

**BEFORE THE ADVANCE RULING AUTHORITY, ODISHA SALES TAX  
TRIBUNAL: CUTTACK.  
(FULL BENCH)**

**A.R.Application Nos.6 & 7 of 2012-13**

**P r e s e n t :            Shri S.K.Paty, 1<sup>st</sup>. Judicial Member.**

**Shri G.C.Patnaik, 2<sup>nd</sup> Judicial Member.**

**&**

**Mr.C.Jena, Accounts Member-III.**

M/s. Sushant Minerals Pvt. Ltd.,  
Plot No.427/1158, Sunderabasti, Barbil, Keonjhar. ...Applicant.

**-V e r s u s-**

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

...Respondent.

For the Applicant

: Mr.B.B.Panda, Advocate.

For the Respondent

: Mr.R.Rout,SR-I.

Date of hearing : **10.07.2012**

Date of order : **08.08.2012**

**ORDER**

Both these cases relate to the same parties and involve similar questions of law and fact and to avoid unnecessary repetitions both these cases are disposed of by this common order. The above two A.R. Applications filed by the dealer under section 78(1)(i) of the Orissa Value Added Tax Act, 2004 (in short, the OVAT Act) for advance ruling.

2.            The brief facts of these cases are that the dealer appellant is a registered dealer bearing Tin21401405842. It is an exporter of iron ore fines through Paradip Port. As per the contentions in advance ruling application no.6 of 2012-13, in order to achieve foreign buyers contracts it is necessary to hold the minerals at the port of export for which movement of materials from the mines is necessary. The applicant has started export of minerals since November,2009. It has raised the disputed question as to whether the sale or deemed sale, as a



consequence of transfer of title of minerals should be considered as a sale in course of export for the purpose of section 5(3) of the CST Act, 1956 or for the purpose of eligible deduction from the taxable turnover under section 11(2) of the OVAT Act, 2004 where the law under which the minerals are transported to port require the minerals to be exported out of the territory of India.

3. Likewise in the advance ruling application no.7 of 2012-13, the applicant has raised the question as to whether the context " in course of export out of territory of India" used in section 18-(b) of the Orissa Value Added Tax Act, 2004 is to mean the sale preceeding the sale covered under the provisions of either section 5(1) or section 5(3) of the Central Sales Tax Act, 1956 being the sale in course of export out of India which are covered either under section 5(1) or section 5(3) of the CST Act has been excluded from the taxable turnover under section 11(2) of the Orissa Value Added Tax Act whereas sales subjected to tax at zero rate covered under section-18 of the Orissa Value Added tax Act is meant for sales covered under taxable turnover.

4. The state respondent has filed objection in both these applications contending therein that the present disputes raised by the dealer relate to the provisions under the CST Act and the present question raised by the applications does not come under the purview of section 78(A) of the OVAT Act and hence the present applications are liable to be rejected.

5. In both these cases admittedly the dispute arose since the Deputy Commissioner of Sales Tax, Barbil Circle has issued order of assessment vide his order no.3769 dtd.19.8.2011 wherein it is stated that the dealer is entitled to purchase iron ore fines at zero rate as the dealer failed in establishing the transactions within the frame-work of section 5(3) of the CST Act. Accordingly, in the present case the present dispute is initiated after order of assessment passed by the Id. DCST, Barbil Circle, Barbil. It is not disputed that this Tribunal is authorised to



give advance ruling as per the provisions enshrined in section 78(A) of the OVAT Act.

Section 78(A)(1) of the OVAT Act 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.-

- (i) determination of rate of tax of a particular commodity, or
- (ii) admissibility of input tax credit on a particular transaction of purchase and if admissible, the conditions and restrictions subjected to which such input tax credit shall be admissible.

Section 78(A)(3) of the OVAT Act reads as follows:

" An application seeking advance ruling by any registered dealer shall not be entertained on the following grounds, namely:-

- (i) if the disputed question on which advance ruling has been sought is the subject matter of any assessment or appeal proceeding concerning the said dealer, or
- (ii) if the disputed question arises from any order already passed under the Act.

6. On perusal of the aforesaid provisions it is clear that this Tribunal can exercise the jurisdiction under section 78(A) of the OVAT Act when the dispute relates to the question of determination of rate of tax of a particular commodity or there is any dispute of admissibility of ITC as prescribed in 78(A)(1)(ii) of the OVAT Act as stated earlier. On going through the present dispute raised by the appellant in both these cases it is crystal clear that the dispute being raised relate to CST Act and as such these questions do not come within the ambit of section 78(A)(i) of the OVAT Act. Secondly, as stated earlier in view of the prohibition codified in section 78(A)(3) of the OVAT Act, this Tribunal can not invoke its jurisdiction for advance ruling when the disputed question is the subject matter of any assessment or appeal proceeding concerning the said dealer or if the disputed questions arises for any order passed under this Act. In the present case admittedly the dealer



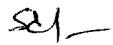
has come up with the present applications after the order of the assessment passed by the Id. DCST, Barbil. In this view of the matter, in our considered opinion, the present applications filed by the dealer do not come within the ambit of section 78-A of the OVAT Act to give any finding on the questions raised by the applicant and hence the present applications are not maintainable.

7. In view of the aforesaid discussions the present applications are not maintainable under section 78(A) of the OVAT Act and hence these applications are rejected.

Dictated & corrected by me,

  
(S.K.Paty)

1st. Judicial Member.

  
(S.K.Paty)

1st. Judicial Member.

I agree,

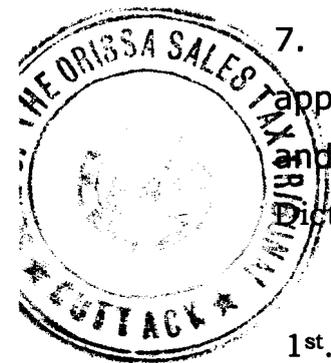
  
(G.C.Patnaik)  
2nd. Judicial Member.

I agree,

  
(C.Jena)  
Accounts Member-III.

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Senior Stenographer



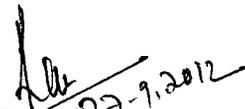
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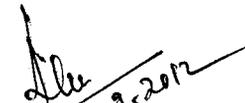
Memo No. I(II)144/12 16513 /CT., Dated. 27-9-12

Copy forwarded to All Sub-ordinate Offices/All officers of Head Office for information and necessary action.

Memo No. 16514 /CT.,

Copy forwarded to the A.C.C.T.(I.T. action.

  
Dy. State Representative  
Dated. 27-9-12

  
Dy. State Representative

) for favour of information and necessary