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

S.A. No. 641 OF 2002-03

(Arising out of order of the learned ACST, Cuttack-I Range,
Cuttack in Sales Tax Appeal Case No. AA- 634/CUIE/98-99,
disposed of on dated 26.02.2002)

Present: Shri R.K. Pattanaik, Chairman,
Smt. S. Mishra, 2nd Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

M/s. NCCF (I) Ltd.,
Ashok Nagar, Unit-II, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri Tusar Dutta, Advocate
For the Respondent : Sri M.L. Agarwal, Standing Counsel (CT)

Date of hearing: 05.05.2020 ***** Date of order: 21.05.2020

O R D E R

Instant appeal under Section 23(3) of the Odisha Sales Tax Act, 1947 (hereinafter referred to as 'the Act') is directed against the impugned order dated 26.02.2002 promulgated in Appeal No. AA 634/CUIE/1998-99 by the learned Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack (in short, 'the FAA'), who reduced the demand raised vide order of assessment dated 30.12.1998 under Section 12(4) of the Act for the year 1995-96 passed by the learned Sales Tax Officer, Cuttack-I East Circle, Cuttack (in short, 'the STO') on the grounds inter alia that the decisions on the subject matter in question to be palpably wrong,

erroneous and, therefore, it is liable to be set at naught in order to do substantial justice.

2. In fact, the learned STO directed payment of balance amount of ₹16,46,176.00 as to the terms and conditions of the demand notice considering the claim of the appellant, especially, with regard to its alleged transactions carried out during the assessment year 1995-96, which was questioned in appeal, later to which, the learned FAA partly allowed the same and reduced the demand to ₹9,38,668.00. The aforesaid decision in appeal has again been challenged by the appellant primarily with respect to the tax imposed vis-a-vis the seedlings, and pesticides purchased from the unregistered dealers alleging them to be not the manufacturers but traders having effected the purchases and sales and as such, the liability to pay tax thereon does not arise at its end. The challenges in appeal are to be considered by the Tribunal in juxtaposition to the grounds raised by the appellant.

3. The appellant dealer is a Government of India undertaking, which happens to carry business in cattle feed, sugar, cloth, polythene rolls, electrical goods, office stationery, matches, pesticides, seedlings, readymade garments etc. In course of assessment proceedings, considering a miscellaneous/fraud report, the learned STO directed the appellant to produce the books of account and other documents for the purpose of verification, during which, it was ascertained that the seedlings were disposed of as tax free goods, like saplings and as regards the pesticides, the purchases were effected from unregistered dealers and had been shown as first point tax paid items and likewise, with respect to stationery items,

some purchases were made from an unregistered dealer, in consequence whereof, profit margin of 5% was added to the purchase value, turnover was determined and then, tax was levied at the appropriate rate. The appellant, as earlier mentioned, questioned levy of tax on the seedlings, pesticides and stationery items on the stated grounds and challenged the decision of the learned FAA.

4. The learned Counsel for the appellant contended that imposing tax on the seedlings @ 12% is totally a misconception since it is not a differently taxable commodity but belonging to a collective term of juvenile stage of plant growth and thus, not exigible to tax. In support of such a claim, a copy of a note on 'Tree Life History Stages and Transitions' has been produced as at Annexure-A. In other words, it is claimed that seedlings and saplings are no two different taxable entities for the purpose of levying tax and since, saplings to be an exempted item as per Entry 36-B of the Schedule appended to the notification issued under Section 6 of the Act, the learned FAA erred in imposing tax @ 12% on the seedlings and therefore, it deserves to be tampered with.

5. As per Entry 36-B, saplings stand as an item exempted from tax under the Schedule to the list of goods exempted from Orissa Sales Tax as read out from Notification No. 20206-CTA-14/76-F dated 23.04.1976 (SRO 469/76) issued under Section 6 of the Act. Thus, from the above Schedule and considering Entry 36-B thereof, saplings are tax free goods. The learned Counsel for the appellant strenuously urged that seedlings and saplings are no different entities, rather, both belong to same category and sometimes collectively referred to as juveniles in view of Annexure-A. In fact, a copy of a letter issued by the Director of

Horticulture, Odisha, Bhubaneswar addressed to the Branch Manager, NCCF (India) Ltd., Cuttack with a clarification that all types of horticulture plants and seedlings are nomenclatured as saplings was referred to by the appellant before the learned FAA, but it was not taken into account. Admittedly, seedlings are not being shown as exempted goods in the aforesaid list. The clarification as to the nomenclature supplemented by the Director of Horticulture, Odisha, Bhubaneswar was not accepted by the learned FAA by rejecting a plea of a common commodity. The notification dated 23.04.1976 which contains the list of goods exempted from Orissa Sales Tax (List-A) does not indicate seedlings as an item to be free of tax, but saplings to be. No explanation is appended to Entry 36-B so as to define saplings to include seedlings. No doubt, any kind of outside intervention to tamper with the schedule is not permissible in law. No one is authorized to add or subtract any goods from the aforesaid list to make it tax free. The learned FAA referred to the botanical dictionary to define and distinguish seedlings and saplings. Indeed, as per the botanical dictionary 'sapling' means a young tree with trunk less than 100 mm in diameter at a certain level above the ground and a 'seedling' does mean, a very young plant, usually formed just after germination, significantly, differing from an adult plant. The above description suggests that seedling is a very young plant, whereas, sapling means a young tree.

6. The Tribunal is to reflect upon some decisions cited by the learned Standing Counsel (CT) which is in relation to the law laid down on the tax exemption goods notified under Section 6 of the Act and matters related thereto. A decision of the Hon'ble Court reported in [1973] 1 CWR 844 (Orissa) in the case

of State of Orissa Vs. Bharat Khadi Bhandar is cited to contend that under the OST Act all goods are liable to tax except the goods notified being tax free under Section 6 of the Act. Two more decisions are relied upon which are reported in [1960] 11 STC 827 (SC): Tunga Bhadra Industries Ltd. Vs. CTO and J. Srirangam Brothers and others Vs. Sales Tax Officer: [1959] 10 STC 257 (Orissa) further to contend that an exemption clause in a taxing statute must be construed strictly and if the words of the rule are insufficient to cover a case, the reason behind the rule cannot be thrashed out in order to achieve the desired result. The learned Standing Counsel (CT) for the State also cited decisions of the Hon'ble Apex Court, such as, GP Ceramics Pvt. Ltd. Vs. CTT:[2009] 19 VST 284 (SC); State of Tamil Nadu Vs. India Cements Ltd:[2011] 40 VST 225 (SC); State of Jharkhand Vs. Ambay Cements: [2005] 139 STC 74 (SC); Commissioner of Customs (Import), Mumbai Vs. M/s. Dillip Kumar And Co: [2018] 9 SCC 1; and Achal Industries Vs. State of Karnataka:[2019] 64 GSTR 1 (SC) which expounded the laws as to the construction and interpretation of the language in a taxing statute, while demanding exemption fulfilling the eligibility criteria of a notification. To sum up, a taxing statute shall have to be strictly construed; its plain language ought to be understood literally without any kind of interpretation which is not legislatively intended for and above all, nothing is to be imported so as to meet any deficiency, which are the underlying principles laid down by the Hon'ble Apex Court in the decisions (supra).

The question is, whether, the seedlings and saplings are to be treated as a common commodity? At the cost of repetition, it is stated that saplings as per Entry 36-B is a tax free goods. Admittedly, seedlings do not find a mention

in the aforesaid schedule. As earlier discussed, the learned Counsel for the appellant referring to Annexure-A, which is the Tree Life History Stages and Transitions contended that seedlings is no different from saplings as both are collective term of a juvenile stage of a plant growth. Whether, such a contention of the learned Counsel for the appellant deserves acceptance so as to hold seedlings to be made free of tax. It all depends on the rules of interpretation. The general principles which should be applied in the interpretation of the entries in the Sales Tax laws laid by the Hon'ble Supreme Court of India is that a Sales Tax statute being one levying tax on goods, any particular term used to specify an item of goods on which tax is levied must, not being a term of science or art, is presumed to have been used in the ordinary sense and, therefore, it should be understood according to the meaning ascribed to it in common parlance and, therefore, while interpreting any item subject to tax under the Sales Tax laws, resort should be had to its popular meaning or the meaning attached to them in the commercial sense and not to the scientific or technical meaning of such term. In this regard, a reference may be had to the following decision in Sri Lakshmi Coconut Industries Vs. State of Karanataka and another: [1980] 46 STC 404 (Kar.). The above proposition of law has been reiterated in catena of decisions by different Hon'ble High Courts. Quoting with approval the decisions rendered in Grenfell Vs. Inland Revenue Commissioners: [1876] 1 Ex. D. 242 and Chests of Tea: [1824] 9 Wheaton (US) 430, the Hon'ble Apex Court held and observed that in determining the meaning or connotation of words and expressions describing an article in tariff schedule, it should be construed in the sense in which they are understood in the

trade by the dealers and customers, when goods are marketable. In the Chests of Tea case, it was held that the legislature does not suppose merchants to be naturalists, or geologists, or botanists. In fact, in the words of Hon'ble Apex Court in Madanlal Monoharlal Vs. State of Haryana, reported in [1990] 77 STC 157 (SC), the rule of interpretation, as above, would apply even to the interpretation of the items of the schedule to the Act keeping in view the nature and purpose of the enactment. Of course, judgments legion lay down the law that so far as exemption is concerned, it should be strictly construed and cannot be extended; analogical principles cannot be invoked and unless, the articles are brought within the items excepted, are not subjected to exemption but at the same time, with the above interpretation in mind, one more rule of construction must also be followed, which is to interpret the words of everyday use, as understood in common parlance. In fact, the interpretation shall have to be by striking a balance between the two constructions. Having regard to the settled principles of law, as enunciated, the Tribunal is to appreciate the claim of the appellant. The botanical description as extended by the learned FAA is certainly unacceptable. If an item or article is a subject of science or art, then a description of the kind which is ascribed to by the learned FAA may be admissible. A popular meaning, or meaning in ordinary language, or used in common parlance as is understood by the traders vis-a-vis a commodity is to be applied as a test in order to determine, whether, the same is taxable or not. In scientific term, a seedling is a young plant, whereas, sapling is called as a young tree, but no real distinction is attributed to in ordinary parlance. No one really knows the botanical distinction between seedling and sapling.

Normally, both are considered to be tender plants. As contended by the learned Counsel for the appellant, with reference to Annexure-A, it is definitely the young or juvenile stages of plant growth which include seedlings and saplings together. A common man does not really understand the scientific or botanical description and distinction in seedlings and saplings and consider both as common being called as tender or small plants. For the purpose of a taxing statute, popular usage or the expression attributed in ordinary or common parlance is to be applied. In view of the aforesaid discussions, the Tribunal is of an inescapable conclusion that a seedling and sapling are to be treated as one as it is popularly understood in order to extend the exemption under Entry 36-B of the Schedule. In other words, the learned authorities below can be said to have wrongly interpreted applying the botanical description to hold that seedling is a different commodity than sapling so as to exclude it from tax exemption net.

7. With respect of to the sale of pesticides, it is evident that the appellant purchased it from three dealers, namely, M/s. Agro Chemicals Ltd., Cuttack, M/s. Kalinga Enterprisers and M/s. Tirupati Associates, Bhubaneswar and there is no denial to the fact that the first of the dealers is a registered one and the other two are not. Whether, there was first point tax paid on the pesticides purchased from unregistered dealers, it was the bounden duty of the appellant to prove and establish the same. The burden of proof lies on appellant to prove that the first point tax on pesticides was paid in so far as the purchases from the unregistered dealers are concerned. In other words, it is not the duty of the State to refer to any materials, rather, the dealer who claims payment of tax shall have to

lead cogent and credible evidence in respect thereof. The settled law is that the burden of proof always rests on the party who asserts existence of a fact. In the instant case, it is the appellant and none else, who is to establish such payment of tax at the first point sale of pesticides. The appellant was required to submit evidence on the tax being paid vis-a-vis the pesticides purchased by it from the two unregistered dealers. The appellant did not produce any such evidence before the authorities below nor made any such attempt during the pendency of appeal before the Tribunal. Simply to claim that the first point tax was earlier paid on the pesticides with respect to the goods purchased from the unregistered dealers without supplying any evidence in that behalf cannot certainly discharge the burden of proof. Thus, the conclusion of the Tribunal is that the appellant miserably failed to prove the fact as to payment of first point tax with respect to the pesticides allegedly purchased from the unregistered dealers during the assessment year 1995-96.

8. As regards the claim of deduction under Section 5(2)(A)(a)(ii) of the Act with respect to sale of office stationery, an amount of ₹3,08,395.50 stood qualified as deduction from the GTO as the same was found to be purchased from registered dealer, whereas, the remainder as having been purchased from unregistered dealer appears to have been held exigible to tax at the appropriate rate, which again in the considered opinion of the Tribunal, to be absolutely just and proper and is in accordance with law.

9. Hence, it is ordered.

10. In the result, the appeal stands partly allowed. As a corollary, the impugned order dated 26.02.2002 promulgated in Sales Tax Appeal Case No. AA. – 634/CUIE/98-99 for the assessment year 1995-96 vis-a-vis the appellant is hereby modified to the extent indicated. Consequently, the learned STO is directed to undertake recomputation of the tax liability with respect to the appellant for the period under assessment in the light of the conclusions drawn herein above.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(Smt. S. Mishra)
2nd Judicial Member

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