

BEFORE THE ADVANCE RULING AUTHORITY, ODISHA, CUTTACK.

A.R. Application No.04 of 2011-12

P R E S E N T :

Mr. S.K. Paty
1st Judicial Member

Mr. G.C. Patnaik
2nd Judicial Member

&

Mr. P.C. Mishra
2nd Accounts Member

M/s. Punj Lloyd Limited,
276, Sukabihar, Bhoi Nagar,
Bhubaneswar-22.

... ..

Appellant.

- V e r s u s -

State of Orissa, represented by the
Commissioner of Sales Tax,
Orissa, Cuttack.

... ..

Respondent.

Appearance :

For the Appellant

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Mr. S.K. Acharya, Advocate

For the Respondent

...

Mr. R. Rout, S.R.-I

Date of Hearing: 23.03.2012

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Date of Order: 28.03.2012

ORDER

The applicant in this case M/s. Punj Lloyd Ltd. has sought for advance ruling u/s. 78A of Orissa Value Added Tax Act, 2004 (in short, OVAT Act) on determination of dispute on purchases made from registered dealer on payment of VAT for utilisation in works contract executed for M/s. Indian Oil Corporation Ltd., Paradeep which is exempted from payment of tax in terms of notification No.2680 CTA-117/2002 (Ph.II) dated 13.01.2009 issued by Finance Deptt. Govt. of Orissa.

2. The applicant M/s. Punj Lloyd Ltd., 276- Sukabihar, Bhoi Nagar, Bhubaneswar, TIN-21161111676 (the contractor) is a works contractor under Bhubaneswar II Circle, Bhubaneswar. The said firm has been engaged by M/s. Indian Oil Corporation, Paradeep Refinery, Paradeep (contractee) for execution of contract and has been executing contract work. In the instant

case, the contractor has to abide by the terms and conditions of the contract awarded by Indian Oil Corporation Ltd., Refinery Division at Paradeep and thereby has to be guided on the tax liability / benefit admissible to the contractee and accordingly the contractor has signed the agreement with the contractee on 03.12.2010 for an amount of Rs.1123,21,61,051.00.

3. The brief fact amounting to the present application for advance ruling both under the OVAT Act relates to adjustment of tax with regard to its transaction of execution of works contract and supply of material pertaining to the work awarded by the contractee. The contractee has been allowed exemption of VAT vide Finance Deptt. Notification No.2680/CTA/117(THII) dtd.13.01.2009 as per power conferred upon the Government u/s.17 of the OVAT Act.

4. In response to notice the State-respondent has filed written submission. It has been submitted therein that it is not understood as to whether goods purchased by the instant dealer and used/sold subsequently in course of execution of works contract is exempted from payment of VAT or not. It has been further argued that as per the said notification, particular transaction(s) of specific dealer with certain conditions and restrictions is exempt from payment of VAT and unless such conditions are fulfilled VAT exemption is not permissible. For that after verification of the transaction and the conditions/restrictions imposed, the Assessing Authority is to conclude the applicability of the said notification and, therefore, the matter may not fall u/s.78A of OVAT Act. As regards the question of input tax credit relating to particular transaction(s) Section 14 of VAT Act and prescription u/r.20 of the said Act are the relevant provisions and without any ambiguity. In nutshell the learned Standing Counsel concluded his contention by mentioning that the exemption allowed u/s.17A of the OVAT Act is not to be adjudicated u/s.78A of the said Act and, hence in the present case Advance Ruling cannot be issued by this Tribunal.

5. The learned Counsel on behalf of the applicant explained that the applicant is engaged in bulk purchase of steel and other materials for execution of works contract, and while transferring goods to the contractee, it faces difficulties in availing exemption of VAT from the contractee in time as

because for such a benefit the contractor has to obtain necessary certificate from Indian Oil Corporation Ltd. The learned Counsel also expressed his difficulties by mentioning that the aforesaid proposition is unworkable because the contractee does not comply in issuing the required exemption certificate before the goods are utilised in the contract work. On these grounds the learned Counsel has prayed for advance ruling as to whether:

(a) In the facts and circumstances as above, the applicant is eligible to get the exemption certificate from the Refinery Unit to purchase the goods without payment of tax for utilising the same in execution of works contract at a subsequent rate.

(b) The applicant is eligible to claim refund of tax from the selling dealers inside the State and what should be the modus operandi as there is no such prescription under Orissa Value Added Tax Act, 2004 to the effect that tax once paid at the time of purchase cannot be refunded under OVAT Act.

6. In view of the above, this application for advance ruling u/s.78A of the OVAT Act is required to be disposed of.

7. We have heard the learned counsel for the applicant and Mr. Ranjit Rout, the learned S.R. for the State. Regarding the details of the matter there is no dispute that the applicant in this case is a works contractor registered under the OVAT Act and executing contract works awarded by M/s. Indian Oil Corporation, Paradeep Refinery, Paradeep. M/s. Indian Oil Corporation is also entitled to exemption of tax as per the Finance Deptt. Notification discussed above. However, the matter for consideration as contained in the application pertains to the provisions u/s.78A and Rule 117A of OVAT Act. The provisions under the said Section and the relevant Rule for consideration of the application need to be discussed a little in order to determine whether this forum is legally equipped to decide on the matter or not.

8. Provisions u/s.78A(1) & (2) are as under:-

(1) Any registered dealer may apply in the prescribed form and manner, to the Tribunal for obtaining an advance ruling on any disputed question relating to,-

(i) determination of rate of a particular commodity, or

(ii) admissibility of input tax credit on a particular transaction of purchase and if admissible, the conditions and restrictions subject to which such input tax credit shall be admissible.

(2) If, in the opinion of the Tribunal, the application does not relate to any disputed question as referred to in sub-section (1) or the application is incomplete or incorrect, the Tribunal may, after giving the applicant a reasonable opportunity of being heard, reject the application.

9. Therefore, it is clear from the stipulations in the above para that the Advance Ruling Authority has to determine the rate of tax of a *particular commodity* as in Section 78A(1)(i) and the admissibility of input tax credit on a *particular transaction* of purchase and if admissible the conditions and restrictions subject to which such input tax credit shall be admissible as in Section 78A(1)(ii) and Rule 117A shall follow suit accordingly.

10. With the above legal provision the contents of the application of M/s. Punj Lloyd Ltd. needs to be considered. We have carefully considered the matter as per the stipulations and prescriptions in Section 78A and Rule 117A and are of the opinion that the applicant nowhere in his application has mentioned any particular transaction of purchase to fall under Section 78A(1)(ii) so that an advance ruling can be passed. Similarly, there is no dispute relating to the rate of tax for considering the application u/s.78A(1)(i) of the Act.

Subsequently, the learned Counsel for the applicant has filed a written note of argument wherein he has referred to the Notification of the Government of Orissa as Annexure-3 which is not under dispute. He has also referred to Section 78A of the OVAT Act and the material portion of the OVAT Act which reads as follows.

“Any registered dealer may apply in the prescribed form and manner to the Tribunal for obtaining an advance ruling on any disputed question relating to admissibility of input tax credit on a particular transaction of purchase and if admissible, the conditions and restrictions subject to which such input tax credit shall be admissible.”

In the case at hand, there is no dispute relating to admissibility of input tax credit but the dealer applicant has not disclosed any particular transaction of purchase on which the question of admissibility of input tax credit can be said as under dispute. In the written notes of argument, the learned Counsel for the applicant has submitted a list of some materials like cement, paint, high speed diesel, cables, spares etc. but no document to such effect has been furnished by the applicant. This fact is also not disclosed in the memorandum of appeal and the state respondent is thereby devoid of its right to counter the case of the applicant on this score. That apart, the written note of argument is furnished on dtd.24.03.2012 i.e. after closure of arguments dtd.23.03.2012 and accordingly the facts incorporated in such written notes of argument are of no help for the applicant. As a whole, we do not find any merit in the present application preferred by the applicant for advance ruling.

11. As discussed above, we are of the considered opinion that the application preferred by the applicant is not tenable in the eye of law and the same is rejected as devoid of merit.

Dictated & corrected by me,

Sd/-
(P.C. Mishra)
2nd Accounts Member

Sd/-
(P.C. Mishra)
2nd Accounts Member

I agree,

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

I agree,

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

Attested as true copy


Computer Stenographer

of the C.C.T. (w) Act/10/12

Memo No. 16231 /Ct

Dated. 21-09-12

Copy forwarded to all sub-ordinate offices ^{I(IV) 14/12} for information and necessary action. ^{all officers of Head office.}

Memo No. 16232 /Ct

Dated. 21-09-12

Copy forwarded to the A. C. C. T. (I.T & Policy) for favour of information and necessary action.

o/c

Dy. State representative. ¹⁷⁻⁹⁻²⁰¹²