BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 342 (VAT) of 2016-17

(Arising out of order of the learned JCST (Appeal), Sundargarh Range, Rourkela in First Appeal No. AA V 26 of 2010-11, disposed of on 19.12.2016)

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

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

-Versus-

M/s. Techno Engineers, Plot No. 33, Industrial Estate, Rourkela, Dist. Sundargarh ... Respondent

For the Appellant : Sri M.L. Agarwal, S.C. (CT)
For the Respondent : Sri R.K. Mishra, Advocate

Date of hearing : 30.11.2022 *** Date of order : 26.12.2022

O R D E R

State is in appeal against the order dated 19.12.2016 of the Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (hereinafter called as 'First Appellate Authority') in F A No. AA V 26 of 2010-11 reducing the assessment order of the Sales Tax Officer, Rourkela II Circle, Panposh (in short, 'Assessing Authority').

2. The facts of the case, in short, are that –

M/s. Techno Engineers is a manufacturer and seller of mechanical spare parts and components. The assessment period relates to 01.04.2005 to 31.03.2008. The assessment was made on the strength of Audit Visit Report (AVR) of the audit team. The Assessing Authority recorded finding that 4% tax shall be levied on goods i.e. spare parts w.e.f. 07.05.2008 and prior to that tax shall be levied @ 12.5%. So the Assessing Authority calculated differential tax for the said period. The Assessing Authority also disallowed the ITC on purchase of consumable goods such as cotton waste etc. The Assessing Authority raised tax demand of ₹40,32,573.00 u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') on the basis of Audit Visit Report (AVR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority allowed the appeal in part and reduced the assessment to ₹38,472.00. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files cross-objection supporting the order of the First Appellate Authority.

3. The learned Standing Counsel (CT) for the State submits that the sale of machinery component and spare parts should have taxed as per Part-III of scheduled goods. He further submits that it is immaterial whether it is sold as capital goods or industrial input. He further submits that it is naturally unspecified goods for the selling dealer unless the purchaser claims it as capital or industrial input. The circular referred in the order is not applicable to the present facts and circumstance of the case. So, he submits

that the finding of the First Appellate Authority is otherwise bad in law and the same requires interference in this appeal.

4. On the contrary, learned Counsel for the Dealer supports the finding of the First Appellate Authority and submits that the First Appellate Authority has passed a reasoned order and the same requires no interference in the appeal.

5. On hearing of rival submissions and careful scrutiny of the material available on record, it is found that the Dealer was dealing in manufacturing and sale of mechanical spare parts, components. The assessment was made on the strength of Audit Visit Report. The Assessing Authority disallowed the ITC and recorded finding that @ 12.5% tax shall be levied on spare parts. So, he charged a differential rate of tax and raised the tax demand of ₹40,32,573.00.

6. The First Appellate Authority deleted the part of demand of tax for the differential amount of rate of tax @ 8% and uphold the finding of the Assessing Authority regarding disallowance of claimed ITC. The State challenged the finding of deletion part of tax for the differential amount of tax @ 8%. So, now the crux of adjudication is, whether the finding of the First Appellate Authority regarding deletion on the part of demand of tax for the differential amount of tax@ 8% is justified ?

7. Sec.2(8) of the Act deals in capital goods. Capital goods means plants, machinery and equipments used directly in the process of manufacturing and shall include the components and spare parts thereof, but shall not include such plant, machinery and equipments which are used for the purposes and in the circumstances specified in Schedule ‘D’.

Sl. No.24 of Schedule-B Part-II deals in capital goods as defined in sub-sec (8) of Sec.2 of the OVAT Act, 2004. The capital goods are taxable @ 4% prior to 01.04.2012.

Section 2(8) of the Act provides that the restrictions specified in Schedule-D, wherein the tax @ 4% shall not be applicable for such plant, machinery and equipments. Sec.2(8) of the Act shows that the component and spare parts were included within the meaning of capital goods on 01.06.2008 by way of amendment. It means component and spare parts were not included in the capital goods u/s.2(8) of the Act prior to 01.06.2008. The AVR shows that the audit team has verified the books of account of the Dealer and found that the Dealer had sold spare parts and components to RSP @ 4% and the Dealer had paid the tax@ 4%. As spare parts and components were not included within the meaning of capital goods prior to 01.06.2008 and the assessment period relates prior to that, the Dealer is liable to pay tax @ 12.5%. The order of assessment shows that the Assessing Authority has rightly levied tax @ 12.5% and charged the differential amount. The First Appellate Authority recorded a finding that the amount paid by the buyer in respect of purchase of capital goods is entitled for ITC and further recorded finding that the SAIL, RSP paid tax towards purchase of capital goods is reclaimed as ITC, and therefore, Revenue neither losses or gain in this case and basing on such finding, he deleted the differential tax amount which cannot be said to be the proper reasoning. The issue is whether spare parts is included in the capital goods or not during the period of assessment. The answer is no, so the same cannot be treated as ‘capital goods’ within the meaning of Sec.2(8) and the said goods subject to exigible to tax @ 12.5% not @ 4%.

8. On the foregoing discussions, we came to an irrestible conclusion that the First Appellate Authority went wrong in deleting the differential tax amount rather the Assessing Authority had rightly levied the differential amount of tax on the alleged goods. So, the finding of the First Appellate Authority needs interference in this appeal. Hence, it is ordered.

8. In the result, the appeal is allowed and the impugned order of the First Appellate Authority is hereby set aside. As a consequence the order of assessment is restored. Cross objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G.C. Behera)
Chairman

Sd/-
(G.C. Behera)
Chairman

I agree,

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

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I