

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

S.A. No. 126 (ET) of 2010-11

(Arising out of order of the learned JCST, Balasore Range,
Balasore in First Appeal Case No. AA-122/BA/2008-09 (ET)
disposed of on dated 28.10.2010)

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 D. Behura, Standing Counsel (CT)

Date of hearing: 13.10.2020 ***** Date of order: 12.11.2020

ORDER

Present appeal under Section 17(1) of the Odisha Entry Tax Act, 1999 (in short, 'the Act') is at the behest of the dealer assessee questioning the legality of the impugned order dated 28.10.2010 promulgated in Appeal No. AA-122/BA/2008-09 (ET) by the learned Joint Commissioner of Sales Tax, Balasore Range, Balasore (in short 'FAA') confirming the assessment order dated 31.03.2008 passed by the learned Sales Tax Officer in Balasore Circle, Balasore (in short, 'AA') on the grounds inter alia that it is not just and fair in the facts and circumstances of the case and thus, liable to be interfered with in order to do substantial justice.

2. As is revealed from the record, the dealer assessee has been involved in manufacture and sale of aluminium conductors and other items and purchase of aluminium wires, rods, ingots as raw materials from inside and outside the State. It is also revealed that gross turnover vis-a-vis the dealer assessee under the Act for the tax period 2004-05 was determined by the AA and additional tax was raised to the tune of ₹17,33,038/- payable as per the terms and conditions of the demand notice. As held by the AA, sale of aluminium wires as raw material by the dealer assessee to the manufacturers of conductors/cables is exigible to tax @2% in view of Entry-2 Part-II of the Schedule of the Act. Said finding was challenged by the dealer assessee contending that aluminium wires fall under Entry-11 of Part-I of the Schedule which was not admitted by the FAA and as a result, by the impugned order dated 28.10.2010, the assessment dated 31.03.2008 was affirmed. As per the dealer assessee, the decision of the authorities below that sale of aluminium wires in favour of manufacturers of conductors/cables with a liability to pay tax @2% is erroneous and cannot be sustained in law, inasmuch as, such goods do fall under Entry-11 of Part-I of the Schedule of the Act. The question is, whether the claim of the dealer assessee is justified?

3. The dealer assessee would contend that the assessment for the period of 2004-05 and its confirmation by the FAA is arbitrary and illegal and consequently, demand of ₹17,33,038/-, for not being as per law, deserves to be set aside. It is contended that the authorities below committed gross illegality and misdirected themselves in levying entry tax @1% on the sale of aluminium wires as

entry tax is payable @0.5% as the goods fall under Entry-11 Part-I of the Schedule. It is further contended that the aluminium wires could not have been made exigible to tax under Entry-2, Part-II of the Schedule. As per the dealer assessee, the AA had made assessments for the periods 2001-02 and 2002-03 applying entry tax payable @0.5% but, there was a change of opinion for the tax period 2004-05, which is not legally sustainable. On the other hand, as per the respondent State, there is no wrong, error or any kind of illegality committed in the assessment made, since the dealer assessee was found to have sold aluminium wires to the manufacturers of conductors/cables and thus, rightly under the relevant entry, the rate of tax was demanded. It is also claimed that aluminium wires do not find a mention in Part-I and it cannot as well be categorised alongside aluminium rods and sheets. According to the respondent State, in absence of any specific entry in Part-I, and since the goods, such as, the aluminium wires are said to have been sold to the manufacturing units, Entry-2 of Part -II of the Scheduled shall have to be applied. Thus, it is contended that the authorities below rightly appreciated the subject matter and correctly applied the rate of tax to the sale of aluminium wires by considering it as goods under Entry-2 of Part-II of the Schedule and therefore, the impugned order dated 28.10.2010, as does not suffer from any serious legal infirmity, must prevail.

4. The learned counsel for the dealer assessee cited previous orders dated 29.05.2020 and 06.07.2020 of the Tribunal passed in S.A. Nos.346 (ET) and 347(ET) of 2005-06; and 152(ET) 2008-09 respectively contending that a consistent

view has been expressed to the effect that aluminium wires, even if not specifically indicated in Entry-11 Part-I, such goods are akin to aluminium rods and sheets. As per Entry-11 Part-I, sheets, rods etc. of non-ferrous metal including aluminium are the scheduled goods, whereas, in Part-II under Entry-2, it is in relation to electrical goods including metals, materials for transmission towers, conductors/cables for manufacture and as per the respondent State, since the dealer assessee allegedly sold the aluminium wires to the dealers who are engaged in manufacture of conductors/cables, it has to fall in the category of Part-II instead and not under Entry-11, Part-I of the Schedule.

5. If aluminium wires are treated as sheets, rods, the same are to fall in Part-I under Entry-11 and if it is otherwise, not being specific goods as mentioned thereunder, and for having been sold and disposed of to the manufacturing dealers in conductors/cables, then it has to be exigible to tax as goods falling under Entry-2 Part-II of the Schedule. As apprised by the learned counsel for the dealer assessee, the said question involving the same parties had earlier been considered and adjudicated upon by the Tribunal in the cases *ibid* and in that respect, copies of the orders dated of 05.10.2020 and 06.07.2020 were produced. There is no denial to the fact that the Tribunal has had the occasion to consider such a question regarding taxability of the schedule goods and a view has been expressed that the aluminium wires are like aluminium rods, sheets and therefore, are to fall under Entry-11 of Part I of the Schedule and not Entry-2 Part-II thereof. The Tribunal, in fact, elaborately discussed the legislative intent of the word 'etc' as

appearing in Entry-11 of Part-I of the Schedule so as to conclude that aluminium wires are like the aluminium rods/sheets and are to be taxed accordingly and not as goods earmarked under Entry-2 Part II. It has been the recent view of the Tribunal that despite the fact that aluminium wires are not indicated specifically under the relevant entry of Part-I, since it appear similar to the goods, such as, aluminium rods/sheets, which are visibly dissimilar in shape and size but made of same material, it shall have to be treated as goods under Part-I. One more aspect may be highlighted. Had the intention of legislature been otherwise, then in that case, aluminium sheets and rods of different dimensions would not have been retained in a single entry of Part I. In that context, the expression 'etc' with other words appearing in Entry 11 Part I, thus, therefore, must have to mean and be understood as including goods, like aluminium wires. That apart, the Tribunal, while disposing of S.A. Nos. 346 (ET) & 347 (ET) of 2005-06, even discussed the 'User Theory' sought to be applied by the respondent State, but then did not apply it and ultimately by resorting to an interpretative reasoning reached at a decision that aluminium wires do fall in Part-I of the Schedule and hence, cannot be taxed as goods under Entry-2, Part-II even for being sold to the manufacturing dealers of conductors/cables. Thus, having regard to the earlier view of the Tribunal and in order to maintain regularity, discipline and judicial propriety, the Tribunal considers it appropriate to reiterate the same to hold that aluminium wires are required to be taxed at the appropriate rate as goods under Entry-11 Part-I of the Schedule. Resultantly, the Tribunal once again arrives at a decision that the impugned order

dated 28.10.2010 is not justified and the rate of tax shall have to be accordingly modified.

6. Hence, it is ordered.

7. In the result, the appeal stands allowed. As a logical sequitur, the impugned order date 28.10.2010 in Appeal No. AA. 122/BA/2008-09(ET) confirming the assessment dated 31.03.2008 vis-a-vis the dealer assessee is hereby set aside. As a consequence, the AA is directed to undertake recomputation as to the tax liability under the Act with respect to the dealer assessee for the assessment period 2004-05 as per the decision of the Tribunal, preferably, within a period of three months from the date of receipt of a copy of the above order.

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