

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A.No.139(ET) of 2005-06

(Arising out of the order of the learned ACST, Balasore Range,
Balasore, in Appeal case No. AA.40/BA-2003-04(ET),
disposed of on 31.05.2005)

P r e s e n t: Shri A.K.Das, Smt. S.Mishra & Shri S.M.Dash,
Chairman. Judicial Member-II Accounts. Member-III.

M/s.B.Seenalah & Co., (Projects) Ltd.,
Mirigini, Nilgiri, Balasore. ... Appellant.

- V e r s u s -

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

For the Appellant ... Mr. A.N.Mohanty, Advocate.
For the Respondent ... Mr. M.S.Raman & Mr. S.K.Pradhan
Learned Counsel(CT)

Date of hearing: 22.09.2021 * * * Date of Order: 08.10.2021

O R D E R

The present appeal has been directed against the order of the learned first appellate authority/ Asst. Commissioner of Sales Tax, Balasore Range, Balasore under the Orissa Entry Tax Act for the year 2002-03. The sole issue for consideration in this case, is whether the first appellate authority is justified to tax @8% on the value of tipper, earth excavator and wheel loader under Part-III of the Orissa Entry Tax schedule as 'motor vehicle' or the above noted commodities are to be taxed @2% under Part-II scheduled as 'machinery'.

2. According to the appellant, the above noted commodities are coming under a term machinery and are to be taxed at 2% and

charging 8% of tax under part-III scheduled to the entry tax Act, is incorrect in law. Per contra, the Counsel on behalf of the State vehemently argued that above noted goods i.e. tipper, dumper, earth loaders and wheel loaders are motor vehicles having rubber tyred wheels and are designed to be adapted to the roads. In view of this, the impugned goods cannot come under the term wheeled machinery which move on iron plate, chain or rail.

3. We have carefully gone through the impugned appeal order, assessment order and we find that there is no controversy in the description of the goods as narrated by the assessing authority, appellate authority and by the present appellant. The relevant portion of the assessment which has given rise to the present controversy is quoted below:

“Scrutiny of statements filed revealed that the dealer has received 2 old tippers for Rs.14,00,000/- during September, 2002 which has been shown as 2% tax group. Similarly, the dealer has purchased Hindustan-1025 for Rs.40,41,440.00 during December, 2002. TATA wheel loader for Rs.24,12,800.00 during January, 2003 which are taxable @8% under the OET Act as per entries in Part of schedule goods vis-a-vis tax rate under OST Act. The total value of this Rs.78,54,240.00 is now taxed @8%.”

The above noted observation of the assessing authority has been disputed by the appellant in first appeal wherein learned FAA observed as follows:

“The only point of dispute in the present case is that the learned assessing authority has levied tax @8% on the purchase turnover of the tipper. The tipper is registerable under M.V. Act which is used in the carriage of goods. Hence, the same is treated as motor vehicle and therefore, attracts levy of tax @8%

as part-III of scheduled goods under OET Act. I do not find any other ground to interfere in the assessment. Therefore, the assessment passed by the learned assessing authority is upheld at this forum.”

It is worthwhile to mention here that the learned first appellate authority had described all the vehicles and the value thereof in Page-3 of the order but while concluding he has mentioned only the purchase turnover of the tipper which gives rise to a believe that he has not considered the other two categories of the commodity for which the appeal has been filed before him. The appellant herein, being aggrieved with such order has filed the instant appeal.

4. So, the controversy in the present appeal, is whether, tipper, dumper, earth excavator, and wheel loaders are to be considered as motor vehicles under section 2(28) of the motor vehicle Act or to be treated as machineries. Therefore, the clause 28(2) of the motor vehicle Act, 1998 is invited herein for reference.

‘Section 2(28) “Motor vehicle or vehicle means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than 4 wheels fitted with engine capacity of not exceeding 35 cubic centimetres.”

The scope of the clause 28 of section 2 of the Motor Vehicle Act was considered by the Supreme Court in **Bolani Ores Ltd. Vs. State of Orissa, 1975 (2) SCR 138** wherein, the Hon’ble Court held that the term “adapted for use” occurring in the Clause 28 of Section 2, is to be construed as “ suitable for use”. The vehicle such as tank, cater-

pillar which move on iron chain are not made for roads and even if they move, they cannot be taken as motor vehicle. The Hon'ble Supreme Court in case of **Bose Abrham Vrs. State of Kerala and Others (2011) (1) RLT 730 (SC)** held that excavators and road rollers are motor vehicles for the purpose of M.V Act. In case of Central Coal Field Ltd. Vrs. State of Odisha, AIR, 1992 SC 1371, the Hon'ble Court held that dumpers run on rubber tyre are adopted for use of roads and are motor vehicles. The above position of law is well settled and has been followed by catena of orders of this Tribunal.

5. While perusing the various judgments relevant to this case, we are convinced that vehicles which move on rubber tyres are to be accepted as motor vehicles under Section 2(28) of the Motor Vehicle Act. It has been fairly admitted by the appellant that the impugned goods are tipper, Hindustan 1025 earth excavator and Tata wheel loader which are taxed at 8% as motor vehicles. The first appellate authority as well as the assessing authority have not made any observation on the question whether the impugned vehicles move on rubberised wheels or on iron chain. The appellant, herein, has also not pleaded in support of the fact that the goods in question move on iron chains and rails to qualify as moving machinery. The Counsel on behalf of the State urges that as the vehicles in question actually move by rubberised wheels, are to be termed as motor vehicles and are to be taxed at 8% under the Part-III of the scheduled of the Entry tax Act, 1999.

6. The answer to the question whether, the dumper, tipper, Hindustan 1025 earth excavator and Tata wheel loader move on rubberised wheels, are available in the public domain. Their pictures, description and price can be viewed in the internet also. It is found that the above mentioned vehicles actually move on rubberised wheels and are fit for road, as such come under the term motor vehicles as defined under Section 2(28) of the Motor Vehicle Act, (supra). Therefore, we find no infirmity in order of learned first appellate authority in taxing the above

category of goods as motor vehicle, applying rate of tax under Part-III of the schedule to the OET Act,1999. As such, the present appeal is found to be without any merit and consequently dismissed.

Dictated and Corrected by me,

Sd/-

**(Shri S.M.Dash)
Accounts Member-III.**

Sd/-

**(Shri S.M.Dash)
Accounts Member-III.**

I agree,

Sd/-
**(Shri A.K.Das)
Chairman.**

I agree,

Sd/-
**(Smt. S.Mishra)
Judicial Member-II**