BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 225 (ET) of 2013-14
(Arising out of the order of the ld. JCST, Angul Range, Angul, in First Appeal Case No. AA/48/ET/AL/13-14, disposed of on dtd.30.12.2013)

P r e s e n t: **Shri S. Mohanty, 1st Judicial Member**

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

- V e r s u s -

M/s. Rabi Prakash & Brothers, Shanti Bazar, Angul. ... Respondent

For the assessment period: 01.04.2007 to 30.06.2012

For the Appellant ... Mr. M.L. Agarwal, S.C.
For the Respondent ... Mr. A.K. Dash, Advocate

Date of hearing: 24.06.2019 ******** Date of order: 26.06.2019

O R D E R

The goods like 'chokad' and 'chunni' are covered under Orissa Entry Tax Act or not, if yes, whether it should to be treated as scheduled goods as per part–I entry Sl. No.66 of the rate chart of the Act or otherwise, the goods being non-scheduled good are not liable to be taxed as claimed by the dealer are the questions raised in this appeal before this Tribunal preferred at the instance of the State against a confirming order of assessment u/s.9C of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) covering tax period from 01.04.2007 to 30.06.2012 relating to the assessee-dealer, M/s. Rabi Prakash & Brothers, a registered TIN dealer.

2. The facts which are required for the purpose of this appeal are, the assessee-dealer deals in seasonal goods like, rice, cattle feed, chokad, chunni etc. both wholesale and retails basis. It purchases goods both from inside and outside state dealers and effects sale similar to inside and outside dealers. The tax audit of the dealer's business unit was conducted for the period period from 01.04.2007 to 30.06.2012. The assessing authority declined the claim of the dealer that, article like 'chokad' and 'chunni' as non-scheduled goods but, treating the same as Cattlefeed, a scheduled goods taxed the same @ 1% in the assessment which was ended with raising demand of tax payable by the dealer at Rs.30,856.00 and penalty at Rs.61,716.00, thereby the total demand was calculated at Rs.92,568.00.

As against the order of assessing authority, dealer being aggrieved, knocked the door of first appellate authority who in turn allowed the appeal and deleted the tax liability and penalty with the findings that, chokad and chunni are not scheduled goods as per the Entry Tax rate chart, hence not taxable.

3. When the tax liability was deleted, Revenue being aggrieved, called the order of first appellate authority in question by way of this second appeal.

4. The contention of the Revenue is, chokad and chunni should be treated as an article covered under entry at Sl. No.66 of Part-I of the schedule of the OET Act. It is contended that, though 'chokad' and 'chunni' are not specifically mentioned under the schedule but it should be treated as scheduled goods like cattle feed and the first appellate authority has committed wrong in misreading the ratio laid down by the authority in Kallumal Samaldas v. CST (1983) 54 STC 103 so, wrongly treated the goods are non-scheduled goods.

5. The appeal is heard without cross objection from the side of the respondent-dealer but in the final hearing, the dealer has

submitted written submission in support of the view taken by the first appellate authority in the impugned order.

6. It is pertinent to mention here that, the dealer has claimed the goods to be non-scheduled goods not exigible to Entry Tax. The assessing authority taxed the goods @ 1% treating the same as 'cattle feed'. The first appellate authority while deleting the tax liability has discussed the goods in the light of 'cattle feed' and/or 'pulses', both are scheduled goods. Specific claim of the Revenue is the goods should be covered under entry Sl. No.66 of the Part-I of the schedule of the OET Act i.e. based on the findings of this Tribunal on earlier occasion in OSTT Appeal No.65(ET) to 67(ET)/2009-10. Thus, in one hand when the dealer claims the goods as non-scheduled goods, Revenue claims the same to be scheduled goods covered under entry Sl. No.66 of part I of the shedule.

7. In the argument, it is brought to the notice of the forum by the counsels from either sides that, there are conflicting views of this Tribunal time to time when identical matter was taken up for consideration. In some cases the Tribunal has held that, 'chokad' and 'chunni' are 'cattle feed' exigible to Entry Tax whereas, in some cases opposite view was also taken denying tax liability treating the same as non-scheduled goods.

8. Entry Sl. No.66 of the Part-I of the schedule of the OET Act reads as follows:

"**66. Cattle feed, prawn fed and poultry feed**"

The above entries are omitted w.e.f. 01.04.2011 and thereafter, the goods under the aforesaid entry Sl. No. became non-scheduled goods not exigible to Entry Tax. It is believed that, when an entry under the statute is to be interpreted, the intendment of the legislature is to be considered ahead of any kind of interpretation. Deriving the meaning of the term from Dictionary or from similar statute to the Entry Tax Act are secondary. Pertinently here it is said that, the term 'chokad' and 'chunni' are the terms as per local Odia

language and in the same pronunciation it has been crept in the statute book. So, it was not within the imagination of the legislature to think of the Dictionary meaning of any term in English to be attributed to this entry. Similarly, many entries are available according to local pronunciation. In the matter of **Ganesh Trading Co. v. State of Haryana (1973) 32 STC 623 (SC), Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co. (1989) 72 STC 280**. The observation of the Hon'ble Court is-

> "In finding out the true meaning of the entries mentioned in the Sales Tax Act, the dictionary meaning is not relevant."

As per OVAT Act, the goods under entry Sl. No.3 of Schedule-A above which includes cattle feed are tax exempted goods. Thus, even though the goods are treated as tax exempted goods at a particular period under OVAT Act but at a particular point of period, the said goods like cattle feed was still taxable under the OET Act i.e. up to the omission of the serial w.e.f. 01.06.2004.

9. This Tribunal, while sitting over the question relating to tax liability, is under the obligation to determine the liability in accordance to the provision under the Act prevailing on the date of assessment. In that view of the matter, here it is found that, no specific entry is there in the rate chart of the article under the name of 'chokad' and 'chunni' in the Entry Tax Act. The rate chart does not contain any serial number to deal non-scheduled goods as it is there in VAT rate chart. But, when it comes to Entry Tax Act, there is no tax on the goods which are not covered under the schedule. The schedule under OET contain 'cattle feed' as a specific entry, whereas, the tax chart under OVAT Act in Sl. No.3 contain cattle feed and its supplements.

10. Taking cue from the authorities above now, it is to be seen, whether 'chokad' and 'chunni' is to be termed as "cattle feed" or "supplements of cattle feed" or it is a separate article. In latter two

cases like supplement of cattle feed or separate article, there should not be any confusion that, both category cannot be covered under Entry Tax net. So, it remains only, when the 'chokad' and 'chunni' is to be treated as cattle feed only, in that case it is taxable.

11. Learned Standing Counsel raised an alternative argument that, 'chunni' should be covered under pulses entry Sl. No.77 of the rate chart. Such argument is not based on any grounds in appeal and is a new plea as in the argument by the Revenue, hence not to be looked into.

12. Common parlance test always considers the goods in term of how a common man or the people associated with the goods in the trade of goods perceive it. User test theory is applied in case where the entry has linked the taxable object with the use to which it is put to or cases where the meaning of the goods in common parlance is derived by the predominant use to which the goods put to irrespective of the other minor use for which they can also be put to. The above view is derived from the authority in the matter of **M/s. Arnapurna Carbon Industries Co. v. State of Andhra Pradesh AIR 1976 SC 1418**, wherein the Apex Court has held as follows:

> "Apparently, the deciding factor is the predominant or ordinary purpose or use. It is not enough to show that the article can be put to other use also. It is its general or predominant use which seems to determine the category in which an article will fall."

Reliance also can be placed in the matter of **Atul Gas Industries Pvt. Ltd. v. Collector of Central Excise AIR 1986 SC 730**. The Apex Court in the matter of Commissioner of Sales Tax, M.P. Indore v. Jaswant Singh Charan Singh held that,

> "the word 'coal' would include 'charcoal', it being observed that, while interpreting items in statute like the sales tax act, resort to be had not to the scientific or technical meaning of such terms, but to their popular meaning or the meaning attached to them by those dealing in them, i.e. to say to their commercial sense."

The Hon'ble Bombay High Court in the matter of M/s. Gopalanand Rasayan lg vs. The State of Maharashtra on 8 April, 2010 held that, steam is not chemical with the observation that:

> "In common sense, the steam is treated as byproduct of water and for predation of the steam the process is just to boil water. Therefore, the common man always treats the steam as part and parcel of water. It is a fact that in taxing statute the words which are not of technical expressions or words of art but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance."

13. To interpret goods fitted to any particular entry in the Entry Tax rate chart as here we can take the consideration of user test theory, common parlance test theory and trade parlance theory. Let us take the registration certificate and for the purpose the dealer has indulged in trading of goods in the market. The dealer purchases 'chuni' and 'chokad', sells 'chunni' and 'chokad' and per both the authorities below the dealer purchased and sale these goods as cattle feed. This finding is not disputed. That is the intention of the dealer while purchasing and selling the goods in the market as a trader. So, irrespective of the fact that, the purchaser is using these 'chunni' and 'chokad' for any purpose or 'chunni' and 'chokad' or it can be used for any other purpose but the fact remains, the dealer in particular engaged in trade of 'chunni' and 'chokad' treating the same as cattle feed, for the purpose he has obtained the registration certificate under the Act. Here, the predominant use to which the goods put to irrespective of the minor use for which they also can be put, if examined it is to be found that the dealer purchased and sold the goods as 'cattle feed' or not?

14. At this juncture it is pertinent to mention here that, at different period of time Single Bench and Division Bench of this Tribunal have taken contradictory views. In that view of the matter, it is found not prudent to follow the either of the view. Here, we can refer to authority in State of Orissa v. Rajkumar Agarwalla,

Berhampur, Ganjam ILR 1974 CUT 1367 (ORI), wherein it is held as follows:-

> "6. Thus both the aforesaid categories come within the meaning of chuni as used in common parlance. It was the duty of the assessing authorities including the Tribunal to have called upon the dealer to give evidence as to the nature of the good sold before holding that he was liable to sales tax. The assessing officer and the appellate authorities have merely indicated their subjective view without reference to objective factors which was absolutely necessary to determine the true character of the goods sold. Without materials on record it is not possible to say as to in which category the impugned goods sold would fall.
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> xxx xxx xxx
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> 8. The case would go back to the Tribunal which would find out the particular class in which the impugned goods fall. It would first of all call for affidavits from both the sides to indicate the nature of the goods sold and then call for further evidence, if necessary."

15. Reverting to the case in hand, it is said that, the present one is the audit assessment under OET Act, so necessarily there must have been an assessment under OVAT Act by the taxing authority. The assessing authority can very well ascertained from the return filed by the dealer and assessment under the OVAT Act, what was the classification of the goods as per the dealer and what was the classification of the goods accepted by the assessing authority in the assessment to which the dealer ultimately admitted. If the goods were treated as 'cattle feed' under the OVAT assessment, there should not be any hesitation to hold the goods as 'cattle feed' here in the OET assessment.

16. With the observation above, it is believed that, this is a fit case where the matter should be returned back to the assessing authority for assessment afresh. In the remand assessment, the assessing authority will peruse the periodical return, claim of the dealer regarding classification of the goods under OVAT assessment,

the audit assessment undertaken on the basis of self-same audit visit report and any other kinds of evidence if found required and then to decide whether 'chokad' and 'chunni' dealt by the dealer in the case in hand is to be treated as taxable goods i.e. cattle feed as per the schedule of the OET Act and thereafter the liability will fix accordingly.

In the result, it is ordered.

17. The appeal is allowed in part. The matter is remitted to the assessing authority for assessment afresh in the light of the observation hereinabove.

Dictated & corrected by me,

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

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