BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK

S.A.No. 55(ET)/2012-13

(From the order of the ld.DCST, Jajpur Range, Jajpur Road, in Appeal No. AA-283-CU-III-(ET)-10-11, dtd.28.03.2012 modifying the assessment order of the Assessing Officer)

P R E S E N T :

Smt. Suchismita Misra Chairman **Sri S. Mohanty Judicial Member-II** **& Sri P.C. Pathy Accounts member-I**

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

-Versus -

M/s. Rohit Ferrotech Ltd., Rabana, Jakhapura, Jajpur. ... Respondent

Appearance :

For the Appellant ... Mr. M.S. Raman, A.S.C. (C.T.)
For the Respondent ... Mr. B.N. Mohanty, Advocate

(Assessment Year : 2007-08)

Date of Hearing: 26.02.2019 *** Date of Order: 27.02.2019

ORDER

What should be the rate of entry tax on purchase of coal and coke used for manufacturing of HCFC (High Carbon Ferro Chromes), to be paid by the assessee-dealer in the case in hand, when the dealer claims the the use of same as raw material conversely the revenue claims the same as fuel/consumable in the process of such manufacturing is the sole question raised for decision in this appeal at the behest of Revenue.

2. The Assessing Authority/Asst. Commissioner of Sales Tax, Jajpur Circle, Jajpur Road (in short, AA/ACST)

declined the plea of the dealer to treat the coal and coke as raw material for the purpose of manufacturing of HCFC and then levied tax on the same at full rate. The period of assessment is 01.04.2007 to 31.03.2008. The demand raised against the dealer by the AA in assessment u/s.9C initiated on the basis of Audit Visit Report (AVR) is Rs.42,16,187/-.

As against the view of AA above, the learned First Appellate Authority/Deputy Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short, FAA/DCST), when approached by the dealer, he modified the demand by reducing it to Rs.1,05,355.70 with a view in consonance to the claim of the dealer that, the coal and coke used by the instant dealer in the manufacturing of HCPC Ferrochrome is to be treated as raw material in the manufacturing and in consequence thereof, the dealer is entitled to concession in rate of tax as per Rule 3(4) of the OST Rule.

3. When the concession in rate of tax is allowed and thereby, the demand is reduced, Revenue felt aggrieved and questioned the sustainability and legality of the order of the FAA in this second appeal and *inter alia*, has contended that, the FAA has committed wrong in treating the 'coal' and 'coke' as raw material in the manufacturing of HCFC. It is the 'coke' and 'coal' should be considered as fuel for raising temperature in the blast furnace for manufacturing of the Ferrochrome. So, concession in rate of tax is not available under law.

Findings :

4. Advancing argument for the Revenue Ld. Addl. Standing Counsel, Mr. Raman submitted that, the interpretation of the term raw material as per the Entry Tax Act as per Section 26 of the OET Act is different from the interpretation of the term input as per Sec.2(25) of the OVAT Act. It is argued that, the FAA has swayed by a view that, the

term 'raw material' as per OET Act is akin to 'input' as per OVAT Act. Since Sec.26 of the OET Act employs the term "raw material" in association with the expression, which directly goes to the composition of the finished product, which is not equivalent to the interpretation of input as per Sec.2(25) of the OVAT Act, where the input has been defined to mean not only goods directly goes into composition of finished products or packing of goods for sale but also includes consumables directly used in such processing or manufacturing, the consideration for determination of 'raw material' and 'input' are accordingly different. The interpretation of the term "input" under the OVAT Act has got a wider connotation in comparison to the interpretation of 'raw material', which is very specific and limited such as, it must be present in the end product to make a goods characterised as raw material as per Section 26 of the OET Act read with Rule 3(4) of the OET Rule.

5. ***Per contra,*** learned Counsel for the dealer strongly relied on the view taken by the FAA that, 'coke' and 'coal' are used as raw material by the dealer in the manufacturing of HCFC. Besides, he argued for consistency in the matter by the authority. According to him, the Revenue has treated 'coke' and 'coal' as raw materials in the assessment of other periods relating to the dealer and the view of the taxing authority became a precedent applicable to the present assessment. Placing reliance on a decision rendered by Division Bench of this forum in S.A.No.89(ET)/2010-11, learned Counsel submitted, the Division Bench has also treated 'coke' and 'coal' used by the dealer as raw materials and allowed concession in the rate of tax to the dealer for the tax period 2006-07. Such view of the Tribunal also accepted by the taxing authority and it has reached its finality.

Countering the submission of the Counsel for the dealer Mr. Raman, learned Addl. Standing Counsel argued with authority that, *'res judicata'* has no applicability in the taxation matter.

In the matter of **Bharat Sanchar Nigam Ltd. & Another Vrs. Union of India and** Others, it is held that, "*Res judicata* does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of *res judicata* but because of the theory of precedent or precedential value of the earlier pronouncement. Where the facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam. However, these are fetters only on a co-ordinate Bench, which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior jurisdiction".

6. HCFC is the end product manufactured by the dealer. It is not the case that, the dealer manufactures any other goods or the dealer is engaged in sale of 'coke' and 'coal'. Though the R.C. of the dealer is not produced for perusal of the Bench, but from the impugned order as well as the order

of the Division Bench on earlier occasion relating to the dealer involving identical issues, it is established that, the R.C. issued by the taxing authority contains goods like furnace oil, HSD oil, petrol, mobile oil as fuel. Coal and coke are not entered as fuel to be used by dealer. Claim of the dealer is, the end product HCFC contains carbon to the extent of 7%. It is also argued that, the notification of the Finance Department dtd.17.01.2009 to disallow ITC on 'coal' and 'coke' was struck down by the Hon'ble Court. So, in consequence to that, it is to be accepted that, the materials which are treated as raw materials under the OVAT Act and the materials against which the dealer is given input tax credit, the same should be treated as raw materials in the consequential tax liability under Entry Tax Act.

The word "consumable" takes colour from and must be read in the light of the words that are its neighbours "raw material", "component part", "sub-assembly part" and "intermediate part". So read, it is clear that the word "consumables" therein refers only to material which is utilised as an input in the manufacturing process but is not identifiable in the final product by reason of the fact that it has got consumed therein.

"The expression "raw material" is not a defined term. The meaning has to be given in the ordinary well-accepted connotation in the common parlance of those who deal with the matter. In the case of **Collector of Central Excise, New Delhi Vrs. Ballarpur Industries (1989) 4 SCC 566**, it was *inter alia* observed as follows: (SCC p. 572, para 14) "14. The ingredients used in the chemical technology of manufacture of any end product might comprise, amongst others, of those which may retain their dominant individual identity and character throughout the process and also in the end product;

those which, as a result of interaction with other chemicals or ingredients, might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end product; those which, like catalytic agents, while influencing and accelerating the chemical reactions, however, may themselves remain uninfluenced and unaltered and remain independent of and outside the end products and those, as here, which might be burnt up or consumed in the chemical reactions. The question in the present case is whether the ingredients of the last- mentioned class qualify themselves as and are eligible to be called 'raw material' for the end product. One of the valid tests, in our opinion, could be that the ingredient should be so essential from the chemical processes culminating in the emergence of the desired end product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning up is its quality and value as raw material. In such a case, the relevant test is not its absence in the end product, but the dependence of the end product for its essential presence at the delivery end of the process."

In **M/s. Meridian Industries Ltd. Vs. Commissioner of Central Excise [Civil Appeal No. 4112 of 2007]** **AIT-2015-160-SC,** it is held as follows :

The definition of 'consumables' suggest that if a particular item participates in or is required for a manufacturing process, but does not form part of the end product and instead it is specifically or totally consumed during a manufacturing process, the same would be treated as 'consumables'. On the other hand, 'raw material', inter alia, includes any materials or goods that is required for the manufacturing process for a manufacturer. In accordance to the guiding principle by the authority in the present case, it is

inconceivable to accept that, 'input' under OVAT Act and 'raw material' under OST Act are same. But the fact remains, when it is the view of the Tribunal time to time as well as the view of the taxing authority time to time that, the 'coal' and 'coke' remain present in the end product i.e. HCFC, then there is no escape from the conclusion that, these are to be treated as raw materials.

On a conspectus of the facts and interpretation of the statutory mandate discussed above, we do not find any legally sustainable reason to interfere with the impugned order. The dealer is entitled to concession in rate of tax as held by the learned FAA. The appeal sans merit hence dismissed on contest.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
Judicial Member-II

Sd/-
(S. Mohanty)
Judicial Member-II

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I