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

S.A. No. 147 (ET) of 2012-13

(Arising out of order of the learned DCST, Angul Range,
Angul in First Appeal Case No. AA/04/ET/2009-10
disposed of on dated 16.10.2012)

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

General Manager,
Mahanadi Coal Fields Ltd.,
Jagannath Area, Talcher, Dist. Angul ... Appellant

-Versus-

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

For the Appellant : Sri A.K.. Panda, Advocate
For the Respondent : Sri M.S. Raman, ASC (CT)

Date of hearing: 25.08.2020 ***** Date of order: 22.09.2020

O R D E R

. Instant appeal under Section 17(1) of the Odisha Entry Tax, 1999 (in short, 'the Act'), is at the behest of the appellant which is directed against the impugned order dated 16.10.2012 promulgated in Appeal No. AA/04/ET/2009-10 by the learned Deputy Commissioner of Sales Tax, Angul Range, Angul (in short, 'FAA'), who confirmed the order of assessment dated 31.03.2008 passed by the learned Assessing Authority, Angul Circle, Angul (in short, 'AA') for the period of

assessment 2004-05 on the grounds inter alia that it is arbitrary being a product of non-application of judicial mind and, therefore, deserved to be interfered with for the sake of justice.

2. The appellant is a dealer who is primarily engaged in the business of mining and sale of coal. With respect to the assessment period, the AA examined the accounts and during such examination, it was revealed that the appellant dealer did not pay any entry tax in respect of purchase of certain items which are chemicals on the ground that the said goods are explosives and are not scheduled goods as per the Act. It was alleged that the appellant had, in fact, purchased and procured Ammonium Nitrate, Sodium Nitrate and other chemicals and mixed them for being used as explosive at the mining site and for having purchased the chemicals, which are scheduled goods under the Act, tax was to be paid, but the same was avoided on the pretext that explosives have, really, been procured, which at the relevant point of time and till 28.02.2005 were not scheduled goods under the Act. The aforesaid finding of the AA who directed the appellant to pay the entry tax was challenged before the FAA with an argument advanced that the goods which were procured are nothing but explosives and cannot be treated as chemicals. However, the FAA did not accept the contention of the appellant dealer and finally, dismissed the appeal confirming the order of assessment dated 31.03.2008.

3. The contention of the appellant dealer is that the authorities below grossly erred in reaching at a conclusion that the purchases or procurements are in

relation to chemicals and not explosives without properly appreciating and verifying the materials on record. It is also contended that the authorities concerned misinterpreted the word 'explosive' and branded it as 'chemical' and levied tax thereon being scheduled goods under the Act. In this connection, an earlier decision of the Tribunal in S.A. Nos. 293 and 294 (ET) of 2006-07 dated 04.04.2019 concerning the present dealer is cited, wherein, a similar question arose for determination. In that case, the Tribunal, in absence of any material evidence towards purchase of chemicals, declined to concede to the claim of the State and held that the purchase was in respect of explosives and not chemicals.

4. The appellant dealer, as is made to appear from the record, in response to a notice, produced the books of account before the FAA and rebutted the claim of the AA. It has been consistently claimed by the appellant dealer that the purchases so made for the mining purposes are in respect of explosives and not chemicals for any other use and utility. It is further made to suggest that the appellant received the goods on being procured by its parent Company and such procurements had been made from companies viz. IEL, Kolkata; Naba Bharat Fuse Co. Ltd., Talcher; IDL Industries, Rourkela; and IBP, Talcher. In fact, on a bare perusal of the record, such information could be elicited. According to the materials on record, the parent Company of the appellant is found to be involved in the purchase of explosives on behalf of its subsidiaries. As per the learned Counsel for the appellant dealer, after such lifting, the companies concerned, who supply the explosives, raise bills in the name of its registered office. In this regard, a

sample copy of invoice is found to be in record, which was originally produced before the FAA. Looking at the above facts, the question before the Tribunal is, if at all, the appellant dealer during alleged period purchased any chemicals, or simply procured explosives? The learned Counsel for the appellant made the Tribunal to go through the copies of the invoices, bills and other documents available in the record so as to prove that the explosives had, in fact, been procured, not any chemicals, as is claimed by the authorities below. The Tribunal does not find any invoices to suggest that the appellant dealer, or its parent Company, for that matter, had ever procured or purchased chemicals, such as, Ammonium Nitrate, Sodium Nitrate etc. In fact, it is not clearly understood and discernible from record as to on what basis and with reference to which materials the authorities below confirmed such purchase of chemicals, like Ammonium Nitrate, Sodium Nitrate, etc. for its use in the preparation of explosives. It has been alleged that the chemicals have been procured and after being mixed together have been used as explosives which is also not substantiated by any material evidence. It is not, in fact, revealed from the record that the appellant dealer had really purchased and procured chemicals which are scheduled goods as per Part-I of the Schedule. The invoices/bills which are available in the record conspicuously and unerringly suggest that the procurement is in respect of Powergel B1 Bulk and such other items, which are, prima facie, explosive in nature. In fact, different grades of explosives are used and utilized in mining activities. In couple of invoices, an explosive item i.e. Emulking is shown to have been procured by the appellant

dealer which is basically an explosive of a certain degree. In fact, such is an emulsion based pumpable and augerable bulk explosive suitable for use in a wide range of rock types, ores, minerals, coal and under various geo-mining conditions. Having regard to the materials on record, it is, thus, made clear that the parent Company of the appellant used to procure the explosives supplied by different companies. It remained unsubstantiated at to the procurements of the chemicals by the appellant dealer. As earlier discussed, such procurements of chemicals, like Ammonium Nitrate, Sodium Nitrate, etc. are not supported by any evidence on record. There is no denial to the fact that chemicals used for any purpose as at Entry 73, Part-I of the Schedule are exigible to tax @ 1%. No one disputes the fact that till 28.02.2005, explosives were not scheduled goods, which were introduced in Part-I of the Schedule at Entry 102 by way of Orissa Entry Tax (Amendment) Act, 2004 w.e.f. 01.03.2005. On a closer scrutiny of the bills, invoices, copies of which are available in the record, it is further suggested that the establishment of the appellant procured goods, like Nova Shakti, Nova Column, etc. besides Powergel B1 Bulk from different companies and used the same in the mining activities which are nothing but explosive simpliciter. At no stretch of imagination, such explosive substances can be designated as chemicals in order to bring it within the ambit of Part-I of the Schedule so as to make it exigible to tax @ 1%. The claim of the Revenue does not get any support regarding purchase of chemicals which is nothing but based on mere surmises and conjectures and whatever evidence is made available on record, considering the same, it unerringly indicates that the

procurements by the appellant dealer were exclusively vis-a-vis the explosive substances for being utilized in the mining activities. In such view of the matter and having regard to the totality of the circumstances, it would not be correct and justified to accept the contention of the Revenue to hold that the appellant dealer was involved in procuring chemicals and not explosives which also remained unsubstantiated with material particulars. Having said that, the Tribunal, thus, arrives at an inescapable conclusion that the appellant dealer is not liable to pay entry tax in respect of the explosives procured on or before 28.02.2005.

5. Hence, it is ordered.

6. In the result, the appeal is allowed. As a necessary corollary, the impugned order dated 16.10.2012 promulgated in Appeal No. AA/04/ET/2009-10 confirming the order of assessment dated 31.03.2008 is hereby set aside.

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