. In so far as Clause-(d) is concerned, the same refers to purchase by a registered dealer from out side the State against the tax paid in any other State and obviously thereby since no tax was paid within the State of Orissa, no question of claim for input tax credit for such tax can obviously be permitted. So far as Clause (e) is concerned, if a registered dealer has stock of goods remaining unsold at the time of closure of his business, clearly thereby since the event of further sale has not taken place, no question of input tax credit can arise. So far as Clause (f) is concerned, if goods are purchased by a registered dealer and the same is stolen, damaged or destroyed, obviously such goods are not more available for resale and in absence of such goods no claim of input tax credit could be permissible. In so far as Clause (g) is concerned, where a registered dealer is not in a position to provide the tax invoice, no question of grant of input tax credit is also permissible. So far as Clause (h) is concerned, a registered dealer, who may have purchased goods from a registered dealer, but if such selling dealer registration certificate has been suspended the purchasing dealer can have no right to claim input tax credit. In so far as Clauses (i) and (j) are concerned, the goods which we are presently concerned, i.e., Coal and Furnace oil are admittedly not specified in the

Schedule-A or C. In so far Clause (k) is concerned, where the finished products of the registered dealer is exempted from tax either in whole or in part under the Act, no question of input tax credit on inputs or capital goods other than those covered under Schedules A, C or D would obviously be available in view of the exemption of tax of the final products either whole or in part. In so far as Clause (l) is concerned, if a registered dealer executes works contract and has exercised his option under Sub-section (3) of Section 11 to pay tax by way of composition as prescribed u/s 11(c) in view of exercise of such option no question of availing input tax credit would arise. We now come to Clause (m) of Sub-section (8) which contemplates and vests power in Government to make notification specifying any other goods, this is the power which the State has resorted to in passing the impugned notification.

15. In the case at hand, we are clearly of the considered view that both the judgments cited by the Petitioners in the case of *Collector of Central Excise Bombay v. Maharashtra Fur Fabric Ltd.* as well as in the case of *State of Karnataka and Ors. v. Kempaiah (supra)* clearly cover the field. The principle of *ejusdem generis* shall apply to the scope and ambit of Clause (m) of Sub-section (8) of Section 20 of the OVAT Act, 2004. Clearly Clauses (a) to (l) of Sub-section (8) of Section 20 are circumstances specified by the legislature under which no input tax credit can be claimed nor allowed to a registered dealer. Only such additional circumstance may be specified by a notification of the State Government, but the nature of such notification has to satisfy the requirement of Sub-section (8) of Section 20 of the OVAT Act.

16. We are afraid that we cannot accept the contention raised by the State that u/s 20(8)(m) the State is vested with "plenary power" and not limited to the type of circumstances similar to those spelt out under Clauses (a) to (l) of Sub-section (8) of Section 20 of the OVAT Act.

17. The principle of *ejusdem generis* has been well settled by the Hon'ble Supreme Court of India in various judgments, including the judgments referred by us hereinabove and for this purpose we cannot do better than what has been said by the Hon'ble Supreme Court in the case of *State of Karnataka and Ors. v. Kempaiah (supra)*, particularly in para-8 thereof and in the case of *Collector of Central Excise Bombay v. Maharashtra Fur Fabric Ltd. (supra)* particularly in para-6 thereof, Paragraph-8 of the judgment of the Hon'ble Supreme Court in the case of *State of Karnataka and Ors. v. Kempaiah* reads as follows:

8. The definition of the word "action" in Section 2(1) read as under:

2. (1) "action" means administrative action taken by way of decision, recommendation or finding or in any other manner and includes wilful failure or omission to act and all other expressions [relating to] such action shall be construed accordingly.

A perusal of the definition indicates that it encompasses administrative action taken in any form whether by way of recommendation or finding or "in any other

manner", e.g., granting licences or privileges, awarding contract, distributing government land under statutory rules or otherwise or withholding decision of any matter etc. The expression "in any other manner" takes it in fold the last-mentioned categories of administrative actions. Mr. Nagaraja has argued that the expression "in any other manner" will have to be given a wider meaning so as to include other actions of the public servants such as the action of the Respondent in amassing wealth, otherwise the very purpose of the Act will be frustrated. We are afraid we cannot accede to the contention of the learned Counsel as it would not only be contrary to the principle of construction of statutes but will also be repugnant to the object of the Act, pointed out above. The expression "in any other manner" contains general words which construed literally, should receive their full and natural meaning but when they follow specific and particular words of the same genus, it will be presumed that the legislature has used the general words in a limited sense to convey the meaning implied by specific and particular words, This follows from application of the rule of ejusdem generis. That rule which is an exception to the rule of construction that general words should be given their full and natural meaning, was enunciated by Lord Campbell in R. v. Edmundson "1... where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified". (Craies on Statute Law, 6th Edn., p.179.) These rules of interpretation are so well settled that they hardly need any authority to support our conclusion. Now in the definition of action, the expression "in any other . manner" follows "decision", "recommendation" or "finding". So it connotes other categories of administrative action; it cannot be interpreted to mean actions which have no nexus to any administrative action.

Paragraph-6 of the judgment of the Hon"ble Supreme Court in the case of Collector of Central Excise Bombay v. Maharashtra Fur Fabric Ltd. (supra) reads as follows:

6. A careful reading of the proviso to the notification would show that by resorting not only to the process of bleaching, dyeing, printing, shrink-proofing, tentering, heat-setting, crease-resistant processing, but also to "any other process or any two or more of these processes", the Respondent would lose the benefit of the exemption. It is well-established principle that general terms following particular expressions take their colour and meaning as that of the preceding expression, applying the principle of ejusdem generis rule, therefore, in construing the words "or any other process", the import of the specific expressions will have to be kept in mind. It follows that the words "or any other process" would have to be understood in the same sense in which the process, including tentering, would be understood. Thus understood, a process akin to stentering/tentering would fall within the meaning of the proviso and, consequently, the benefit of the notification cannot be availed by the Respondent.

18. In view of the aforesaid law laid down by the Hon"ble Supreme Court we apply the principle of ejusdem generis to Clause (m) of Sub-section (8) of

Section 20 and are of the considered view that the present notification impugned hereinabove cannot stand the test of application of the principle of ejusdem generis. Accordingly, we are of the considered view that the impugned notification vide S.R.O. No. 34/2009 dated 27.1.2009, limited to declaring "coal" and "furnace oil" as goods at serial 1 and 2 thereof is illegal and therefore declare that the said notification would not have any application and will stand quashed to the aforesaid extent, since the impugned notification is ultra virus Section 20(3)(b) read with Section 2(25) and 2(27) of the OVAT Act, 2004 and consequently purchase made by the Petitioner manufacturers of the aforesaid item, i.e., coal and furnace oil within the State from a registered dealer holding a valid registration certificate in respect of goods intended for the purpose of use as input and/or consumable directly used in respect of manufacture of finished product is clearly contrary to the legislative mandate.

19. Accordingly, the impugned notification S.R.O. No. 34/2009 dated 27.1.2009, to the extent noted hereinabove, stands quashed.

20. Insofar as the alternative prayer made by the Petitioners seeking to challenge the provision of Section 20(8)(m) of the OVAT Act, 2004 is unconstitutional. We are of the considered view that such power does not suffer from the vice of excessive delegation of the legislative power, since Sub-section (8) itself as well as the OVAT Act, 2004 contains the necessary guidelines and limits under which power under Clause (m) thereof can be exercised by the State. Therefore such prayer of the Petitioners fails and the said provision cannot be held to be excessive or unguided.

21. In view of the conclusion reached by us in Paragraph-18 as noted hereinabove, we are of the considered view that the other contentions raised by the parties are merely academic and therefore, need not be answered in the present case. Writ application is allowed in terms of the direction noted hereinabove.

I. Mahanty, J.

I agree.