

report, the assessment was re-opened invoking Sec.12(8) of the OST Act. The AG Audit team had objected the concession in rate of tax on the strength of declaration Form-IV in the purchase of petrol and diesel as availed by the dealer. Learned STO, Angul Circle, Angul as Assessing Authority, in the re-assessment proceeding held the purchase of petrol, HSD, HFO and lubricants at concessional rate on the strength of declaration Form-IV, which are utilised in the locomotive for transportation of coal (raw material) from MCL, Talcher to the plant premises of the dealer as wrong and not admissible. As a result, extra demand of Rs.2,08,60,525/- was raise against the dealer.

3. Being aggrieved by such demand, the dealer knocked the door of the JCST as FAA. The FAA in the impugned order also declined to accept the argument of the dealer that, the transportation of coal by the locomotive of the dealer is not an integral part of manufacturing and thereby the assessment and demand thereon remained undisturbed.

4. Being unsuccessful before both the fora below, the dealer preferred this second appeal. The main contention of the dealer can be summarised as follows :

Both the authorities below should have treated the use of HSD in the own locomotive of the dealer for transporting coal as an integral part of the manufacturing process. Both the fora below have committed wrong in levying differential tax on the petrol notwithstanding the fact that, it was a first point tax paid goods.

5. Revenue contested the appeal by filing cross objection *inter alia* contending therein the findings by both the fora are in accordance to law.

6. The question raised for decision in this appeal is, whether the dealer is entitled to concession in rate of tax against

purchase of HSD, which are used in his own locomotive which consequently used in the transportation of raw materials like coal to the MCL plant of the dealer for the purpose of manufacturing of electricity.

4. Fifth proviso to sub-section (1) of Section 5 of the OST Act requires a registered dealer purchasing goods for use within the State of Odisha by him in the manufacture or processing of goods for sale at concessional rate of tax to furnish a declaration in prescribed form. Further it has been stipulated therein that if he utilizes the same for any other purpose or outside the State of Odisha, he shall pay the difference in tax had he not furnished the declaration.

Learned Counsel for the dealer-appellant argued that, the HSD is used as fuel in the locomotive of the dealer, the locomotive was used for transportation of the coal from MCL to the dealer's plant. The locomotive and the railway track used, all are the exclusive private property of the dealer. The manufacturing process of electricity is not confined to Factory only, but it is extended up to the point from where inputs are brought in the exclusive private arrangement of the dealer. Learned Counsel for the dealer, interpreted the term used in the provision u/s.5 of the OST Act such as "in generation or distribution of electricity" and "in the manufacturing" as engrafted in proviso to Sec.5 of the OST Act and entrysl. No 81 and argued that, the term "in the manufacturing" includes the transportation of raw materials. Furthermore, the counsel squarely placed reliance in a reported decision in the matter of **Collector of Central Excise -Vrs.- Rajasthan State Chemical Works (1991) 55 E.L.T. 444 (SC)**. It is argued that, the Apex Court has extended the term "manufacturing" to include handling, lifting, pumping, transfer and transportation of raw materials as a process in relation to "manufacture".

Per contra, learned Addl. Standing Counsel, Mr. Raman argued that, taking note of fifth proviso to sub-section (1) of Section 5 of the OST Act and declaration in Form-IV as appended to relevant entry of the Schedule of goods subjected to tax under the said Act, the Hon'ble Supreme Court of India in the case of ICI India Ltd. Vrs. State of Odisha, (2007) 10 VST 1 (SC), observed that :

“7. In case the goods so purchased are used for any other purpose or utilised outside the State of Odisha, the dealer shall pay the differential tax on the goods.”

Mr. Raman strenuously argued that, if the goods purchased falls within the scope of expression “**but utilises the same for any other purpose**” then the concession in rate of tax is not available as per the proviso to Sec.5 of the OST Act. He has distinguished the decisions relied by the learned Counsel for the dealer i.e. **Collector of Central Excise -Vrs.- Rajasthan State Chemical Works (supra)** with the argument such as, the decision was rendered in interpretation of Sec.2(f) of the Central Excise and Salt Act, 1944. Thus, the term “in the manufacturing” is quite distinguishable from the term “in the process of manufacturing”. Learned Counsel placed reliance on a decision of this Tribunal in S.A.No.590 & 591/2006-07, wherein and whereby this Tribunal has declined to give concession in rate of tax against the fuel used in the school bus.

7. To appreciate the question raised for decision in this appeal, it is pertinent to produce the relevant provisions as follows :

5. Rate of tax.-

- (1) The tax payable by a dealer under this Act shall be levied on his taxable turnover at such rate, not exceeding twenty five per cent, and subject to such conditions as the State Government may, from time to time, by notification specify :

xxx xxx xxx
xxx xxx xxx

xxx xxx xxx
xxx xxx xxx

Provided further that where a registered dealer purchases goods of the class or classes specified in his certificate or registration as being intended for use within the State of Orissa by him in the manufacture or processing of goods for sale or in mining or **in generation or distribution of electricity or any other form of power at concessional rate of tax** or free of tax after furnishing a declaration in the prescribed form, **but utilises the same for any other purpose** or outside the State of Orissa, he shall pay the difference in tax or the tax, as the case may be, payable had he not furnished the declaration.”

xxx xxx xxx

3. In exercise of power under Section 5 of the OST Act, the State Government in Finance Department issued notification bearing No.14687-CTA-37/2001-F. [SRO 149/2001], dated 31.03.2001 wherein Entry 81 stood thus :

<u>Sl.No.81.</u>	<u>Description of goods</u>	<u>Rate of tax</u>
	Goods of the class or classes other than petrol, cement, stationery goods, ginger tincture, cosmetics perfumes air-conditioner, furniture carpet, telephones, Indian Made Foreign Liquor (IMFL) or any liquor specified in the certificate of registration of the registered dealer purchasing the goods as being intended for use by him in the manufacture or processing of good for sale or in mining or in the generation or distribution of electricity or any other form of power subject to production of true declaration by the purchasing registered dealer or his authorised agent in Form-IV.	4%
	Explanation: This entry is also applicable for purchases through leasing or works contract or hire purchases.	

Here, we may also take note of the following provisions under CST Act and Rules.

8. Rates of tax on sales in the course of inter-State trade or commerce.-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

[(a) * * *]

(b) 6[* * *] are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or [in the telecommunications network or] in mining or in the generation or distribution of electricity or any other form of power;

***** **

CST (R&T) Rules, 1957

[13. The goods referred to in clause (b) of sub-section (3) of Section 8 which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, [machinery, plant,] equipment, tools, stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing of goods for sale, or [in the telecommunications network or] in mining, or in the generation or distribution of electricity or any other form of power.]

8. In the case of **J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. The Sales Tax Officer, Kanpur and another, reported in 16 STC, 563**, Hon'ble Apex court held as follows:

"In our judgment if a process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the process or activity as specified in rule 13 will qualify for special treatment. This is not to say that every category of goods "in connection with" manufacture of, or "in relation to" manufacture, or which facilitates the conduct of the business of manufacture will be included within rule 13. Attention in this connection may be invited to a judgment of this Court in which it was held that vehicles used by a company (which mined ore and turned out copper in carrying on activities as a

miner and as a manufacturer) fell within rule 13, even if the vehicles were used merely for removing ore from the mine to the factory, and finished goods from the factory to the place of storage. Spare parts and accessories required for the effective operation of those vehicles were also held to fall within rule 13. **(See Indian Copper Corporation Ltd. V. Commissioner of Commercial Taxes, Bihar and others, (1965) 16 STC 259 (SC)."**

In the case of Indian Copper Corporation Ltd. Vs. Commissioner of Commercial Taxes, Bihar and others, reported in 16 STC, 259. Apex Court held as follows:

In a case where a dealer is engaged both in mining operations and in the manufacturing process---the two processes being interdependent---it would be impossible to exclude vehicles which are used for removing from the place where the mining operations are concluded to the factory where the manufacturing process starts.

The expression "goods' intended for use in the manufacturing or processing of goods for sale' may ordinarily include such vehicles as are intended to be used for removal of processed goods from the factory to the place of storage.

The mere fact that there is a statutory obligation imposed upon the owner of the factory or the mine to maintain hospital facilities would not supply a connection between the goods and the manufacturing or processing of goods or the mining operations so as to make them goods intended for use in those operations.

The expression "intended to be used" cannot be equated with "likely to facilitate" the conduct of the business of manufacturing or of processing goods or of mining."

In the case of **Commercial Taxes officer, Circle D, Jaipur Vs. Rajasthan Electricity Board, reported in 104 STC, 89.** Rajasthan Electricity Board was engaged in the business of generation and

distribution of electricity. Apex Court affirmed the order of the Rajasthan High Court in which it has been held as follows:

"The High Court held that trucks, trolleys, trailers and the like, but not passenger vehicles, as also their accessories and spare parts, tyres and tubes could be purchased by the respondent-Board at the concessional rate of tax prescribed under section 8 (1) of the Central Sales Tax Act, 1956 and that, to make things clear, the respondent-Board was entitled to have its registration certificate altered to include "tools and plants, including vehicles and other transportable goods, including their spare parts, tubes and tyres". The respondent-Board is engaged in the business of generation and distribution of electricity. What is used in the distribution of electricity or intended for such use falls within the scope of section 8 (3)(b) read with rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957.*****In so far as soaps, paints and varnishes are concerned, the High Court rightly upheld the finding of the Board of Revenue that they were permissible only in so far as they were intended to be used for the purpose of cleaning boilers and machinery and other equipment and for the purpose of painting machinery and electrical goods. Raincoats could be purchased at the concessional rate of tax so far as they were necessary for the use of linesmen working on transmission lines during the rainy season and winter; similarly, battery cells to the extent they were necessary for use by linesmen for working on transmission lines during the night."

9. From the conspicuous of the authorities mentioned above, it can be said that, the term "in the manufacturing" and in "relation to manufacturing" do not carry any different/separate meaning and ambit so far as the inputs utilised in a manufacturing process. A manufacturing process starts from input and ends in output. The term input and output above include the entire process of procuring the material for the specific purpose of manufacturing

and delivering the manufactured product at the destination. Resultantly, all the activities in the entire process can be stated as a process in the manufacturing. Consequently, the goods used in this process in the manufacturing should carry concession in rate of tax as it is the intendment of the legislature while giving the relaxation in tax to an Entrepreneur. The benefit of the provision u/s.5 cannot be squeezed or curtailed by way of narrow interpretation of the term “manufacturing” having regard to the very purpose of the scheme declared by the appropriate Government. In that view of the matter, it is held that, the locomotive exclusively used for the purpose of carrying the raw materials to be used only in the manufacturing is included in the category of goods u/s.81 read with Sec.5 and will carry concession in rate of tax against Form-IV.

10. Keeping in mind the ratio determined above, adverting to the case in hand, it is found that, the HSD used as a fuel in the locomotive can be used as a goods under the category utilised in the manufacturing process only when it is established that, the locomotive itself is a goods under the same category. The R.C. of the dealer should contain the locomotive and HSD used for running of the locomotive for the purpose of concession in rate of tax. If the locomotive is not the goods under the category, then there is no scope to include HSD used in the locomotive in the same category of goods entitling concession.

11. From the record and LCR it is not clearly established that, the dealer has included the locomotive in his R.C. and if any concession in rate of tax was claimed against such locomotive used by the dealer in transporting the coal to the plant. In that case, it is held that, this is a fit case where the matter should be remitted back to the AA for the limited purpose as follows :

- (i) The AA will verify the R.C. of the dealer and will inquire into the fact that, the R.C. contains locomotive and HSD

and if the dealer has claimed concession in rate of tax against locomotive.

- (ii) If it is found that, the dealer has claimed concession in rate of tax against locomotive used in transporting of coal to the plant, then the fuel used in the locomotive will carry the benefit of concession in rate of tax as against Form-IV.

As regards the claim of the dealer regarding wrong levy of differential tax on purchase of petrol, it is said that, learned Counsel for the dealer did not press this ground in appeal in the hand. However, the argument of learned Counsel Mr. Raman on this question is fairly grounded on the Entry Sl.No.81 mentioned above. Goods like petrol has been kept out of the ambit of concession in rate of tax. So, in agreement with learned Addl. Standing Counsel, Mr. Raman, it is held that, the fora below has rightly upheld the view of Assessing Authority in imposing differential tax on petrol.

From above, it is hereby ordered.

The appeal is allowed in part on contest. The matter is remitted back to the AA for assessment afresh as per the observation herein above.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
Judicial Member-II

Sd/-
(S. Mohanty)
Judicial Member-II

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

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