

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**STREV No.33 of 2014**

***M/s. Kamadhenu Cattle & Poultry ....  
Feed Unit***

***Petitioner***

Mr. R.P. Kar, Advocate

*-versus-*

***The State of Odisha***

***.... Opposite Party***  
Mr. Sunil Mishra, ASC

**CORAM:  
THE CHIEF JUSTICE  
JUSTICE M. S. RAMAN**

**ORDER  
02.03.2023**

**Order No.**

***Dr. S. Muralidhar, C.J.***

04. 1. This petition by the Assessee-dealer arises from an order dated 24<sup>th</sup> July, 2013 passed by the Odisha Sales Tax Tribunal, Cuttack allowing the appeal being S.A. No.28(V) of 2010-11. The aforementioned appeal arose from an order 26<sup>th</sup> February, 2010 passed by the Joint Commissioner of Sales Tax (JCST), Koraput Range, Jeypore confirming an assessment order passed by the Sales Tax Officer (STO), Koraput I Circle, Jeypore under Section 42(4) of the Odisha Value Added Tax Act, 2004 (OVAT Act) raising a demand of Rs.3,86,245.24 against the dealer for the period 1<sup>st</sup> April, 2005 to 30<sup>th</sup> September, 2006. In effect, the Tribunal concurred with the STO and the JCST that 'Chokad' sold by the dealer to NALCO, an Industry unit, would attract 4% tax in terms of Entry 74 of

Schedule-B of Part-II of the OVAT Act for the aforementioned period.

2. Admit. The following question of law is framed for consideration:-

*“A. Whether the Tribunal is justified in confirming levy of tax on the sale of Wheat Bran (Chokad) @ 4% treating the same as industrial input coming under SI No.74 of Part-II of Schedule-B particularly when Wheat Bran (Chokad) is generally exempted under Entry 3 of Schedule-A?”*

3. The background facts are that the Petitioner-Dealer carries on business in cattle feed, poultry feed, salt, rice and broken rice and effects purchases both from inside and outside the State of Odisha. Pursuant to an audit visit report, which noted that the Petitioner effected sale of 8463.30 quintals of wheat bran worth of Rs.50,53,137/- during 2005-06 to M/s. NALCO Ltd., Damanjodi, and that the Assessee had claimed exemption by referring to Entry ‘3’ of Schedule ‘A’ of the OVAT Act, the STO made an inference that since NALCO was an industrial organization the said goods, i.e., ‘Chokad’ sold to it “have been used as industrial input which is subject to tax at 4% with effect from 1<sup>st</sup> July, 2005 vide SL No.74, Part-II of the OVAT Schedule”. Accordingly, the gross turnover and taxable turnover were recomputed and a demand of tax was raised along with penalty under Section 42(5) of the OVAT Act.

4. This was confirmed by the JCST by the order dated 26<sup>th</sup> February, 2010 dismissing the dealer’s appeal and further confirmed by the Tribunal by the order dated 24<sup>th</sup> July, 2013 dismissing the dealer’s second appeal.

5. This Court has heard the submission of Mr. R.P. Kar, learned counsel for the Petitioner and Mr. Sunil Mishra, learned Additional Standing Counsel appearing for the Department.

6. The facts are not in dispute, viz., that the Petitioner-dealer sold 'Chokad' to M/s. NALCO during the period in question. The case of the Assessee was that such sale was exempted from VAT by virtue of Entry 3 in Schedule 'A' to the OVAT Act which reads as under:

<b><i>“Sl. No.</i></b>	<b><i>Description of Goods</i></b>	<b><i>Conditions of exemptions</i></b>
<b><i>1.</i></b>	<b><i>xxxxxxxx</i></b>	
<b><i>2.</i></b>	<b><i>xxxxxxxx</i></b>	
<b><i>3.</i></b>	<b><i>Aquatic feed, poultry feed and cattle feed including supplements, concentrates, additives, de-oiled cake, grass, hay and straw and husk of pulses, wheat and groundnut including chokad”</i></b>	

7. It must be noted here that the above Entry was substituted with effect from 1<sup>st</sup> July, 2005 where the list of goods included 'Chokad'. It must further be noted that Column-3 which is titled 'Conditions of exemptions' has been left blank. In other words, there is no conditionality attaching to the sale of 'Chokad' for such sale to be exempt from VAT.

8. In comparison, if one looks at Entry 24 of the Schedule 'A' of the OVAT Act, it reads as under:

<b><i>“Sl. No.</i></b>	<b><i>Description of Goods</i></b>	<b><i>Conditions of exemptions</i></b>
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- |     |  |  |
|-----|--|--|
| 24. | Meat, fish dry fish, prawn, fish seeds, fries and fingerlings, prawn/shrimp seeds and other aquatic products, eggs and livestock.” | Meat, fish dry fish, prawn and other aquatic products, when not cured or frozen shall be exempted” |
|-----|--|--|

It is, therefore, seen that only when such Meat, fish, dry fish etc., are not cured or frozen, they shall be exempted from VAT.

9. Another entry of a similar nature is Entry 38 which reads as under:

<i>“Sl. No.</i>	<i>Description of Goods</i>	<i>Conditions of exemptions</i>
38.	Bhoga meant for being offered to the Deity and “Prasad” of any kind including ‘Mahaprasad of any kind’ sold within the compound of Sri Jagannath Temple at PUri and the Lingaraj Temple and Ananta Basudeva Temple at Bhubaneswar.	When sold inside the compound of any temple of religious institution governed under the Orissa Hindu Religious Endowments Act, 1951”

10. It is seen that as far as the goods in Entry ‘38’ are concerned, when the goods are sold inside the compound of any temple or of a religious institution governed under the Orissa Hindu Religious Endowments Act, 1951, it would be exempt from VAT and not when it sold outside such premises. The Court, therefore, finds merit in the contention advanced by Mr. Kar, learned counsel for the Petitioner, that there is no conditionality attached to the exemption granted from VAT on sale of ‘Chokad’.

11. Mr. Mishra, learned Standing counsel for the Department sought to contend that the very nature of the goods in Entry '3' reflects the legislative intent of exempting them from VAT only where they are used 'as such' and not as 'inputs' in the manufacture of some other commodity.

12. The fact remains that an entry in a taxation statute admits only of strict interpretation. If the legislative intent was that there should be some conditionality attached to granting exemption from VAT on the sale of 'Chokad', then it should have been expressly stated as has been done in Column 3 in regard to Entries 24 and 38. That there being no such conditionality as far as Entry 3 is concerned, the only conclusion that can be drawn is that sales of 'Chokad' irrespective of the purpose for which such 'Chokad' has been purchased by the buyer, would be exempt from VAT.

13. Now, turning to Entry 74 of Part-II of Schedule 'B' of the OVAT Act, the Court finds that it is only where an Industrial input is 'notified by the State Government', it would attract tax at 4% (presently 5%). The said Entry 74 reads thus

<i>“Sl. No.</i>	<i>Name of the Commodity</i>
74.	Industrial inputs as may be notified by the State Government “

14. It is not even the Department's case that any notification has been issued by the State Government stating that 'Chokad' is an Industrial input for the purposes of Entry 74 of Schedule 'B'. Without noticing this requirement in Entry 74, both the STO as well

as the JCST fell into error in drawing an ‘inference’ that ‘*Chokad*’ sold to NALCO must ‘naturally’ have been used as an industrial input. This cannot be a matter of surmise or conjecture. If Entry 74 of Schedule ‘B’ had to be made applicable in order that the sale of ‘*Chokad*’ to NALCO is amenable to tax at 4%, then it was necessary for the Department to show that there was a notification issued by the State Government identifying ‘*Chokad*’ as an ‘industrial input’. In the absence of such notification, no inference could have been drawn that ‘*Chokad*’ sold to NALCO was in fact an ‘Industrial input’.

15. The Court is, therefore, satisfied that the STO, the JCST and the Tribunal erred in treating the sale of ‘*Chokad*’ by the Petitioner to NALCO as an ‘industrial input’ attracting VAT at 4%.

16. The question framed is, accordingly, answered in the negative, i.e., in favour of the Petitioner-dealer and against the Department. The impugned order of the Tribunal and the corresponding orders of the JCST and STO are hereby set aside.

17. The revision petition is allowed in the above terms. No order as to costs.

**(Dr. S. Muralidhar)**  
**Chief Justice**

**(M. S. Raman)**  
**Judge**