

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 128(ET)/2011-12

(From the order of the Id.DCST (Appeal), Sambalpur Range,
Sambalpur, in Appeal No. AA.16/BGH/ET/09-10, dtd.14.09.2011,
modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

.... Appellant

-Versus-

M/s. Bargarh Dyeing House,
Dist. Bargarh.

.... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)
For the Respondent : Mr. V. Sharma, Advocate

(Assessment Period : 01.04.2005 to 31.12.2008)

Date of Hearing: 08.02.2019 *** Date of Order: 12.02.2019

ORDER

The goods like cotton yarn in hank dealt by the assessee-dealer, if is to be treated as schedule goods under Entry Sl.No.2 of Part-I of the Schedule of Entry Tax Act i.e. cotton yarn and exigible to entry tax or not, is the question raised for deciding the appeal in hand before this Tribunal.

2. In a regular assessment for the assessment period from 01.04.2005 to 31.12.2008, the Assessing Authority/Asst. Commissioner of Sales Tax, Bargarh Circle, Bargarh (in short, AA/ACST) levied entry tax @1% treating the goods like cotton yarn in hank as claimed as taxable goods under the Odisha Entry Tax Act, 1999 (in short, OET Act). But in appeal before the learned First

Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in short, FAA/DCST), the appellate authority in impugned order reversed the finding of the AA relying on the view that, 'cotton yarn in hank' purchased from outside dealers by the assessee-dealer in hand is not a schedule good. As a result, the tax liability fixed by the AA was deleted and the dealer was found entitled to refund of Rs.54,798/- against the excess tax paid.

On this backdrop, State has preferred this second appeal challenging the order of the FAA to be illegal and not sustainable on the plea that, 'cotton yarn in hank' is taxable under Entry Tax Act.

3. Undisputed facts in this case is, the dealer was engaged in trading of 'cotton yarn in hank' purchased from Out-State dealer brought into local area. The dealer was paying entry tax on such purchase, but being guided by the authority, the Single Bench of this Tribunal wherein it is held that, 'cotton yarn in hank' being a non-schedule goods under OET Act, the dealer stopped paying entry tax. In the case in hand, the AA did not accept the plea of the dealer and fixed tax liability, whereas the FAA accepted the plea of the dealer and deleted the tax liability. In the hearing, learned Counsel for the dealer placed reliance on two of the judgments passed by this Tribunal by Single Bench i.e. in S.A.No. 94(ET)/2006-07 dtd.25.03.2008 and S.A.No.319(ET)/2005-06 dtd.15.04.2007. Both the orders were passed by Single Bench treating the cotton yarn in hank as non-schedule goods.

Per contra, learned Addl. Standing Counsel advanced an order passed by Full Bench of this Tribunal in S.A. No.277(ET)/2007-08 dtd.20.09.2010, whereby the Full Bench has held that, cotton yarn in hank is nothing but same goods i.e. cotton yarn and levied tax. Learned Addl. Standing Counsel placing reliance on the view of the

Full Bench of this Tribunal argued that, the Full Bench has got overriding effect on the Single Bench order, hence the dealer's tax liability is to be recognized in the light of the decision rendered by the Full Bench.

4. The Entry Sl.No.2 of the Part-I of the Schedule under OET Act contain the goods like 'cotton yarn', the dealer in hand deals with goods like cotton yarn in hank. If we go by the dictionary meaning of the word "hank", it is nothing but a unit of measurement i.e. the measurement of yarn in a particular unit. As per the dictionary meaning it is in the textile industry, a hank is a coiled or wrapped unit of yarn or twine. This is often the best form for use with handlooms compare to the 'cone' from needed for power looms. 'Hanks' came in varying lengths depending on the type of material and the manufacturer. It is the measurement of the length per unit mass of cloth or yarn, which varies according to the type being measured. For example, it is equal to 840 yards for cotton yarn and 560 yards for worsted.

Thus, from above, the meaning of the hank can be limited only to a unit of the measurement of the 'cotton yarn'. When 'cotton yarn' is a schedule goods and 'cotton yarn' in hank is nothing more than a measurement of schedule goods, then the irresistible conclusion is, the 'cotton yarn in hank' is necessarily under the umbrella of the schedule goods as per Entry Sl.No.2 of the Part-I of the Schedule of the Entry Tax Act. In that event, in my considered view, irrespective of the findings of the Single Bench, the Full Bench has the correct interpretation that the 'cotton yarn in hank' is not different from the schedule goods cotton yarn, which is exigible to entry tax. It is not out of place to mention here that, in the case in hand, the dealer was paying entry tax on the cotton yarn hank, but the dealer stopped

paying tax keeping in view the order passed by this Tribunal in Single Bench. In that event, I am of the view that, the dealer was not at fault or it was not an intentional mistake by the dealer. Rather when the dealer found his goods are found non-schedule goods, then under bona-fide belief, he stopped paying tax. In such event, I am of the view that, the dealer though liable to pay entry tax on “cotton yarn hank” for the assessment period in question, but the dealer cannot be held liable to pay any interest for delay payment of tax or not penalty for non-payment of tax. Accordingly, it is ordered.

The appeal by the Revenue is allowed on contest. The dealer is liable to pay tax on the “cotton yarn hank” for the tax period in question. Demand be raised accordingly.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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