

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 55(ET)/2015-16

(From the order of the Id.DCST (Appeal), Balasore Range, Balasore, in Appeal No. AA-132/BA-2003-2004 (ET), dtd.31.01.2015, modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

.... Appellant

-Versus-

M/s. Oripol Industries Ltd.,
Remuna, Dist. Balasore.

.... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)
For the Respondent : Mr. S.K. Mohapatra, Advocate

(Assessment period : 12/99 to 03/2000)

Date of Hearing: 02.02.2019 *** Date of Order: 02.02.2019

ORDER

Whether HDPE sacks is exigible to tax under Odisha Entry Tax Act, 1999 (in short, OET Act) as per Entry Sl.No.23 of Part-I of the Schedule or not, is the moot question raised for decision in this appeal preferred by the revenue.

2. The dealer was subjected to audit assessment u/s.7(4) of the OET Act for the tax period from 12/99 to 3/2000 and the dealer was found to have not paid entry tax on the goods for which, the tax was levied and determined at Rs.40,608/-. The assessing authority held the HDPE sacks dealt by the instant dealer covered under entrysl.no.23 of the schedule 1I of the act liable to be taxed @1% . The

assessment was challenged in appeal before the learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (in short, FAA/DCST) by the dealer, who in turn, reversed the findings of the Assessing Authority, Balasore Circle, Balasore (in short, AA) and assessed the dealer to return figure with a finding that, the HDPE sacks are not exigible to entry tax holding the same as tax free goods before 24.07.2000 vide impugned order, as a result the demand raised by AA is reduced to return figure. Felt aggrieved, the revenue has preferred this second appeal to restore the assessment of AA.

Findings :

4. At the outset, learned Addl. Standing Counsel, Mr. Pradhan advanced the authorities like **Municipal Corporation for the City of Thane & Others – Vrs.- Asmaco Plastic Industries & Others, (1999) 1 SC 372, Raj Pack Well Ltd. –Vrs.- Union of India (Uoi) 1993(41)ECC285** and in **M/s. Soosree Plastic Industry (P) Ltd. – Vrs.- Union of India & Others** in **O.J.C. No.2255/1966**. Besides the above authorities, he also placed reliance on a decision of the Single Bench of this Tribunal in **S.A.No. 152(ET)/2013-14. Per contra** Learned Counsel for the dealer argued that, the dealer is engaged in selling HDPE sacks, which is a non-schedule goods at the relevant period under assessment and thus, the dealer is not liable to pay tax.

5. The decision of the Single Bench of this Tribunal above relates to an assessment period after the amendment. Thus, it has got no avail to the State. However, the authorities relied by the Addl. Standing Counsel including the authority in **Sushree Plastic Industries Pvt. Ltd. (supra)** in particular have observed the HDPE sacks are

made of plastic fabric, hence not to be treated as textiles and consequently the HDPE sacks treated as plastic made goods.

6. To appreciate the disputed question, it is relevant to take note of the fact that, the Entry Sl.No.23 as per Part-I of the Schedule has undergone amendment w.e.f. 24.07.2000. The entries before the amendment reads as follows :

“Plastic goods, moulded luggage & plastic furniture”

The entry after amended w.e.f.24.07.2000 reads as follows :

“23. Polythene, High Density Poly Ethylene (HDPE), Poly Propylene (PP) including wovensack, plastic goods, moulded luggage excluding plastic or moulded furniture.]”

During the period before amendment the word ‘HDPE’ was not there in the entry. It was simply “plastic goods” ‘moulder luggage’ and ‘plastic furniture’ were there in the entry. The Entry Sl.No.23 as it is after amendment contains “HDPE” as a separate item from “plastic goods” in the same Entry Sl. If the term plastic goods includes HDPE sacks then what was the necessity for the legislature to include HDPE as a distinct item under the same entry. Thus, the articles ‘plastic goods’ as per the entry should be treated as a distinct /separate item for the purpose of taxation. Further, when the entry excludes the plastic furniture but includes ‘plastic goods’ as a term different from HDPE in express term, it is unsafe to hold that, the HDPE sacks is different from article “plastic goods” under the Act.

7. To put it in another way, if we carefully compare the entries Sl.No.23 between, what was before and after amendment, it is found that, the term “plastic goods” is there in both the occasions. The entry as it is amended, it contains other entries besides plastic goods.

As per the amended entries, the plastic furniture is excluded from the entry whereas HDPE is entered as a separate item besides plastic goods in the same entry. So, it can be construed that, the intention of the legislation is to treat the HDPE goods as a separate goods not within the term of “plastic goods”. The decision in **S.A.No.152(ET)/2013-14** relied by revenue is not in accordance to the Entry Serial of the relevant time. Similarly the decision in M/s. Sushree Plastic Industries Pvt. Ltd. can be distinguished by saying that decision relates to the interpretation of the HDPE sacks if can be treated as textiles. Accordingly, there is no hesitation to hold that, the HDPE sacks may be an article made of plastic fabrics but in absence of any specific entry to that effect in the schedule and particularly the entry of HDPE being a separate article besides ‘plastic goods’ as per the amended entry, it can safely be construed that, it was never the intention of the legislature to include the HDPE products under the category of plastic goods. Hence, it is held that, the assessment and levy of entry tax in the case in hand by the Assessing Authority is not sustainable in the eye of law. On the other hand, FAA has rightly held the HDPE sacks dealt by the dealer is not exigible to Entry Tax, then there is no reason to reverse the result arrived at by the FAA, even though the observation in the impugned order is not a reasoned one. Accordingly, it is ordered.

The appeal is dismissed on contest as of no merit.

Dictated and Corrected by me,

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

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

