BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No. 687 of 2007-08

(Arising out of order of the learned ACST (Appeal), Sundargarh Range, Rourkela in First Appeal Case No. AA- 153(RLI)/2006-07 disposed of on dated 24.04.2007)

Present: Shri R.K. Pattanaik, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member, and
Shri R.K. Pattnaik, Accounts Member-III

M/s. Ores Enterprises (P) Ltd.,
Koira, Sundargarh ... Appellant

-Versus-

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

For the Appellant : Sri Damodar Pati, Advocate
For the Respondent : Sri S.K. Pradhan, Additional Standing Counsel (CT)

Date of hearing: 15.09.2020 ***** Date of order: 13.10.2020

O R D E R

Being aggrieved of the impugned order dated 24.04.2007 promulgated in Appeal No. AA- 153 (RLI)/2006-07 by the learned Assistant Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (in short, 'FAA'), the dealer assessee has preferred the instant appeal under Section 23(3) of the Sales Tax Act, 1947 (in short, 'the Act') on the grounds inter alia that the findings are not based on facts and law, inasmuch as, it is not involved in any manufacturing activity and thus, not exigible to tax under the Act, which is also

directed by the Sales Tax Officer, Rourkela-I Circle, Uditnagar (in short, 'AA') in a proceeding initiated under Section 12 of the Act with respect to the assessment period 2003-04.

2. According to the dealer assessee, it is a private limited company registered under the Companies Act, 1956 situated within the jurisdiction of the AA; on being registered under Section 9-C of the Act w.e.f. 18.04.1998, it is being indulged in crushing of minerals and ores by setting up a crusher unit and commenced its commercial production w.e.f. 20.01.2000. It is also contended that the Finance Department by notification dated 01.03.2002, deleted certain activities from manufacture which included stone crushing units, whereafter, its RC was amended w.e.f. 31.07.2002. As per the dealer assessee, post amendment of RC, it is filing returns as a trading unit and as ores and minerals are first point tax paid goods w.e.f. 01.04.2001, it did not pay any tax, for that matter. The dealer assessee also contends that the assessment proceeding for the period 2003-04 was commenced which resulted in raising extra demand challenging which it knocked the portals the Hon'ble Court in W.P. (C) No. 427 of 2005 which stood disposed of on 11.09.2005 with a direction to move the appropriate authority with an observation that the views expressed therein are only on the applicability of the judgments cited by the dealer assessee without delving into the merits of the findings in the order of assessment dated 15.12.2004.The dealer assessee lastly contended that an appeal was then filed but the FAA confirmed the view that it is being involved in manufacturing activity and, therefore, is liable to pay the tax.

3. The respondent State, on the other hand, supported the decisions of the authorities below, while claiming that the dealer assessee is involved in manufacturing activity and, thus, rightly it has been directed to pay tax under the Act notwithstanding the notification dated 09.01.2002. As per the State, since the iron lumps are transformed into ores and fines, it is on account of manufacturing process and considering the artificial definition of Section 2(ddddd) of the Act, such activity involving crushing into iron ores and fines is exigible to tax. It is also contended that said definition of 'manufacture' is quite expansive and the legislature issued the notification dated 09.01.2002, only to do away with grant of exemption, which is also indicative of the fact that such units are indeed dealing in manufacturing activity. In other words, the learned Additional Standing Counsel (CT) contended that the dealer assessee, since involved in production of a different commercial commodity than the iron ore or lump with marketability prospect, the decisions of the authorities below in respect thereof are just and in accordance with law and, therefore, not to be tinkered with.

4. In this connection, the learned Counsel for the dealer assessee cited a recent order dated 10.07.2020 of the Tribunal in S.A. No. 351 (ET) of 2005-06 relating to it and contended that earlier view expressed in S.A. Nos. 350 (ET) of 2005-06, 37 (ET) of 2006-07; and 2113 of 2005-06 was accepted holding that it cannot be treated as a manufacturer for the purpose of taxation under the Act. Apart from that, the decision of the Hon'ble Court in the case of State of Orissa and others Vs. D.K. Construction and others: (2017) 100 VST 24 (Orissa) and ruling

of the Hon'ble Apex Court in the case of State of Maharashtra Vs. Mahalaxmi Store reported in (2003) 129 STC 79 (SC) have been referred to in order to strengthen the claim that the unit in question is not involved in manufacturing activity. The learned Additional Standing Counsel (CT) once again made the Tribunal to go through all the reported decisions cited in S.A. No. 351 (ET) of 2005-06 while countering the contention of the dealer assessee and further claiming that there is conversion of goods in the process and also by applying the doctrine of irreversibility as the iron ore or lump is completely lost, it must have to be held as being a part of manufacturing activity which the authorities below apparently arrived at.

5. The definition of 'manufacture' appears in Section 2(ddddd) of the Act and with all its grammatical variation and cognate expression means producing, extracting, altering, ornamenting, finishing or otherwise processing or adopting any goods, but shall not include such manufacture or manufacturing process, as the State Government may by notification, specify from time to time. As per Section 2(28) of the OVAT Act, 2004, 'manufacture' means any activity that brings out a change in an article or articles as a result of some process, treatment, labour and results in transformation into a new and different article so understood in commercial parlance having a distinct name, character and use, but does not include, such activity of manufacture as may be notified. Said definition under the OVAT Act, 2004 appears more refined than the 'manufacture' means according to the Act. Though the definition of 'manufacture' as assigned to it in Section 2(28) of

the OVAT Act, 2004 is inapplicable to the present case, it is only highlighted to show the paradigm shift in defining the expression 'manufacturing activity'. The Tribunal is to consider the case in hand with reference to Section 2(ddddd) of the Act in order to find out whether the activity of the dealer assessee relates to manufacture or manufacturing process so as to be exigible to tax under the Act. The view which had earlier been expressed in S.A. No. 351 (ET) of 2005-06 to the effect that irrespective of the notification dated 09.01.2002, a decision on whether an activity to be manufacture or manufacturing process still remains for determination with reference to Section 2(ddddd) of the Act is restated. In other words, just by considering the said notification, an activity of the present nature cannot straight away be called as manufacture or manufacturing process and the Tribunal is in no manner precluded to consider it having regard to the materials on record.

6. The lexicological meaning of 'manufacture' does mean 'making' or 'building'; and includes the act of making something; the act of creating something which is different from the materials that went into it; to bring into being by combining, shaping or transforming materials. In other words, 'manufacture' means to produce an item by using raw materials; processing of raw materials or parts into finished goods through the use of tools, human labour, machinery etc. It is indeed a value adding process allowing production of goods at a higher cost over the value of the raw materials. There is also a distinction in manufacturing and processing activity which cannot be lost sight of. Typically, 'manufacturing' means

the capability used to turn a raw material into a finished goods, whereas, processing would then be the additional steps for creation of the end product by machining away defects, if any. In fact in M/s. Saraswati Sugar Mills Vs. Haryana State Board and others reported in AIR 1992 SC 224, the Hon'ble Apex Court very lucidly explained the distinctive features vis-a-vis the manufacture and processing by observing therein that the construction of words and the meaning to be given to such words shall normally depend on the nature, scope and purpose of the statute in which it is occurring and held that if a material is processed, the product may not lose its original character, while in manufacturing, something is necessary to be brought into which is different from that which originally existed in the sense that the thing so produced is a commercially different article. It is also held that manufacture implies a change, but every change is not a manufacture and yet, every change of an article is the result of treatment, labour and manipulation and the essential point is that in manufacturing a different goods from the original is created and the end product is by itself a commercially different commodity, but in the case of processing, it is not necessary to produce a distinct article of commercial identity, inasmuch as, it essentially effectuates a change in the form, contour, physical appearance or chemical combination or otherwise by artificial or natural means and in its more complicated form involves progressive action in performing, producing or making something. If the meaning of 'manufacture' as defined in Section 2(ddddd) of the Act is properly understood and appreciated having regard to the settled position of law, the activity of the dealer assessee

cannot be held as manufacture or manufacturing process. In fact, the Hon'ble Apex Court in Commissioner of Sales Tax, U.P Vs. Lal Kunwa Stone Crusher Pvt. Ltd: (2000) 118 STC 287 (SC) and Divisional Deputy Commissioner of Sales Tax and another Vs. Bherhaghat Mineral Industries: (2000) 120 STC 205 (SC) categorically held and observed that stone/minerals on being crushed with the resultant end product does not involve in manufacture or such a process cannot be construed as manufacture. In fact, the dealer assessee cited the ruling of the Hon'ble Court in D.K. Construction case to fortify the contention that iron ore lumps are basically minerals and through the crushing process, it is simply made into smaller sizes with no new and distinct product of commercial identity being created. If considered in its proper prospective with reference to Section 2(ddddd) of the Act, manufacture can only be held as production of a new thing of distinct commercial viability. In the instant case, iron ores or lumps are subjected to crushing which neither involves manufacturing or processing independently nor its identity is entirely lost or destroyed which only results in change in sizes and form. In other words, no process is really subjected to with respect to the iron ores or lumps creating a distinct commercial commodity as a result of such activity of crushing. So far as the decisions which are cited by the State, the details of which have been indicated in S.A. No. 351 (ET) of 2005-06, rather suggest production of different and distinct commercial goods with saleability and under such circumstances, it has been held that the activities to be manufacture or manufacturing process. Without discussing more, the Tribunal is of the considered view that the consistent view expressed on

the subject matter is to be maintained so as to hold that the iron ores on being crushed without being subjected to any other processes leading to the making of its smaller sizes cannot be treated as an activity of manufacture as defined in Section 2(ddddd) of the Act, inasmuch as, by such means neither the original identity of the ore or lump is lost or any new distinctively different commercial commodity is created. Thus, the inescapable conclusion of the Tribunal is that the findings of the authorities below cannot be countenanced with the conclusion that the dealer assessee is not to be treated as a manufacturer for the purposes of the Act.

7. Hence, it is ordered.

8. In the result, the appeal stands allowed. As a necessary corollary, the impugned order dated 24.04.2007 promulgated in Appeal No. AA- 153(RLI)/ 2006-07 is hereby set aside. Consequently, the assessment for the period 2003-04 vis-a-vis the dealer assessee is quashed. Extra tax, if any, paid be refunded to the dealer assessee as per and in accordance with law.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(A.K.Dalbehera)
1st Judicial Member

I agree, Sd/-
(R.K. Pattnaik)
Accounts Member-III