THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No. 370(ET) of 2005-06,
S.A. No. 371(ET) of 2005-06 &
S.A. No. 372(ET) of 2005-06

(Arising out of the orders of the learned Asst.CST, Cuttack-II Range, Cuttack in First Appeal Case Nos. AA/522/ET/DL/2004-05, AA/534/ET/D1/04-05 & AA/567/ET/DL/2004-05 disposed of on 30.01.2006)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri B. Bhoi, Accounts Member-I

M/s.. National Aluminium Co. Ltd.,
Smelter Division, Angul. ..... Appellant.

-Vrs. –

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack. ..... Respondent.

For the Appellant : : Mr. S.C. Sahoo, Advocate.
For the Respondent : : Mr. D. Behura, ld. S.C.(C.T.)

Date of Hearing : 04.09.2023 * Date of Order : 03.10.2023**

O R D E R

The afore-mentioned three second appeals have been preferred by the dealer-assessee assailing the orders dated 31.01.2006 of the Assistant Commissioner of Sales Tax, Cuttack II Range, Cuttack (in short, 'ld.FAA') passed in First Appeal Case No. AA-522-ET/DL-2004-05, No.AA-534-ET/DL-2004-05 and No.AA-567 ET/DL-2004-05. These appeals though relate to different tax periods involve common question of facts and law. For convenience, they are clubbed together for hearing and disposal in a common order.

2. The facts leading to these second appeals are summarized in brief for better appreciation. M/s. National Aluminium Company limited (Smelter Division Angul) (hereinafter called the dealer-company) is a Government of India Undertaking engaged in manufacturing of aluminium goods using raw materials like alumina, coal, alum, C.P. coal, aluminium fluoride, caustic soda and other consumables. The dealer-company was assessed under Section 7(4) of the Orissa Entry Act, 1999 (hereinafter called as OET Act) determining extra demand of ₹1,51,41,799.00 for the assessment year 2001-02, ₹1,65,92,361.00 for the assessment year 2002-03 and ₹1,49,65,523.00 for the assessment year 2003-04. The first appeals as preferred against the aforesaid orders of assessment turned out to be reduction in demand to the extent of ₹91,07,799.00 for the year 2001-02, ₹1,34,33,971.00 for the year 2002-03 and confirmation of the demand raised at assessment for the year 2003-04. The dealer-company approached this forum preferring second appeals being not contended with the orders of the ld. FAA.

3. The broad thrust reposed in the grounds of appeal and the written submissions in all the second appeals as agitated by the dealer-company represented by Mr. S.C. Sahoo, learned Advocate revolves on irregular levy of entry tax on purchases of C.P coke, aluminium fluoride and chemicals, tractor chassis besides disallowance of revised returns on purchase of Cathode Bottom and set-off availed on purchase of CT Pitch and Pig Iron.

4. The dealer-company is in dispute on levy of entry tax on purchases of C.P. Coke in respect of all the assessment years under appeals contending that Calcined Petroleum

Coke (CP coke) is a petroleum product falling not under Part-I of the Schedule appended to the Orissa Entry Tax Act that covers only 'Coal, Coke' exigible to entry tax @1% on purchase value. It is submitted that amendment made by the Finance Department vide SRO No.288/2004 dated 31.05.2004 substituting 'Coal including Coke in all its forms' against 'Coal and Coke' appearing at Entry 1 of Part I under the Schedule effective from 01.06.2004 is a clear revelation ensuring CP Coke (calcined petroleum coke) as not encompassed under Part I of the Schedule till 01.06.2004. Accordingly, Mr. Sahoo contends that CP Coke is not a scheduled goods coming under the purview of Part-I of the Schedule for all the periods under assessment.

5. Per contra, Mr. D. Behura, S.C.(C.T.) representing the State submits that coke is different from coal for the purpose of Sales Tax, but coal and coke are described simultaneously as declared goods amenable to entry tax. Coal is a mineral dug out of bowels of the earth without anything more done to it. Coke is obtained from different items like crude petroleum and coal. Coke is obtained by a process of burning and filtration of coal after certain properties are removed there from. Coke is completely different from coke. CP coke though extracted from petroleum products is coke. When it refers to the forms, it may be either dust or lump or may include briquettes. It is contended that when the goods are described in its generic sense such as coke, it may takes within its ambit coke of any kind, whether obtained from coal or a petroleum product and coke of any form whether it is lumps, broken, ground or powered. Therefore, the substitution of the entry with effect from 01.06.2004 as 'Coal including coke in all its forms' does not appear to bring any

material change in the said position except that the amendment is clarificatory and declaratory in nature as a preparation for the implementation of VAT law from 2005. However, by the use of the word 'including' the 'Coal' has been given an extended meaning and includes 'Coke'. Therefore, the word 'Coke' occurring in the existing Entry No.1 of Part I under the Schedule described as 'Coal, Coke' has been used in generic sense and is comprehensive enough to take within its scope 'Calcined Petroleum Coke (CP Coke) and is not necessarily confined to only 'Coke' derived from 'Coal'.

6. The rival contentions are gone through. It is a fact that coal is a sedimentary deposit composed predominantly of carbon and hydrocarbons that is readily combustible. Coke, on the other hand, is a solid residue remaining after certain types of bituminous coals are heated to a high temperature out of contact with air until substantially all of the volatile constituents have been driven off. Calcined petroleum coke is a critical ingredient in the production of aluminium. It is created by placing high quality raw green petroleum coke into rotary kilns, where it is heated to temperature between 1200 to 1300 degree Celsius. The high temperatures remove excess moisture, extract all remaining hydrocarbons and modify the crystalline structure of the coke, resulting in a denser more electrically conductive product. Calcined petroleum coke has a sponge –like structure which plays an important role in the making of anodes. The pores allow binding material to penetrate through the coke particles and form a solid carbon block, through which aluminum smelters conduct electricity into their smelter pots. From this account of discussion, it is made clear that the Entry 1 of Part-I under Schedule to the

OET Act embodying 'Coal, Coke' as declared goods does not amount to define only 'Coke' as produced from coal. The punctuation mark 'comma' between Coal and Coke signifies these goods as separate and distinct. Hence, coke either obtained from coal or petroleum coke is altogether a coke in its generic sense. The amendment brought about substituting 'Coal including Coke in all its forms' against 'Coal, Coke' at Entry 1 of Part I under Schedule is, in fact, clarificatory in nature. Accordingly, CP Coke is Coke in terms of Part I of the Schedule to the OET Act amenable to entry tax as admissible. The contention of the dealer-company on this score merits no consideration.

7. Mr. S.C. Sahoo, learned Advocate of the dealer-company places reliance on the decisions of the Hon'ble High Court of Odisha recorded in (2021) 56 VST 68, Hon'ble Apex Court in (1964) 16 STC 563 (SC) in case of ***JK Cotton Spinning & Weaving Mills Co Ltd Vs. Sates Tax Officer, Kanpur and Others, Collector of Central Excise Vs. Ballapur Industries Ltd*** reported in (1990) 77 STC 182 and Hon'ble High Court of Odisha reported in STREV No.28 & 29 of 2007 in case of ***M/s. Associated cement Companies ltd. Vs. State of Orissa***. Mr. Sahoo in the ratio of the above decisions urges that CP coke is a raw material for manufacture of aluminium goods. The decision of the Hon'ble High Court of Orissa in case of M/s. Associated cement Companies Ltd. Vs. State of Orissa (Supra) at para 15 of the said decision is relevant and is quoted as under:-

> '15. Question A is accordingly answers in favour of the petitioner and against the Department by holding that the Tribunal erred in holding that the coal is not a raw material for manufacturing cement. Question B is answered by holding that the Tribunal

> erred in coming to the conclusion that coal could not be treated as a raw material vis-à-vis the finished product i.e. cement. Such conclusion was contrary to the decision of the Supreme Court in Ballarpur Industries Ltd (supra).'

CP coke and coal discharge substantially similar functions in the process of production of aluminium. Accordingly, CP coke is a raw material for manufacturing of aluminium products. It is therefore opined that CP coke may invite levy of 0.5% of entry tax subject to compliance of statutory requirements postulated under Rule 3(4) of the OET Rules with the dealer-company having been a manufacturer of aluminium goods using raw materials like C.P. coal and other raw materials. The learned assessing authority ought to verify the transactions in question in consonance with the provision of the aforesaid OET Rules on verification of the books of accounts and other ancillary documents as may be adduced by the dealer-company on call.

8. With respect to levy of entry tax on purchase of aluminium fluoride (chemical) in all the assessment years under appeal and that of chemicals for the year 2001-02, the learned Advocate pleads that aluminium fluoride (a kind of chemical) and chemicals are not the scheduled goods as per Entry 6, Part-I of the Schedule which specifies 'Drugs and chemicals including Medicines'. To fortify his stand, the learned Advocate relies on the ratio of the decision rendered by this Tribunal in S.A. No.10(ET)/2006-07 and S.A. No.26(ET)/2006-07 in case of ***J.K. Papers Ltd Vs. State of Orissa*** which, *inter alia*, provides in Para No.7 of the decision as under:-

> "7.Gone through the impugned order. The FAA has visited the dealer's unit and has verified the disputed

goods/chemicals. Learned Counsel for the dealer argued that, the chemical as entered in Entry Sl. No.6 is related to the drugs and medicines only. It does not cover any kind of chemical and that is the reason why some other chemicals are entered in Entry Sl. No.13 and 62 and that too Entry Sl. No.73 is introduced by way of amendment for the year 01.06.2004 to include all kinds of chemical under the term "chemical used for any purpose". While amending the Act and making a separate Entry like chemicals for all purpose is created vide separated Sl. No. the term chemical in the Entry Sl. No.6 was deleted. The FAA after a threadbare discussion of the different authorities held that, the entries under the Entry Sl. No.6 are grouped together and in that even, it attracts the principle of "Noscitur a socits" and in the conclusion, it is rightly held by the FAA that the, word "chemical" used in Entry Sl. No.6 of the schedule is chemicals which can be used in the manufacture of drugs and medicines and that is what the intention of the legislature while mentioning the term "chemical" in the Entry Sl. No. 6, Part-I such as "Drugs and Chemicals including Medicines". Chemicals used for any purpose as per Entry Sl. No.73 w.e.f. 01.06.2004 indicates the chemicals which were specified in the Entry Sl.No.6. Entry Sl. No.13 and Entry Sl. No.62 are having limited interpretation in generic term. If that be, the view of the FAA is correct in the eye of law that, the chemicals included under the Entry Sl. No.6 is taxable whereas the chemicals of other kinds should be treated as unscheduled goods under the entry tax and then it is not exigible to entry tax."

In view of the above dictum which bears a fair applicability under the facts and circumstances of the present case, levy of entry tax on the purchase value of aluminium fluoride (chemical) and chemicals appears to be not justified. The argument of the State urging exigibility of entry tax on aluminium fluoride and chemicals is not acceptable as per the decision of this Tribunal cited supra.

9. The learned Advocate appearing on behalf of the dealer-company submits that the purchase value of 'cathode bottom' has been wrongly reflected as ₹148,54,569.00 instead of ₹14,85,568.00 in the 'Daily Receipt Book' relating to the assessment year 2001-02. The forums below have adopted the higher value i.e. ₹1,48,54,569.00 and taxed at ₹1.80 lakh. It is submitted that the instant dealer-company being a Govt. of India undertaking does not profess any deliberate ulterior motifs for suppression. It maintains all set of books of accounts. In this connection, it is opined that the learned assessing authority may verify the genuineness of the claims examining the evidence of purchase etc. as per law.

10. The dealer-company is said to have purchased CT pitch from M/s. SAIL, Rourkela during the assessment year 2002-03 on which, entry tax has been collected. CT Pitch is not scheduled goods and thus, the dealer-company claims refund of the entry tax paid. Gone through the averment of the learned Advocate vis-à-vis the order of the ld.FAA in this regard. The ld.FAA has not refuted refund on this account. The observation of the ld.FAA passed on 30.01.2006 in First Appeal Case No.AA/522/ET/DL/2004-05 in this score is in the affirmative and thus, befits no interference.

11. Whereas Pig Iron is a scheduled goods found place at Entry 3, Part-I of the schedule. The dealer-company is said to have purchased Pig Iron from M/s. Kalinga Iron Works, Barbil during the assessment year 2002-03 on which, entry tax has been collected. The dealer-company is entitled to avail set off as per provision of sub-rule (5) of Rule 19 of the OET Rules. The learned assessing authority is sought to allow set off as per provision of law after details verification of the books of accounts.

The dealer-company protests levy of 8% entry tax on purchase value of tractor chassis instead of 2% for the assessment year 2002-03. In this connection, it is worthy to mention that all the five entries appearing at Part-III of the Schedule to the OET Act have been omitted Vide Finance Department Notification No.23878/CT dated 31.05.2004 effective from 01.04.2004. Prior to this Notification, Entry 2 of Part-III under the Schedule was 'Motor vehicles, two wheelers, and three wheelers' exigible entry tax @8%. The ld.FAA is therefore correct in levy of 8% entry tax on purchase value of Tractor chassis.

12. In view of the aforesaid discussion, the appeals filed by the dealer-company are partly allowed. The impugned orders of the ld.FAA are set aside. The cases are remitted back to the learned assessing authority to assess the dealer-company afresh in the light of the observations made in the foregoing paragraphs within three months from the date of receipt of this order. Cross objections are disposed of accordingly.

Dictated and corrected by me.

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member