BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 178 (ET) of 2008-09

(Arising out of order of the learned ACST, Sundargarh Range, Rourkela in First Appeal No. AA- 43 (RL-I) ET of 2007-08, disposed of on dated 24.05.2008)

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

M/s. Gulf Oil Corporation Ltd.,
Sonaparbat, Rourkela ... Appellant

-Versus-

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

For the Appellant : Sri L. Pangari, Sr. Advocate &
Sri P.R. Pattnaik, Advocate
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl.SC (CT)

Date of hearing: 20.04.2022 *** Date of order: 28.04.2022

O R D E R

This appeal is directed against the order dated 24.05.2008 passed by the learned Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter called as 'first appellate authority') in Appeal No. AA- 43 (RL-I) ET of 2007-08 thereby confirming the order of assessment dated 30.03.2007 passed by the Sales Tax

Officer, Rourkela-I Circle, Uditnagar (in short, 'assessing authority') raising demand of ₹6,45,593.00 for the year 2003-04 in the assessment framed u/s. 7(4) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act').

2. The relevant facts leading to the filing of the present second appeal are that the dealer-Company is engaged in purchase of scheduled goods like machinery and its spares, electrical goods, furnace oil, wax, diesel, etc. for use in manufacture and HDPE granules, aluminium powder, gum, ferrous and non-ferrous plates, TG urea, AN melts and prills as raw materials. The assessing authority during the assessment year in question, on verification of books of account and relevant documents found that the dealer-appellant had effected purchase of ₹9,05,42,145.00 from outside the State, out of which purchase of ₹71,94,596.00 and ₹10,82,811.00 relates to purchase of scheduled goods I and scheduled goods II respectively. A sum of ₹6,83,20,734.99 relating to purchase of AN prills in course of import was not included. The assessing authority included AN prills in the GTO as the same was scheduled goods and determined the GTO at ₹18,84,12,021.99. After deduction of ₹2,95,54,141.99 towards purchase of entry tax paid goods, the TTO was determined at ₹15,88,62,880.00

which was taxed @ 0.5% on ₹15,05,85,473.00, @ 1% on ₹71,94,596.00 and @ 2% on ₹10,82,811.00. Thus the total tax was computed at ₹8,46,529.00. The dealer having paid ₹2,00,936.00 before assessment, it was required to pay the balance amount of ₹6,45,593.00.

2(a). The dealer-appellant challenging the demand raised by the assessing authority filed appeal before the first appellate authority on the ground that the goods imported for ₹6,83,20,734.99 is not scheduled goods for which inclusion of the same for the purpose of taxation is illegal, arbitrary and against the sanction of law. The first appellate authority on going through the materials on record and grounds raised by the dealer-assessee confirmed the order of the assessing authority holding that AN prills, which is commonly known as 'Ammonia Nitrate', is scheduled goods and the State is competent to levy entry tax on it. The dealer-appellant being further aggrieved with the order of the first appellate authority confirming the order of assessment, preferred the present second appeal.

3. Learned Counsel for the dealer-appellant challenging the impugned orders of the fora below vehemently urged that AN prills, which is commonly known as 'Ammonia Nitrate', not being scheduled goods, it was not

exigible to entry tax. The forums below committed serious illegality in including the purchase amount of ₹6,83,20,734.99 in the GTO for the purpose of levying tax holding the same as scheduled goods. He strenuously argued that 'Ammonia Nitrate' does not specifically find place in Part-I of the Schedule to the OET Act. Therefore, the authorities below were not correct in their approach in levying entry tax on the said imported goods worth ₹6,83,20,734.99. Learned Sr. Counsel for the appellant relying on the judgment in the case of **Vikrant Tyres Ltd. Vs. First Income Tax Officer, Mysore, reported in (2001) 3 SCC 76**, vehemently urged that had the legislature intended to treat Ammonia and Ammonia Nitrate Prills (AN Prills) as the same products, it could have placed AN Prills in Entry No. 62 of the Schedule. The legislature having not done so, the import value of AN Aprils cannot be the subject matter of tax. He further argued that a taxing statute has to be strictly interpreted and there is no scope of assumption, presumption, surmises, and intendment. The plain language of the statute has to be strictly interpreted and accepted. He submitted to set aside the orders of the forums below and remand the matter to the assessing authority for recomputation of the tax liability.

4. On the other hand, learned Standing Counsel (CT) for the revenue supporting the impugned orders of the fora below argued that AN prills being a chemical, it would be covered under Entry No. 73 of Part-I of the Schedule and, therefore, the fora below were correct in their approach in levying entry tax on the said purchase amount. There is no illegality or impropriety in the impugned orders of the authorities below warranting interference of this Tribunal. He submitted to dismiss the appeal and confirm the orders of the forums below.

5. We have heard the rival submissions of the parties, carefully gone through the grounds of appeal raised by the dealer-appellant vis-a-vis the impugned orders of the forums below and the materials on record. The sole dispute in the present appeal is whether AN prills, which is commonly known as 'Ammonia Nitrate' is scheduled goods under Part-I of the Schedule and is exigible to entry tax under the OET Act? It is claimed by the learned Standing Counsel (CT) for the revenue that 'Ammonia Nitrate' being chemical comes under Entry No. 73 of Part-I of the Schedule whereas it is claimed by the learned Senior Counsel for the dealer assessee that it is not schedule goods. On going through the records, we find that both the forums below

have levied entry tax on import of AN prills for an amount of ₹6,83,20,734.99 without discussing anything as to under which entry said goods come for the purpose of levying tax under the OET Act. The goods AN prills, which is commonly known as 'Ammonia Nitrate' does not find place in any of the entry in Part-I of the Schedule. Entry No. 62 contains 'ammonia' which is quite different from the goods 'Ammonia Nitrate'. Ammonia is a compound of Nitrogen and Hydrogen with chemical formula NH3, whereas 'Ammonia Nitrate' is a chemical compound with the chemical formula of NH4NO3. It is a white crystalline solid consisting of ions of Ammonium and Nitrate. It is predominantly used in agriculture as high Nitrogen fertilizer. So, Ammonia and Ammonia Nitrate being two different commodities and 'Ammonia Nitrate' having not been specifically mentioned in Entry No. 62, it would not come under the said entry. So far as Entry No. 73 is concerned, the same was inserted w.e.f. 01.06.2004 vide Finance Department Notification No. 23878-CTN-16/2000-F (SRO No. 288/04) dated 31.05.2004 published in Odisha Extraordinary Gazette No. 743 dated 01.06.2004. So, during the assessment year in question, Entry No. 73 was not in existence. Therefore, 'Ammonia Nitrate' would not come under Entry No. 73 for the purpose of levying entry tax. It is

settled position of law that when a particular expression was not given in the statute, it must be understood in its popular common sense that is in the sense how that expression is used everyday by those who deal with those goods. Unless the term and expression have been defined in the statute itself, it should not be understood in the scientific and technical sense, but in a popular sense. In the case of **Vikrant Tyres Ltd.** (supra), the Hon'ble Apex Court in para-10 of the judgment relying on the Constitution Bench judgment in case of V.V.S. Sugars Vs. Govt. of A.P., (1999) 4 SCC 192, observed that the courts while construing Revenue Acts have to give a fair and reasonable construction to the language of a statute without leaning to one side or the other, meaning thereby that no tax or levy can be imposed on a subject by an Act of Parliament without the words of the statute clearly showing an intention to lay the burden on the subject. In this process, the courts must adhere to the words of the statute and the so-called equitable construction of those words of the statute is not permissible. The task of the court is to construe the provisions of the taxing enactments according to the ordinary and natural meaning of the language used and then to apply that meaning to the facts of the case and in that process if the taxpayer is

brought within the net he is caught, otherwise he has to go free. This principle in law is settled by this Court in India Carbon Ltd. Vs. State of Assam, (1997) 6 SCC 479, wherein this Court held (at SCC p. 483. Para 7) "interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf". A Constitution Bench of this Court speaking through one of use (Hon. Bharucha, J.) in the case of V.S.S. Sugars Vs. Govt. of A.P., reiterated the proposition laid down in the India Carbon Ltd. case in the following words (SCC Head note) :

> "The Act in question is a taxing statute and, therefore, must be interpreted as it reads, with no additions and no subtractions, on the ground of legislative intendment or otherwise."

In view of the above settled position of law taxing statute is to be read as it is for the purpose of levying tax ,nothing can be added or subtracted on the ground of legislative intendment. In the present case, 'Ammonia Nitrate' having not been mentioned in any of the entries in Part-I and Part-II of the Schedule, it would not be exigible to entry tax under the OET Act. The forums below have imposed tax in a very arbitrary and whimsical manner without discussing anything as to whether AN prills imported by the Company

for an amount of ₹6,83,20,734.99 is scheduled goods or not and if it is scheduled goods, then it is coming under which entry. Therefore, the impugned orders passed by the forums below cannot be sustained in the eye of law.

6. In the light of the discussions made above, the appeal filed by the dealer-appellant succeeds, the impugned orders passed by the forums below are set aside and the matter is remitted back to the assessing authority to recompute the tax liability of the dealer-assessee excluding AN prills, which is commonly known as 'Ammonia Nitrate' imported by the Company for an amount of ₹6,83,20,734.99 from the GTO within a period of three months from the date of receipt of this order.

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