

tax liability on the goods claiming to treat the goods as per entry Sl. No.9 of the Part-II taxable @ 2%. The period of assessment under dispute is 2003-04. In the assessment u/s.7(4) of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act), learned STO, Rourkela II Circle, Panposh as assessing authority hold the goods covered under entry Sl. No.9 of Part-II as it comes under 'machinery and equipments' and 'spare parts and components' used in manufacturing, mining, generation or for execution of works contract or for any other purpose then, hold that the de-husking rolls are prepared utilizing rubber, china clay, chemicals, silica, resin etc. and 'rice polishing rubberized' is prepared by utilizing rubber, china clay, resin and chemicals, therefore, these two goods should be covered entry Sl. No.9 of Part-II taxable @ 2%.

3. Conversely, the first appellate authority, at the instance of dealer hold that, these two goods are nothing but rubber products prepared utilizing rubber, china clay, chemicals, silica, resin so covered under entry Sl. No.46 of Part-I of the schedule. The view of the first appellate authority is, the goods utilized in the preparing of the finished products lost its identity in the process of manufacturing and the new goods produced are nothing but rubber products, therefore need to be taxed @ 1%.

4. The appeal is heard without cross objection and in absence of the dealer as well, since the dealer remained absent in the hearing and set at exparte.

5. Learned Addl. Standing Counsel for the Revenue argued that, both the goods like 'de-husking rolls' and 'rice polisher rubberized' are covered under entry Sl. No.9 of Part-II. The entry Sl. No.9 of Part-II as it was in the period of assessment reads as follows:

"9. Machinery and equipments used in manufacture, mining, generation of electricity, or for execution of works contract or for any other purpose."

On the other hand, the entry Sl. No.46 as per Part-I which is applied by first appellate authority reads as follows:

“46. Raw Rubber, Rubber and synthetic rubber products including tyres and tubes.”

6. If we read the entry Sl. No.46 of Part-I above, it includes the goods like tyres and tubes. The goods like ‘tyre’ and ‘tubes’ not only comprises only rubber but also other articles for its preparation and it is used in machine. However, legislature in its wisdom treated the same as a rubber product as per entry Sl. No.46. On the other hand, if we read the entry Sl. No.9 i.e. machinery and equipments, it is hard to accept that rubberized product should be treated as equipments of machineries. The term ‘spare parts’ and ‘components’ became inserted in the entry at a period after the period under assessment in question i.e. effective from 01.06.2004.

7. So, at the outset, it can be said that, treating these goods as ‘spare parts’ and ‘components’ by the assessing authority itself is erroneous as these goods were not there originally in the entry. The entry Sl. No.9 as it was by then, is machinery and equipments used in manufacture, mining, generation of electricity or for execution of works contract or for any other purpose. In that case, from the terms of the entry above, the machinery and equipments never cannot cover the goods dealt by the dealer. Since the present period of assessment is 2003-04, in that case there is no scope to apply the amended entry in serial for the assessment of earlier period. So, on this score only, it can safely be said that, the claim of the Revenue is not well founded. Thus, once it is not established that, the goods dealt by the dealer is not covered under entry Sl. No.9 then, consequently, there is no reason to interfere with the order of first appellate authority. Hence, it is held that, the impugned order treating the goods dealt by the dealer is taxable @ 1% as per entry Sl. No.46 calls for no interference.

Accordingly, it is ordered.

8. The appeal by the Revenue is of no merit, hence dismissed.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

Sd/-
(S. Mohanty)
1st Judicial Member