BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 151 (ET) of 2004-05

(Arising out of order of the learned ACST, Sambalpur Range, Sambalpur in First Appeal No. AA- 01 (SA-III-ET) of 2003-04, disposed of on dated 29.04.2004)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri M. Harichandan, Accounts Member-I

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

-Versus-

M/s. Mahanadi Coal Fields Ltd., IB Valley Area, Brajrajnagar, Jharsuguda ... Respondent

For the Appellant : Sri D. Behura, S.C. (CT) & Sri S.K. Pradhan, Addl.SC (CT)
For the Respondent : Sri D.K. Das, Advocate

Date of hearing: 20.04.2022 *** Date of order: 27.04.2022

O R D E R

The present second appeal at the instance of the State is directed against the order dated 29.04.2004 passed by the learned Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter called as 'first appellate authority') in Appeal No. AA- 01 (SA-III-ET) of 2003-04 thereby setting aside the order of assessment

passed by the Sales Tax Officer, Sambalpur-III Circle, Jharsuguda (in short, 'assessing authority') raising tax demand of ₹9,50,612.00 for the year 2001-02 in the assessment framed u/s. 7(4) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act').

2. The facts of the case, in brief, are that the dealer-assessee is engaged in mining and selling of coal and is liable for payment of entry tax on purchase of schedule goods and on sale of coal. During the period in question, the dealer effected sale of coal to the extent of ₹18,68,39,825.70, out of which sale of coal to Rourkela Steel Plant was for ₹52,14,960.67. The assessing authority on verification of books of account found that the dealer-assessee effected sale of coal to M/s. NALCO, Angul on which no entry tax had been deposited on the ground that M/s. NALCO had gone before the Hon'ble High Court of Orissa in O.J.C. No. 8739 of 2000 for not paying tax on sale of coal. The assessing authority on further verification of books of account found that the dealer had purchased scheduled goods to the tune of ₹10,13,70,576.56, out of which goods amounting to ₹4,23,66,967.02 were purchased from registered dealer on payment of entry tax and the scheduled goods amounting to ₹7,76,372.04 were purchased within

the local area. On scrutiny of the books of account, the assessing authority determined the GTO and TTO at ₹28,82,10,402.26 and ₹24,50,67,062.30 respectively and then it levied tax @ 1% on Rs.18,16,24,865.03, @ 0.5% on ₹52,14,960.67, @ 1% on ₹79,45,694.16 and @ 2% on ₹5,02,81,542.44, computing total tax at ₹29,27,411.30, out of which the dealer had deposited entry tax of ₹19,76,799.77, resulting extra demand of ₹9,50,612.00.

2(a). The dealer-respondent challenging the aforesaid demand raised by the assessing authority preferred appeal before the first appellate authority on the ground that in view of provisions contained in sub-rule (4) of Rule 3 of the OET Rules, entry tax is chargeable @ 0.5% on coal sold to such industry, who used the scheduled goods as raw materials; that the assessing authority erred in law in taxing the coal purchased by M/s. NALCO @ 1% instead of 0.5% and that the coal purchased by M/s. NALCO against Form E-15 is exigible to entry tax @ 0.5% which is the view of the Hon'ble High Court in W.P. (C) No. 2388 of 2004. The first appellate authority considering the facts and circumstances of the case and on perusal of the documents submitted by the dealer-respondent opined that in the event of non-payment of entry tax by the purchasing dealer, the

liability would be on it and not on the selling dealer in view of the provisions contained in Section 26 of the OET Act read with sub-rule (4) of Rule 3 of the OET Rules. Accordingly, it reduced the assessment to the extent of collection of entry tax by the dealer-assessee.

3. The State being aggrieved with the aforesaid findings of the first appellate authority fixing the liability on the purchasing dealer to pay entry tax in case of non-payment of tax has preferred this appeal. It was vehemently urged by the learned Standing Counsel (CT) for the revenue that in view of Section 3 of the OET Act read with Rules 3(3) and (4) of the OET Rules, the manufacture is required to collect tax from the buying manufacture against declaration in Form E-15 for availing concessional rate of tax. Since the dealer-respondent is engaged in mining activity by extracting coal from its mines, the burden would be on it to collect the appropriate entry tax and deposit it to the State exchequer. M/s. NALCO used coal for production of electricity, which is not a finished product. Therefore, collection of entry tax by MCL @ 0.5% is illegal, arbitrary and against the sanction of law. The dealer-respondent is required to deposit entry tax on sale of coal to M/s. NALCO

@ 1% as per entry No. 1 of Part-I of the Schedule under the OET Act. He submitted to allow the appeal.

4. Per contra, learned Counsel for the dealer-assessee in terms of cross-objection filed by it, relying on the order of this Tribunal passed in S.A. No. 199 (ET) of 2004-05 vehemently argued that the generation of electricity is a manufacturing activity and coal is a raw material for generation/production of electricity and, therefore, the dealer-respondent was entitled to collect tax at the concessional rate as provided u/r. 3(4) of the OET Rules. Further, in view of Section 26 of the OET Act read with Rule 3(1) of the OET Rules, in case of non-payment of entry tax, it is the purchasing dealer who brought the goods into local area to pay the entry tax. The first appellate authority rightly reduced the assessment to the extent of tax collected by the dealer-respondent. There is no illegality or impropriety in the order of the first appellate authority warranting interference of this Tribunal. He submitted to dismiss the State appeal.

5. We have heard the rival submissions of the parties, gone through the grounds of appeal raised by the State vis-a-vis the impugned order of the first appellate authority and the materials on record. The disputes as

emerged from the rival contention of the parties are two folds, which are –

(i) Whether the dealer-respondent was liable to collect tax @ 0.5% on sale of coal to M/s. NALCO or @1% as held by the assessing authority ? and

(ii) Whether in case of non-payment of due entry tax, the liability would be on the purchasing dealer, who brought the goods into the local area to pay entry tax or on the selling dealer ?

6. Coming to the first issue whether the dealer-respondent was liable to collect tax @0.5% on sale of coal to M/s. NALCO or @1% as held by the assessing authority, this Tribunal is of the view that M/s. NALCO having purchased coal from the dealer-assessee for the purpose of generation of electricity is liable to pay entry tax @ 0.5% in view of the provisions contained in Rule 3(4) of the OET Rules. The law is no more res integra after the judgment of the Hon'ble High Court of Orissa in case of **Orissa Power Generation Ltd. Vs. State of Orissa and another, reported in [2015][81 VST 138 (Ori.), confirmed in SLP No. 35253/2015 by the Hon'ble Apex Court** that generation of electricity is a manufacturing activity and coal is a raw material for generation/production of electricity. Rule 3(4) of the OET Rules provides goods specified in Part-I and Part-II of the

Schedule to the Act shall be exigible to tax at a concessional rate of fifty percentum of the rate to which the goods are exigible under sub-rule (3) and sub-rule (2) respectively of the said Rule, when such goods are brought- (a) for use as raw material by a manufacturer on first entry into a local area of the State from outside the State; or (b) for use as raw material by a manufacturer on first entry into a local area from another local area; or (c) by a registered dealer into any local area and then sold to a manufacturer for use as raw material.

7. A cursory look at the provisions contained u/r. 3(4) of the OET Rules makes it abundantly clear that the manufacturer brings goods into the local area for use as raw material is entitled to pay concessional rate of tax @ 50% of the rate to which such goods are exigible under sub-rules (3) and (2) of the said Rule. Sub-rule (3) of Rule 3 provides that the goods specified in Part-I of the Schedule shall be exigible to tax @ 1% of the purchase value. In the instant case, M/s. NALCO purchased coal from the dealer-respondent for generation of electricity, which is undisputed. The generation of electricity being the manufacturing activity, M/s. NALCO is liable to pay tax @ 0.5% and not @ 1% as held by the assessing authority. The contention raised

by the learned Standing Counsel (CT) for the State that the dealer-respondent is liable to collect tax @ 1% in respect of sale of coal made to M/s. NALCO is against the sanction of law and statutory provisions. Therefore, the said contention is not sustainable. Accordingly, this issue is answered in favour of the dealer-respondent.

8. Coming to the second issue, whether it is selling dealer or purchasing dealer who is liable to pay entry tax on entry of goods into the local area. In the present case, the dealer-respondent is the selling dealer, who extracted coal from its mine and sold it to M/s. NALCO for use as raw material in generation of electricity. The assessing authority was of the view that it is the selling dealer, who is liable to pay the due entry tax whereas the first appellate authority took the contrary view. Before answering the second issue, it is profitable to reproduce below Sections 3 & 26(1) of the OET Act for better understanding the dispute :-

> "3. Levy of tax –
>
> (1) There shall be levied and collected a tax on entry of the scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding twelve percentum of the purchase value of such goods from such date as may be specified by the State Government and different dates and different

rates may be specified for different goods and local areas subject to such conditions as may be prescribed.

Provided that the State Government may direct that in such circumstances and under such conditions and for such period as may be prescribed, a dealer shall pay in lieu of tax payable under this Act a sum fixed in the prescribed manner, and in such a case the tax shall be deemed to have been compounded.

(2) The tax leviable under this Act shall be paid by every dealer in scheduled goods or any other person who brings or causes to be brought into a local area such scheduled goods whether on his own account or on account of his principal or customer or takes delivery or is entitled to take delivery of such goods on such entry :"

"26. Manufacturers to collect and pay tax –

(1) Notwithstanding anything contained in this Act, every manufacturer of scheduled goods who is registered under the Sales Tax Act shall in respect of sale of its finished products effected by it to a buying dealer, either directly or through an intermediary, shall collect by way of tax an amount equal to the tax payable on the value of such finished products under Section 3 of this Act by the buying dealer in prescribed manner and shall pay the tax so collected into the Government Treasury:

Provided that the liability of the manufacturer for payment of tax under the sub-section during a

year shall be reduced to the extent of tax paid under this Act on the raw materials which directly go into the composition of the finished products during that year in the prescribed manner."

9. On conjoint reading of the aforesaid provisions, we are of the unanimous view that in case of non-payment of entry tax, it is the purchasing dealer, who is liable to pay the same, as in the instant case, the dealer-respondent has collected and deposited tax in exercise of power u/s. 26(1) of the OET Act accepting Form E-15 submitted by the purchasing dealer. Provisions contained in sub-section (5) of Section 26 of the OET Act provides that collection and payment of tax in accordance with sub-sections (1) and (2) shall be without prejudice to any other mode of recovery of tax under this Act from the buying dealer and shall be subject to such adjustments as may be necessary on the completion of assessment of such buying dealer. The dealer-respondent, who is a manufacturer, having collected and deposited tax @ 0.5% in respect sale of coal to NALCO, Damanjodi for ₹3,22,46,783.89 and having deposited the same to the State exchequer, it has no further liability to pay entry tax in case of excess entry tax is due against the purchasing dealer. It is the purchasing dealer,

who is liable to pay the balance tax due, if any. The first appellate authority did not commit any error in law in holding that the dealer-respondent being the selling dealer of the schedule goods in dispute, it has no liability to pay more tax and in reducing the assessment to the extent of collection of entry tax by it (dealer-respondent). We do not find any illegality in such finding of the first appellate authority warranting interference of this Tribunal.

10. In the light of the discussions made above, the State appeal fails. Accordingly, the same stands dismissed and the impugned order of the first appellate authority is hereby confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I