

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 65(ET)/2017-18

(Arising out of order of the Id.JCST(Appeal), Bhubaneswar Range, Bhubaneswar,
in Appeal No. AA-10822172000078,
disposed of on dtd.26.04.2017)

Present: Sri S. Mohanty
2nd Judicial Member

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

.... Appellant

-Versus-

M/s. Prasanta Kumar Pradhan,
Bhubaneswar.

... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

For the Respondent : Mr. S.K. Mishra, Advocate

Date of Hearing: 09.05.2018 *** Date of Order: 11.05.2018

ORDER

This second appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, FAA/JCST) in First Appeal Case No. AA-10822172000078 dtd.26.04.2017 in reducing the order of assessment passed by the Assessing Officer, Bhubaneswar-I Circle, Bhubaneswar (in short, AO) for the assessment period from 01.04.2010 to 31.03.2015 u/s.9C of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. The instant dealer is a proprietorship concern engaged in execution of works contract. Basing on a tax Audit Visit Report (AVR) in Form E-25, STO, Tax Audit Unit, Bhubaneswar Range initiated proceeding u/s.9(C) of the OET Act for the tax period from 01.04.2010 to 31.03.2015 relating to the dealer by giving statutory notice in Form E-30. The allegations against the dealer in the AVR was, he had not paid tax on the goods like sand, chips, morum etc. and it has also not included the freight charges in the purchase value as per law. The AO levied entry tax on sand, chips and bricks worth of Rs.1,87,66,650/- as per Entry No.12 and 59 of Part-I of Schedule treating the goods as per Mines & Minerals (Development & Regulation) Act, 1957. It has also added 5% towards

freight charges against the inter-state purchase and levied entry tax @2% on Rs.3,45,478/-.

Such assessment was challenged before the FAA by the dealer, who in turn, accepted the argument of the dealer that, sand, bricks and chips are non-schedule goods, hence not comes under the category of minerals exigible to entry tax, whereas the FAA confirmed the tax calculated on the freight charges as levied by the AO. Thereby, the tax due became reduced to Rs.21,465/- instead of Rs.5,82,305/- as calculated by the AO.

When the matters stood thus, State being aggrieved by the order of the FAA, has preferred this second appeal with the contentions like, the goods purchased and sold by the dealer comes under the category of Mines & Minerals (Development & Regulation) Act, 1957 and as such the same is exigible to entry tax.

3. The appeal is heard with cross objection from the side of the dealer that, the order passed by the AO needs no interference as the goods being non-schedule goods are not exigible to entry tax.

4. Here in this appeal, the only question is to be decided is, if the goods like sand, bricks and minerals are exigible to entry tax or not ? At the outset, counsel from both the sides conceded on the point that, in view of the ratio laid down by the authorities in case of **D.K. Trivedi & Sons Vrs. State of Gujarat** reported in **AIR (1986) SC 1323**, the term "minerals i.e. u/s. 3(e) includes minerals which are minor minerals. In view of such authoritative pronouncement and accepted views in so many judgments passed earlier by this Tribunal, further discussion on this question is only for academic purpose. Hence avoiding such discussion, it can be concluded with the observation that, goods like sand, bricks and minerals are exigible to entry tax @1%. Accordingly, the impugned order needs to be modified and the tax due should be raised on the goods dealt by the dealer within the tax period under assessment.

In the wake of above, it is hereby ordered.

The dealer is liable to pay tax on sand, bricks and chips. Besides he is also liable to pay tax on freight charges as determined by both fora below in the impugned order. The impugned order under challenge is hereby set-aside. The

matter is remanded back to the AA for re-computation of tax liability and for raising of demand of tax.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member