

COMMISSIONERATE OF CT & GST, ODISHA (At CUTTACK)
(Finance Department, Government Of Odisha)

No. 6449 /CT.
CUII – 296(C) / 2017-18

Dated 24/4/18

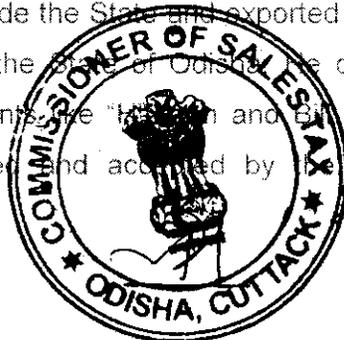
Revision Case No : CUII – 296(C) / 2017-18
Name and address of the petitioner : M/s Varsha Trading Company
Plot No. 161, 42, Jagatpur
Cuttack
Registration Certificate No : 21411311601
Date of Hearing : 07.04.2018
Date of Order : 24.04.2018
Petition filed by : Sri. B.P Mohanty, Ld Advocate.

ORDER

This is a revision petition filed by M/s Varsha Trading Company, Cuttack challenging rejection of its refund application by the Sales Tax Officer, Cuttack II Circle, Cuttack vide order 5722/CT dated 23.08.2017. The petitioner pleads for quashing of the impugned order dated 23.08.2017.

2. The petitioner, M/s Varsha Trading Company, Cuttack, was registered under the OVAT Act vide TIN 21411311601 and was engaged in the business of wholesale distribution of Iron ore fines. The dealer having made purchases from inside the State had effected sale in course of export (i.e sale to an exporter) at zero rate of VAT. The dealer claimed refund of surplus ITC on account of such zero rated sales in course of export. The claim of refund was audited and the Audit Team recommended for grant of refund. However, the Assessing Officer, in course of the examination of the refund claim vis-a-vis the Audit Report, rejected the claim on the ground that sale in course of export is by default an inter-state sale and since the dealer was not registered under the CST Act, it was not eligible to claim exemption for sales effected u/s 5(3) of the CST Act. Thereby, the refund of ₹.4,74,985/- was rejected and the dealer was asked to discharge corresponding tax liability on sale of goods to the exporter alongwith interest

3. Aggrieved by the assessing officer's order, the dealer petitioner has filed this revision petition challenging the impugned order dated 23.08.2017. Sri. B.P Mohanty, Ld Advocate appeared on behalf of the dealer petitioner and stated that the order of rejection was grossly erroneous and irregular. He assailed the impugned order stating that the dealer petitioner had purchased the goods from inside the State and exported it through a merchant exporter from Paradip Port located inside the State of Odisha. He contended that the dealer had submitted all the relevant documents, viz. Invoice and Bill of Lading. He argued that the claim of refund had been audited and accepted by the Audit Team. He vehemently



challenged the contention of the Assessing Officer that the dealer petitioner ought to have been registered under the CST Act to claim the refund. He, on the other hand, contends, that the dealer petitioner was not required to be registered under the CST Act to claim refunds under the OVAT Act for sales in course of export. He, therefore, requests quashing the order dated 23.08.2017 of the Sales Tax Officer, Cuttack II Circle, Cuttack.

4. I have gone through the impugned refund rejection order, revision petition and other materials on record. The dealer petitioner has effected zero-rated sales in course of export and has claimed refund of the amount of the input tax. Admittedly, the sale in course of export happened inside the State and the goods were exported from a port located in this State.

5. The question to be adjudicated before this forum is whether the dealer petitioner was required to be registered under the CST Act to be eligible for refund of ITC under the OVAT Act related to the zero-rated intra-state sales made in course of export ?

6. Here it will be relevant to go through the provisions of Section 18 of the OVAT Act alongwith the provision of Section 5(3) of the CST Act.

OVAT Act

18. Zero rated sales.-

The rate of tax on the sale of goods subject to levy of tax shall be zero when such goods are sold-

- (a) *In course of inter-State trade or commerce; or*
- (b) *In course of export out of the territory of India; or*
- (c) *to a dealer having business under –*
 - (i) *a SEZ; or*
 - (ii) *a STO; or*
 - (iii) *a EHTP; or*
- (d) *to an EOU.*

CST ACT

5. **When is a sale or purchase of goods said to take place in course of import or export.-**

- (1) XXXXX
- (2) XXXXX



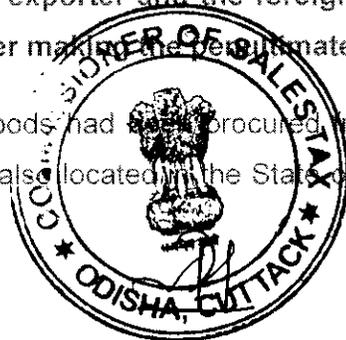
(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

(5) XXXXX.

7. Section 18 of the OVAT Act provides for zero rating of a sale if it is made "In course of export out of the territory of India". The term 'sale in course of export' has not been defined in the OVAT Act. Therefore, it is to be understood as per the meaning ascribed to it under the CST Act. As per Section 5(3) of the CST Act, the penultimate sale is also deemed as 'sale in course of export' if certain conditions are fulfilled, i.e. (a) such sale is made for purpose of complying with agreement or order in relation to export (b) such sale is made after the agreement or order in relation to export, and (c) goods sold in the penultimate sale are actually exported. **Therefore, when a penultimate sale takes place as an intra-state sale in course of export, the transaction is zero rated under the OVAT Act and the dealer is entitled for refund of the input tax as per the OVAT Act. The dealer is not required to be registered under the CST Act. On the other hand, when a penultimate sale takes place as an inter-state sale in course of export, the transaction shall come under the provisions of the CST Act; and therefore CST registration of such inter-state penultimate seller would be required mandatorily. Another point to keep in mind is that when a penultimate sale takes place as an intra-state sale in course of export, the dealer making the penultimate sale cannot be asked to furnish Form H (as mandated in the CST Act) because in this case, as discussed above, the dealer is making the transaction under the OVAT Act; not under the CST Act. Hence to ascertain that whether such intra-state sale took place in course of export or not (i.e whether the 3 conditions required to make a sale 'a sale in course of export' are fulfilled or not), the assessing officer has to examine other documents such as Export Contract between the Indian exporter and the foreign buyer, Agreement between the Indian Exporter and the dealer making the penultimate sale to him, Bill of Lading, etc.**

8. In the present case, goods had been procured from inside the State and exported through Paradip Port which is also located in the State of Odisha. Thus there was no inter-



state transaction of goods to invoke provisions of the CST Act. The sale transaction entered between the petitioner and the exporter being a local sale inside Odisha, no CST registration would be required. The reasons assigned by the Ld Assessing Officer while passing the impugned order that CST registration certificate is a pre-condition for admitting claim of refund on account of sales in course of export is legally not correct.

9. Therefore, the Revision petition of the dealer petitioner is allowed and the order dated 23.08.2017 of the STO, Cuttack II Circle is hereby quashed. The petitioner dealer is entitled for refund as observed by the Audit Team subject to other provisions of law.

The present revision is accordingly disposed of.



Disputed and corrected by me.

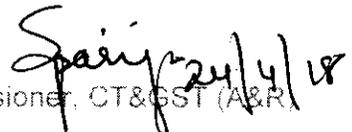
Commissioner of Sales Tax
Odisha (At Cuttack)

24.4.18
(Saswat Mishra)
Commissioner of Sales Tax
Odisha (At Cuttack)

Memo No. 6450 /CT.

Dated 24/4/18

Copy forwarded to the above named petitioner / CT & GST Territorial Range Head (Cuttack II Range, Cuttack) / CT & GST, Circle Head (Cuttack II Circle, Cuttack) for information and necessary action alongwith the connected LCR of 129 pages.


Deputy Commissioner, CT&GST (A&R)

Ofc