BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 36 (ET) of 2007-08

(Arising out of order of the learned ACST (Appeal), Sundargarh Range, Rourkela in Appeal Case No. AA- 103 (RLI) ET/2005-06 disposed of on dated 19.06.2006)

Present: **Shri A.K. Das, Chairman**
Smt. Sweta Mishra, 2nd Judicial Member
&
Shri S. Mishra, Accounts Member-II

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

-Versus-

M/s. Suraj Minerals, Daily Market, Rourkela, Dist. Sundargarh ... Respondent

For the Appellant : Sri D. Behura, SC (CT)
For the Respondent : Sri D.K. Agarwal, Advocate

Date of hearing: 04.08.2021 *** Date of order: 13.08.2021

O R D E R

The State in the present second appeal has assailed the order dated 19.06.2006 passed by the learned Asst. Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (hereinafter called as 'first appellate authority') in Appeal Case No. AA. 103 (RLI) ET/2005-06 who reversed the order of assessment passed by the Sales

Tax Officer, Rourkela-I Circle, Uditnagar, (in short, 'assessing authority') for the period Q/E. 12/04 and 3/05 (2004-05) raising demand of ₹5,38,433.00.

2. The factual background of the case leading to the filing of the present appeal is that M/s. Suraj Minerals, Daily Market, Rourkela is a manufacturing concern involved in manufacturing of sized iron ores and iron ore fines out of iron ore lumps. The assessing authority on verification of books of account found that for the assessment period Q/E. 12/2004 and 03/2005 (2004-05), the dealer effected purchase of capital goods worth ₹4,93,27,106.77 and sold finished goods worth ₹5,42,31,297.33. Thus, he determined the GTO at ₹10,35,58,404.10. After allowing deduction of ₹4,90,35,522.77 towards entry tax paid goods purchased within Odisha and from the local area, the TTO was determined at ₹5,45,22,881.33. The entry tax was assessed @1% on the TTO which came to ₹5,45,228.81. After allowing set off of ₹6,796.00 which the dealer had paid on purchase of raw materials, tax demand of ₹5,38.433.00 was raised.

2(a). The dealer-respondent challenging the order of assessing authority raising tax demand of ₹5,38,433.00 filed appeal before the first appellate authority, who reduced the demand limiting the set off claimed to ₹2,916.00 and accordingly allowed the appeal. Being aggrieved by the first appellate order, the State has come up in second appeal before the Tribunal.

3. It was vehemently urged by the learned Standing Counsel (CT) for the State that the first appellate authority erroneously and arbitrarily reduced the demand raised in the order of assessment passed by the assessing authority who raised tax demand of ₹5,38,433.00 without taking note of the materials available on record and the judgments of the Hon'ble Apex Court in different judicial pronouncements. The first appellate authority in a very whimsical and arbitrary manner reduced the demand in the order of assessment under misconception of law. The sized iron ores and iron ore fines being finished products, the dealer was liable to pay entry tax on sale of those goods. The assessing authority rightly determined the GTO taking into consideration the sale proceeds of the finished products. The first appellate authority illegally and arbitrarily reversed the

finding of the assessing authority and held that levy of tax on sale turnover of ₹5,45,22,881.33 under the OET Act is not sustainable. He submitted to set aside the impugned order of the first appellate authority and confirm the order of assessment of the assessing authority holding the dealer liable to pay tax of ₹5,38,433.00.

4. Per contra, learned Counsel appearing on behalf of the dealer-respondent and supporting the order of the first appellate authority contended that the assessing authority neither took note of the contentions raised by the dealer nor the decision cited by him. It has assessed the tax raising tax demand of ₹5,38,433.00 in a whimsical and arbitrary manner. The Hon'ble Apex Court in different judicial pronouncements have categorically held that sized iron ores and iron ore fines are not liable for entry tax as the same are first point tax paid goods. He vehemently urged that this Tribunal also in S.A. No. 1261 of 2006-07 for the self-same assessment period under the OST Act has categorically held that the dealer is not liable to pay tax on sale turnover of sized iron ores and iron ore fines as the same are not different commodities than the iron ore which has already been subjected to tax at the first point of

purchase. He submitted to dismiss the appeal and to confirm the order of the first appellate authority.

5. We have heard the learned Counsel for the rival parties, gone through the orders of both the forums below and materials available on record. It transpires from the order of the assessing authority that it determined the GTO including the sale value of finished goods worth ₹5,42,31,297.33 and after deduction of ₹4,90,35,522.77 towards entry tax paid goods purchased within Orissa and from the local area, calculated entry tax @1% amounting to ₹5,45,228.81 and then after allowing set off of ₹6,796.00 paid earlier on purchase of raw materials, raised tax demand of ₹5,38,433.00. The order of the assessing authority reveals that he has not applied its mind to the judgments of the Hon'ble Apex Court while calculating the entry tax. This Tribunal in S.A. No. 1261 of 2006-07 preferred at the instance of the State taking note of the ratio laid down in case of Commissioner of Sale Tax Vs. Lal Kunwa Stone Crusher Pvt. Ltd., reported in [2000] 118 STC 287 (SC), and in case of Divisional Deputy Commissioner of Sales Tax and another Vs. Beheraghat Minerals Industries, reported in [2000] 120 STC 205 (SC), categorically held that

the dealer having purchased iron ore lumps on payment of tax at first point; that the sized iron ores and iron ore fines having been obtained by it through the process of crushing of iron ore lumps in its business establishment and that the sized iron ores and iron ore fines not being different commodities then the iron ores which were already subjected to tax at the first point of purchase, the same are not further exigible to tax. The present case also relates to same assessment period and between the same parties and the dispute involved in the present appeal which was the subject matter of dispute in S.A. No. 1261 of 2006-07 is also same. This Tribunal having categorically held in S.A. No. 1261 of 2006-07 that the dealer having paid tax at first point purchase of iron ore lumps; sized iron ores and iron ore fines which are manufactured from iron ore lumps through the process of crushing of iron ore lumps in its business establishment, the same are not exigible to tax. This order of the Tribunal having not been set aside in any higher forum, the same is binding on the parties as well as to this Tribunal. There is no dispute in the present case that the dealer-respondent was involved in manufacturing of iron ore fines and sized iron ores from iron ore lumps through

the process of crushing in its business establishment. The dealer having paid tax at the first point of purchase, the order of the assessing authority calculating entry tax on sale turnover of finished product is against the principle of law laid down by the Hon'ble Apex Court in different judicial pronouncements as well as the principle of law decided by this Tribunal. The learned first appellate authority has rightly held in the impugned order that levy of entry tax on the sale turnover of ₹5,45,22,881.33 under the OET Act is impermissible and unjustified as the iron ore lumps and sized iron ores/fines are one and same commodity. We do not find any illegality or impropriety in the order of the first appellate authority in reducing the demand in the order of assessment passed by assessing authority who raised tax demand of ₹5,38,433.00 calculated on TTO determined by it taking into consideration the sale price of finished products of sized iron ores and fines, warranting interference of this Tribunal. The learned first appellate authority is fully justified in deleting the tax demand raised by the assessing authority and the same is legally sustainable.

6. In view of the discussions made above, we are of the considered opinion that the learned first appellate

authority has not committed any illegality in deleting the tax demand of ₹5,38,433.00 raised by the assessing authority. Accordingly, the appeal filed by the State stands dismissed and the order of the first appellate authority is hereby confirmed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(Sweta Mishra)
2nd Judicial Member

I agree,

Sd/-
(S. Mishra)
Accounts Member-II