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

S.A. No. 346(ET) OF 2005-06
&
S.A. No. 347(ET) of 2005-06

(Arising out of order of the learned ACST, Balasore Range,
Balasore in First Appeal Case No. AA. 379 & 379(A)/BA/2005-06,
disposed of on dated 30.08.2005)

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

M/s. Shree Annapurna Conductors Ltd.,
At- Banaparia, PO- Kuruda, Dist. Balasore ... Appellant

-Versus-

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

For the Appellant : Sri Mukesh Agarwal, Advocate
For the Respondent : Sri M.S. Raman, Additional S.C. (CT)

Date of hearing: 07.05.2020 ***** Date of order: 29.05.2020

O R D E R

Being aggrieved of the impugned order dated 30.08.2005 promulgated in First Appeal Case Nos. AA. 379 & 379(A)/BA/2005-06 by the learned Assistant Commissioner of Sales Tax, Balasore Range, Balasore (in short, 'the FAA') for the respective periods of assessment of 2001-02 and 2002-03 which confirmed the assessment orders dated 21.02.2005 passed by the learned Assessing Authority, Balasore Circle, Balasore (in short, 'the AA') on the grounds

inter alia that it is bad in law and, therefore, without jurisdiction and thus, liable to be set aside in the interest of justice.

2. As per the appellant dealer M/s. Shree Annapurna Conductors Ltd., which deals in manufacturing and sale of conductors and other products and purchasing of aluminium rods, ingots as raw materials, the decision of the authorities below to be erroneous, arbitrary and in excess of jurisdiction, inasmuch as, the very initiation of the proceeding under Section 9(1) of the Odisha Entry Tax Act, 1999 (in short, 'the Act') de hors materials and thus, is grossly untenable. It is further contended that when there was already an assessment and levy of entry tax @ 0.5% on the sale of aluminium wires to the manufacturing dealers as comprehended under Entry 11 of Part-I of the Schedule, it could not have been reassessed to make it leviable as an item under Entry 2 of Part-II of the Schedule, which is beyond the jurisdiction of the authorities below and not only that, such an exercise has been carried out merely on the strength of an audit report, which is an absolute illegality. According to the appellant, the original levy of tax @ 0.5% was justified and not at the later rate as reassessed by assigning 'aluminium wires' as a commodity enumerated under Serial 2 of Part-II of the Schedule and a decision which is based on audit report is not to be permissible and in so far as the consequent order under Section 9(1) of the Act by the AA is concerned, it is nothing but a change of opinion, which is as such not legally sustainable. So to speak, the appellant questioned the initiation of the assessment proceeding under Section 9 of the Act as bad in law and without jurisdiction besides claiming that the

aluminium wires, a commodity to be taxed as an item under Entry 11 of Part-I instead of Entry 2 of Part-II of the Schedule.

3. On the contrary, as per the respondent, the decision under challenge does not call for any interference since the reassessment proceeding under Section 9 of the Act, by no stretch of imagination, can be faulted with and as such, it is within jurisdiction of the AA notwithstanding the fact that it was initiated later to an audit report. It is also contended that the appellant all along participated in the proceeding under Section 9 of the Act and at no point of time ever raised any objection vis-a-vis the notice of the authority concerned and, thus, at present, it cannot turn back and claim that the AA had no jurisdiction at all. In other words, as per the contention of the respondent, the appellant is now fully estopped from raising such a question as to the jurisdiction of the AA, who rightly initiated the proceeding under Section 9 of the Act on a subjective satisfaction being arrived at with regard to the rate of tax prescribed for goods in question. That apart, the respondent would contend that the original assessment levied entry tax @ 0.5% on sale of aluminium wires and conductors, but the rate on the scheduled goods is @ 2% and, therefore, entry tax to be payable @ 1% on the said goods sold as raw materials to the manufacturing units is absolutely a right decision by the AA which may even be based on the audit report permissible in law.

4. Thus, the questions to be considered by the Tribunal are stated below in seriatim:

(a) If at all the reassessment proceeding under Section 9 of the Act as initiated by the AA vis-a-vis the alleged assessment periods concerning the appellant to be justified?

(b) Whether considering the facts and circumstances of the case, such initiation of the proceeding under Section 9 of the Act resulted in change of opinion being made on the basis of a report of the A.G. Audit Unit?

(c) Whether 'aluminium wires' stand as a taxable commodity falling under Entry 11 of Part-I or Entry 2 of Part-II of the Schedule?

5. In fact, reopening of assessment prior to 19.05.2005 was under Section 9(1) of the Act, which on account of amendment presently stands in Section 10(1) thereof, inasmuch as, in the former, the reassessment within the time stipulated was permitted for a reason, if all or any of the schedule goods brought by a dealer escaped assessment to tax, whereas, in the latter, it was elaborated and included under assessment and wrong deductions besides escaped assessment to authorize an assessing authority to exercise the jurisdiction calling upon the dealer by serving a notice upon him within the period prescribed to show cause as to why additional tax shall not be realized. So far as the appellant is concerned, the reassessment for the alleged periods is to be governed by Section 9(1) of the Act as the law stood prior to 19.05.2005.

6. The first and foremost question which is to be considered by the Tribunal is related to the jurisdiction of the AA under Section 9(1) of the Act and

whether, it was justified and such reassessment is permitted on the strength of an audit report? The learned Counsel for the appellant strenuously urged that the reassessment under Section 9(1) of the Act, later to the regular assessment made under Section 7 thereof considering an audit report and in absence of materials on record and without prima facie satisfaction being arrived at by the AA, is absolutely unjustified and untenable in law. Originally, the assessment was made and tax was levied on the sale of aluminium wires @ 0.5% and then, it was switched over to the rate at 2%, which according to the learned Counsel for the appellant, was accomplished only upon the audit report and de hors fresh materials. The learned Additional Standing Counsel (CT), on the other hand, strongly urged that the AA did commit no wrong or illegality, as such and rightly, in exercise of the jurisdiction under Section 9(1) of the Act made the reassessment with regard to the escapement vis-a-vis the schedule goods and such exercise of jurisdiction was permissible even on the basis of an A.G. Audit Report.

7. As earlier discussed, the learned Additional Standing Counsel (CT) raised a point regarding the participation of the appellant in the reassessment proceeding under Section 9(1) of the Act and referred to a decision in the case of Commissioner of Customs Vs. Virgo Steels: [2002] 4 SCC 316 and contended that by conduct of the party, the jurisdiction of the AA, at present, cannot be questioned. The decision (supra) is in relation to challenging notice issued by the authority and then, voluntary participation of the party in question and in under the circumstances, it was held and observed that by such conduct of the party the

objection with regard to the issuance of the notice is held to have been waived. The learned Additional Standing Counsel (CT) also relied upon a decision in the case of D.Ch. Guruvalu Son & Co. Vs. Sales Tax Officer: 2008 (I) OLR 18 which is with regard to the jurisdictional authority under Section 12(8) of the OST Act and there too, the ground of challenge was respecting the validity of the notice issued thereunder. One more decision, which is prominently referred to, reported in (2003) 130 STC 97 (SC) in the case of Commissioner of Sales Tax Vs. Subhash & Co. is cited by the learned Additional Standing Counsel (CT) which once again subscribed to the validity of the notice, wherein, it has been held that the contents of the notice having culminated in the assessment order, it cannot be questioned later on. Another decision in the case of State of Orissa Vs. Sri Gurumurty Patra: (1973) 31 STC 160 (Orissa) is referred to by the State which lays down the law to the effect that jurisdiction to assess and the liability to pay tax are not conditional on the validity of the notice. If there is prejudice caused to the assessee for a failure to issue notice of assessment, it is held to have been invalid as decided in the case of Harmukh Rai Jairam Das Vs. State: (1952) 3 STC 153 so cited by the learned Additional Standing Counsel (CT). The decision in the case of Virgo Steels (supra) is further cited to contend that absence of notice may invalidate the procedure adopted but it does not take away the jurisdiction to initiate an action for recovery of duty escaped. Of course, the appellant at no stage ever challenged the validity of the notice. The appellant claimed that the regular assessment was over and there was no material on record to reopen it under Section 9(1) of the Act and in

that respect, illegality was committed by the AA, in other words, the authority concerned allegedly did not have the jurisdiction to commence the reassessment proceeding as it de hors materials on record. The learned Counsel for the appellant contended that such a question on jurisdiction can be raised at any stage of the proceeding and even thereafter and as such, there is no embargo, since it goes to the very root of the case. It is rightly said and argued by the learned Counsel for the appellant that such a question on jurisdiction can be pointed out or raised during the original proceeding either at the inception or later on and even thereafter in appeal, execution and there lies absolutely no bar or restriction, so to say. On inherent jurisdiction, the Tribunal is inclined to refer to a decision of the Hon'ble Apex Court in the case of Kanwar Singh Saini Vs. High Court of Delhi: 2012 (4) SCC 307, wherein, it has been categorically held and observed that waiver rule does not apply to law; mere acquiescence never confers jurisdiction; and participation of a party before an authority without jurisdiction does not vest or confer jurisdiction and such a question as to jurisdiction can be raised at any stage of the proceeding and later on during appeal, execution, etc. since it is concerning the authority to entertain and exercise the powers conferred under law. It is also well settled that question of jurisdiction being fundamental and if an authority does not have, notwithstanding participation of a party, it cannot supplement and confer the jurisdiction not vested under law. Of course, the instant case is not about lack of inherent jurisdiction so as to apply the above decision, rather, it relates to proper exercise of the vested jurisdiction or not, a question which depends on the fact as

to if the AA had the reason to believe for reopening of the assessment, and in such view of the matter, in the considered opinion of the Tribunal, there existed no restriction, as such, to take up the matter for adjudication. The decisions so cited by the Revenue do not relate to the jurisdictional aspect, rather, it concerns entertainment of the objection as to the validity or otherwise of the notice, a right which definitely cease to survive, the moment the party participates in the reassessment proceeding without any grumble and hence, they are clearly distinguishable. So, the conclusion is that the appellant is not at all estopped from raising the question of jurisdiction vis-a-vis the AA for the reassessment proceeding being initiated under Section 9(1) of the Act.

8. Then the next point to be considered is, whether, the AA had the authority to reassess vis-a-vis the periods of assessment respecting the appellant and was justified in respect thereof? Whether, the reassessment de hors material or it was justified for a reason as is necessarily required under law? The learned Counsel for the appellant alleged reopening of the assessment to be illegal by referring to a decision of the Hon'ble A.P. High Court: (2003) 133 STC 14. In the said case, as the exemption was wrongly allowed in the original assessment, invoking power under Section 14(4)(cc) of A.P. General Sales Tax Act, 1957, order of assessment was passed and in that background, it was held that there should exist fresh material to justify exercise of such authority and lack of diligence on the part of the authority is no ground to reopen the assessment. A decision reported in (2005) 142 STC 509 in the case of Eicher Motors Ltd. Vs. State of M.P. is also cited

to contend that the reassessment must relate to the turnover and not with regard to the assessment and it may be exerted to for a particular reason but cannot be on the basis of an audit report with reference to a citation of the Hon'ble Apex Court reported in (1979) 119 ITR 996 (SC) to the effect that opinion of an internal audit party on a point of law could not be regarded as 'information' to initiate reassessment under Section 147(b) of the Income Tax Act, 1961. The sum and substance of the cited laws is that if the turnover escaped assessment, when it was not noticed either because of inadvertence, omission or deliberate concealment on the part of the assessee or due to want of care on the part of the authority concerned, the turnover though shown in return was not taken cognizance of, reassessment could be based on discovery of new materials. With regard to escaped turnover, the learned Counsel for the appellant cited another decision reported in (1978) 41 STC 17 (Orissa) in the case of K.C. Mohata Vs. ACST. From the above, it can be deduced that any turnover that escaped the attention of the authority can be reassessed on its discovery and the jurisdiction towards it can be exercised by stating the reason therefor and while asserting such jurisdiction, the authority shall have to consider the materials and to apply its mind independently with all diligence before proceeding to reassess. So far as the audit report is concerned, no doubt, as held in the case of Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi: [1979] 119 ITR 996 (SC), opinion on a point of law on account of an internal audit cannot be regarded as information, in the considered opinion of the Tribunal, said ruling is to be

understood in the manner that it can be a piece of material for the authority concerned to consider and to independently act upon on the same with the judicial application of mind, while taking a decision for reassessment and in that case, it would not to be entirely inadmissible. In some decisions, reassessment based on reports has been approved of, more particularly by the Hon'ble Court in the decisions, such as, Shyam Gudakhu Factory Vs. State of Orissa: 76 (1993) CLT 487 and Bindlish Chemical & Pharmaceuticals Works Vs. Commissioner of Sales Tax: (1993) 89 STC 102 (Orissa). The action of the authority under Section 12(8) of the OST Act, as held in the cases (supra), cannot be faulted with even if it is based on audit report. In Bindlish Chemical's case, the Hon'ble Court made an observation that the audit report can provide the basis for reassessment under Section 12(8) of the OST Act. If the laws so discussed as covered by the learned Counsel for the parties are understood, appreciated in its proper perspective and harmoniously applied, the irresistible conclusion would be that independent mind is to be applied by the authority concerned and the decision for reassessment ought not to be entirely based on an audit opinion, since it is not regarded as information enabling to initiate an action against the assessee. In the instant case, the rate of tax vis-a-vis the schedule goods, whether to be levied under a particular entry of the schedule alleged to have escaped the notice of the AA in original assessment which could be on account of inadvertence or otherwise and that was claimed to have been pointed out in the audit report referring to which the reassessment was initiated and in the considered opinion of the Tribunal, such an action lies within the realm

of Section 9(1) of the Act. The learned Counsel for the appellant referred to some more decisions, such as, Binani Industries Vs. ACST : (2007) 6 VST 783 (SC); CIT Vs. Kelvinator of India Ltd: (2010) 2 SCC 723; and State of U.P. Vs. Aryaverth Chawal Udyog: (2016) 19 VST 1 (SC) wherein, reopening of assessment was held impermissible by mere change of opinion. The above decisions are related to change of opinion or review which is not permitted so as to commence reassessment by the authority concerned. If a mistake is committed and on the self-same material, another opinion is formed, under such circumstances, the Hon'ble Apex Court in the above said decisions held the reassessment to be impermissible for the fact that it would amount to exercising power of review. A decision was taken, unless and until error apparent on the face of record appears which can be corrected without discussing the evidence on record, is not susceptible to review, notwithstanding it to be erroneous or wrong. In the aforesaid cases, reassessment proceedings were drawn on the same materials and divergent or different views were reached at and in that context, the Hon'ble Apex Court observed that it would result in change of opinion amounting to review. So far as the case of the appellant is concerned, it is with regard to the rate of tax erroneously applied to the scheduled goods, such as, aluminium wires which was sought to be remedied by the AA, of course, later to the receipt of the audit report. It is not a case that the AA himself assumed the jurisdiction referring to the same materials and decided to reassess on the escaped turnover, rather, a decision on the rate of tax simpliciter was taken albeit on the strength of the audit report with

independent application of mind and for that, in humble opinion of the Tribunal, such initiation of the proceeding under Section 9(1) of the Act cannot be said as without jurisdiction. In Sales Tax Officer Vs. Uttareswari Rice Mills reported in (1972) 30 STC 567 (SC), it is held that a reason must exist for the Sales Tax authority to take action under Section 12(8) of the OST Act. The said citation is also referred to by the learned Counsel for the appellant. If for any particular reason, the Sales Tax authority believes that the turnover of a dealer has escaped assessment, he can go for reassessment and the Hon'ble Apex Court held that the expression 'if for any reason' not to be in any way materially different than the words 'if the sales tax authority has reason to believe'. On the aforesaid aspect, the learned Counsel for the appellant cited some other decisions as well, such as, Indure Ltd. Vs. Commissioner of Sales Tax: (2006) 148 STC 61 (Orissa); State of Orissa Vs. Ugratara Bhojanalaya : (1993) 91 STC 76 (Orissa); and Suburban Industries Kalinga Pvt. Ltd. Vs. STO : (1993) 90 STC 280 (Orissa) and contended that there must exist a reason to believe to initiate reassessment or else the entire exercise may be rendered nugatory. So far as the present case is concerned, the Tribunal does not find any substance to hold that the AA unilaterally on the self-same materials without any reasonable and logical basis endorsed reassessment and thus, it cannot be a case of change of opinion or review as has been alleged by the learned Counsel for the appellant. Of course, the audit report played a vital role and such reports have been considered to be relevant vis-a-vis the reassessment as held in couple of decisions of the Hon'ble Court, the Tribunal arrives at a conclusion that

notwithstanding such utilization of report, the AA independently had application of mind to reassess under Section 9(1) of the Act. The learned Counsel for the appellant referring to Indure Ltd. case attempted to suggest that the AA could not have used and utilized the audit report for the purpose of reassessment. In the case (supra), the Hon'ble Court disapproved the proposition rendered in Bindlish Chemical's case while applying it in juxtaposition to the ratio of Hon'ble Apex Court in Uttareswari case and the learned Counsel for the appellant referring to it contended that the reassessment, whether, can be initiated under Section 12(8) of the OST Act on the basis of an observation in audit report was not specifically answered and, therefore, the citation renders no assistance to the State. The Hon'ble Court, in fact, stressed upon the expression 'any reason' appearing in Section 26 of Bihar Agriculture Income Tax Act vis-a-vis the conditions reflected in Section 34 of the Income Tax Act prior to its amendment of 1948 and while doing so, held and observed that the ratio in Uttareswari case rules the field. Having summed up the decisions, it can logically be concluded that there must exist a reason for the Sales Tax authority to act upon applying independent mind to a particular case and then to go for reassessment even on the basis of an audit report which could provide him some assistance and at no cost, such exercise of jurisdiction under Section 9(1) or 10(1) of the Act, as the case may be, ought to be based on the self-same materials forming a change in opinion which would certainly result in review of its earlier decision.

9. Now it is about the classification of the schedule goods, such as, aluminium wires, whether, it falls in one category or other. As per the authorities below, aluminium wires belongs to Entry 2, Part-II of the Schedule, since there is no specific mention in Entry 11 of Part-I which is claimed so by the appellant. The learned Counsel for the appellant cited rulings reported in (1994) 93 STC 187 (SC); (2003) 11 SCC 798, (2017) 64 GST 16 (SC); (1997) 104 STC 531 (Patna), in particular, to contend that virtually there is no difference between 'wires' and 'rods' and both are same for the purpose of tax liability. The learned Counsel for the respondent, on the other hand, cited decisions reported in (1978) 42 STC 433 (SC); (1961) 12 STC 286 (SC); (1961) 12 STC 330 (SC); (2008) 11 VST 912 (All.) while contending that 'aluminium wires' is distinctively different than 'rods' and it falls in the category of Entry 2, Part-II of the Schedule which is with respect to 'electrical goods' including motors, materials for transmission towers and conductors/cable for manufacture. Admittedly, the appellant purchases aluminium wires, alloy rods, ingots as raw materials and sells aluminium conductors, alloy copper wires, aluminium wires etc. Whether, aluminium wires deserve a place in Entry 11 of Part-I or Entry 2 of Part-II of the Schedule is a question to be answered by the Tribunal? In original assessment, the aluminium wires were held to be goods under Entry 11, Part-I of the Schedule, but subsequent to the audit report and appreciation of the assessing authority, it was treated to be one under Entry 2, Part-II thereof. Such relocating of the schedule goods in Entry 2, Part-II of the Schedule is under challenge at the behest of the appellant. According to the learned Counsel for the appellant, in the

judicial interpretation of different Hon'ble Courts, including Hon'ble Apex Court, as cited supra, wire and rods are treated as one and not as different products and while buttressing such an argument, stress was laid upon and emphasized on the term 'etc.' as appearing in Entry 11, Part-I later to the words 'sheets, rods of non-ferrous metal including aluminium' to suggest that such an expression is used to include all like or similar products. While exclaiming so, the following citations, such as, Royal Hatcheries Pvt. Ltd. Vs. State of A.P: (1993) 92 STC 239 (SC); and Mahankal Agencies Vs. State of M.P: (2004) 134 STC 43 (MP) have been referred to explain the legislative intent in incorporating the word 'etc'. The cardinal principle of classification is that a specific entry in a schedule is to prevail upon the general and in so far as the former is concerned, it is has to be construed in its widest amplitude possible. Without any doubt, 'wires' does not find mention in Entry 11, Part-I and since the appellant sold the aluminium wires to the manufacturing units as a raw material, according to the respondent, it fell in the category of Entry 2, Part-II of the Schedule instead. If a particular commodity is created and acquires a commercial entity on transformation, it becomes a separate commodity altogether for the purpose of sales tax, which is the settled law. It is equally true to conclude that in a taxing statute, scientific or technical meaning need not be applied and ordinary meaning according to the common parlance is to be extended unless and until a contrary intention appears and in this respect the learned Counsel for the respondent cited a ruling reported in (1978) 42 STC 433 (SC) in the case of Porritts & Spencer (Asia) Ltd. Vs. State of Haryana. Of course, a wire or rod is understood

differently in common parlance due to its shape and dimension, but considering the Entry 11, Part-I and referring to the law expounded in Royal Hatcheries Pvt. Ltd. case, wires are to be treated as a product of similar nature like rods. The words 'sheets', 'rods' are more or less of similar kind like wires or in other words, there is a similarity in products though they are different in shapes and sizes. A sheet is different from rod and likewise a wire but all are of a similar product with different shape, size and dimension. Had the word or expression 'etc.' not been there in Entry 11 of Part-I of the Schedule, 'aluminium wires' would not have been imagined similar or akin to 'sheets' or 'rods'. In the considered opinion of the Tribunal, the scheduled goods, even though do not specifically find a place in Entry 11, Part-I, but considering the fact that the expression 'etc.' to be inclusive in nature, it brings within its sweep and definition aluminium wires besides sheets and rods. Since the aluminium wires are shown to have been sold to manufacturing units, the State contends that it falls in Entry 2, Part-II of the Schedule. If no specific entry is mentioned in one entry and the schedule goods stands as a material for the manufacture of the product, then in that case, the 2nd entry is preferred in place of 1st one. The learned Counsel for the appellant contends that the 'User Theory' cannot be applied when aluminium wires can well be included in Entry 11, Part-I, which was originally assessed but subsequently, changed later to the audit report. In this regard, a decision of the Hon'ble Apex Court in Dunlop India Ltd. Vs. Union of India, AIR 1997 SC 597 is cited by the learned Counsel for the appellant which lays down the rule of construction for interpreting fiscal statues. While

challenging the 'User Theory', a decision reported in (1951) 2 STC 11 (Assam) is pressed into service. Apart from the above, the case of Mukesh Kumar Agrawal & Co. Vs. State of M.P. reported in (1988) 68 STC 324 (SC) is relied upon by the learned Counsel for the appellant contending that the nature of goods can only be determined as it is and not by the test of its use to which it is capable of being put and the particular use to which it can be applied in the hands of a special consumer. The aluminium wire is no less different than an aluminium sheet or rod, so to say, excepting the fact that they are distinctively different in shape, size and dimension and having said that, it has to fall under the category of Entry 11, Part-I of the Schedule. To what end use the aluminium wires can be put and subjected to by the consumers hardly carries any relevance so as to consider to which entry it really stands for. It may be that the aluminium wires sold by the appellant were used as materials for manufacture of conductors/cable, but it seemingly finds a place in Entry 11, Part-I of the Schedule alongside sheets, rods in view of the expression 'etc.' appearing therein. In other words, when a specific entry is identified for aluminium wires being a similar product, or goods of the kind like sheets, rods, it cannot be included as an item under Entry 2, Part-II of the Schedule. The 'User Theory' has to be discounted since aluminium wires can be said to have a place under an entry in Part-I of the Schedule construing the word 'etc.' to include goods of similar nature like sheets, rods. The learned Additional Standing Counsel (CT) referring to a decision of the Hon'ble Court in the case of Utracon Structural System Pvt. Ltd. Vs. State of Karnataka, reported in (2013) 66 VST 459

(Kar.) contended that aluminium wires to be a different commercial commodity for the purpose of sales tax. In the aforesaid case, distinction was sought to be made between wires rods and stranded rods and ultimately it was observed that if stranded wires are known as only wires in the market parlance, then for the purpose of CST Act, it falls under the heading 'wire rods', but if the stranded rods are known differently as a new product, it cannot be treated as wire rods. The said ratio is distinguishable for the fact that in the instant case the aluminium wires are apparently considered to be a product of similar nature like sheets, or rods. Had it been a question of two kinds of wires or rods arisen, either one being the original, or a transformed commodity made from another absolutely with a new product in shape, size and use, then things would have been different. It is not that from out of the sheets or rods aluminium wires are alleged to have been made so as to claim that a new commodity was manufactured, or in other words, by way of transformation, a new commercial commodity was made and prepared, inasmuch as, when the Tribunal does find that wires are similar products like sheets and rods and not a transformed goods in view of the interpretation and construction subjected to the word 'etc.' appearing in Entry 11, Part-I of the Schedule. A similar decision is cited by the State reported in (1994) 93 STC 187 (SC) to differentiate between the sheets, rods and wires for the purpose of sales tax. For the reasons stated above, such a distinction as claimed by the learned Additional Standing Counsel (CT) cannot be accepted. In many rulings some of which have been referred to by the learned Counsel for the appellant categorically suggested that

wires and rods are same commodity so arrived at by judicial interpretation. So, the ultimate conclusion of the Tribunal is that aluminium wires ought to have been treated as a commodity falling under Entry 11, Part-I instead of Entry 2, Part-II of the Schedule and in that respect, it would not be wrong to hold that the authorities below completely erred. In other words, the reassessment under Section 9(1) of the Act which was commenced by the AA, though was permissible, but an erroneous decision was finally reached at to conclude that aluminium wires to be a commodity that falls under Entry 2, Part-II of the Schedule which also stood confirmed by the FAA.

10. Hence, it is ordered.

11. In the result, the appeals stand allowed. Consequently, the impugned order dated 30.08.2005 in First Appeal Case No. AA. 379 & 379(A) of 2005-06 for the assessment years 2001-02 and 2002-03 with respect to the appellant is hereby set aside. As a necessary corollary, the reassessments so made by the AA are hereby set at naught.

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