

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:  
CUTTACK**

**S.A. No. 1696 of 2004-05**

(Arising out of order of the learned ACST, Sundargarh Range,  
Rourkela in First Appeal No. AA- 8 (RL-II) /2004-05,  
disposed of on dated 02.08.2004)

Present: **Shri A.K. Das, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri S. Mishra, Accounts Member-II**

M/s. Hindustan Minerals,  
Main Road, Rajgangpur,  
Dist. Sundargarh ... Appellant

-Versus-

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

For the Appellant : N o n e  
For the Respondent : Sri D. Behura, S.C. (CT) &  
Sri S.K. Pradhan, Addl.SC (CT)

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Date of hearing: 04.05.2022 \*\*\* Date of order: 10.05.2022  
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**O R D E R**

Challenge has been made in this appeal to  
the order dated 02.08.2004 passed by the learned Asst.  
Commissioner of Sales Tax, Sundargarh Range, Rourkela  
(hereinafter called as 'first appellate authority') in Appeal No.  
AA- 8 (RL-II) of 2004-05 thereby confirming the order of  
assessment dated 17.02.2004 passed by the Sales Tax

Officer, Assessment Unit, Rajgangpur (in short, 'assessing authority') raising an extra demand of ₹2,62,896.00 for the year 2002-03 in the assessment framed u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

2. The relevant facts of the case leading to the filing of the present second appeal are that the dealer-M/s. Hindustan Minerals, Lanjiberna, Dist. Sundargarh having its Office at Rajgangpur is the owner of a stone crusher located within the mining premises of Lanjiberna Limestone Mines belonging to OCL (India) Ltd., Rajgangpur. The dealer purchased stone boulders from OCL (India) Ltd. and produced stone chips through mechanical process in crusher machine which is fit for sale in the commercial field to be used for all kind of construction purposes by the users. The dealer disclosed the GTO and TTO at ₹19,91,635.00 and nil respectively in its periodical return and claimed the entire sale as first point tax paid goods. The assessing authority in order to verify the correctness of the returns filed by the dealer-assessee issued notice u/s. 12(4) of the OST Act and in response to which, the dealer appeared and produced the books of account such as purchase & sale register, purchase & sale invoices and purchase & sale statements for verification. The assessing

authority on verification of the documents produced by the dealer found that it (dealer-Company) has got the status of SSI Unit under IPR, 1989 by registering with General Manager, DIC, Sundargarh vide PMT Regn. No. 15/1-01422 dtd. 26.02.1994 and it started commercial production on 04.10.1992. The Industrial Unit of the dealer-assessee availed sales tax concession on purchase of raw materials, i.e. boulders, and sale of finished products, i.e. stone chips as well for a period from 04.10.1992 to 31.07.1999, i.e. till the date of withdrawal of incentives by the Government in Finance Department Notification No. 33558-CTA-71/99-F. Dt. 30.07.1999. The assessments u/s. 12(4) of the OST Act for the assessment periods 1999-2000 and 2000-01 were completed on 29.12.2001 disallowing the claim of deduction on account of first point tax paid goods. Learned assessing authority on verification of the documents produced by the dealer-assessee raised an extra demand of ₹2,62,896.00 including surcharge of ₹23,900.00 holding that –

- (i) The dealer purchased rejected boulders from M/s. OCL (India) Ltd. on payment of usual rate of tax and such rejected boulders have not been notified to be taxed at the first point in the series of sale by successive dealers;

(ii) The dealer has received stone chips of 16,443.12 M3 crushing the rejected boulders and sold the same at a cost of ₹19,91,635.00;

(iii) It has not collected any tax from its buyers claiming that these goods are first point tax paid goods;

(iv) The boulders purchased by the dealer-assessee from OCL (India) Ltd. are not minerals and it does not come under entry No. 117 of List-C of the Rate Chart, which is meant for ores and minerals liable to be taxed at sale point and coming under first point tax paid list;

(v) The use of boulders and stone chips are different goods in the commercial filed, so the claim of sale of stone chips as first point tax paid goods is not sustainable in law; and

(vi) When the dealer purchased boulders on payment of 12% tax being unspecified goods, question of treating the same as minerals and levying tax @ 4% does not arise.

2(a). The dealer-assessee challenging the demand raised by the assessing authority rejecting its claim that boulders purchased by it were minerals and were first point tax paid goods, preferred appeal before the first appellate authority who also concurred with the finding of the assessing authority and dismissed the appeal. Therefore, the present second appeal has been filed by the dealer-assessee assailing the impugned orders of the forums below.

3. When the appeal was called on for hearing, none appeared on behalf of the dealer-assessee despite valid service of notice. This appeal being of the year 2004-05 and in the meantime seventeen years have passed in disposal of the appeal, this Tribunal decided to proceed with the hearing of the appeal *ex parte* in presence of the learned Standing Counsel (CT) for the State and in absence of the dealer-assessee.

4. Learned Standing Counsel (CT) for the State supporting the impugned orders of the forums below vehemently urged that there is no illegality or impropriety in the impugned orders of the forums below warranting interference of this Tribunal. The forums below on interpretation of the statutory provisions and appreciation of the judicial pronouncements of different Hon'ble High Courts have correctly held that the rejected boulders are not minerals and it being unspecified goods taxable @ 12%. He vehemently urged that the dealer-assessee knowing this fact has purchased the boulders from OCL (India) Ltd. on payment of 12% tax, therefore, it cannot now again claim that boulders purchased by it are minerals coming under entry No. 117 of the List-C. The dealer-assessee under misconception of law preferred present second appeal in

order to avoid payment of tax due to the Government. He submitted to dismiss the second appeal and confirm the orders of the forums below.

5. We have heard learned Standing Counsel (CT) for the revenue, gone through the grounds of appeal vis-a-vis the impugned orders of the forums below and the materials on record. The memorandum of appeal filed by the dealer-assessee transpires that it has challenged the orders of the forums below mainly on the ground that the forums below under misconception of law and erroneous interpretation of different provisions of statute illegally held the boulders as unspecified goods rejecting its claim that it was mineral and that the forums below also committed illegality in raising tax demand of ₹2,62,896.00 rejecting the claim of the dealer that the boulders purchased by it being first point tax paid goods, it was not liable to pay tax on sale of chips, gitti etc. On perusal of the impugned orders of the forums below, we find that the assessing authority raised extra demand of ₹2,62,896.00 holding the boulders as unspecified goods having not been defined in the statute as minerals, which was confirmed by the first appellate authority. The crux of the dispute, therefore, centres round on the question whether rejected boulders purchased by the

dealer-assessee from OCL (India) Ltd. are minerals coming under entry No. 117 of List-C of the Rate Chart and are first point tax paid goods.

6. Before answering the above question, we feel it expedient to narrate some undisputed facts. M/s. OCL (India) Ltd. operates dolomite/limestone mines for the purpose of extracting limestone, which is mineral and dolomite is a raw material for production of cement. Further for the purpose of quarrying of limestone, the upper crust of mines consisting of earth and boulders called as 'over burden' are removed/cleared so as to reach the mines bed. There is no dispute that quarrying of dolomite, limestone comes under mining activities for which the seller is required to get itself licensed with the Mining Department. The boulders so extracted are sold to different crusher units, who put up their stone crushing unit within the mining area and for that purpose they are required to obtain stone quarrying licence from the revenue authorities. In the present case, there is also no dispute that the dealer-assessee has established a crusher unit within the mining premises of OCL (India) Ltd., Rajgangpur and purchased stone boulders from OCL (India) Ltd. from which it produced stone chips through mechanical process in crusher

machine. The assessing authority taking note of definition of 'minerals' from different dictionaries and relying on the decision of Hon'ble Allahabad High Court in case of Commissioner of Sales Tax, U.P., Lucknow Vs. Ajanta Tiles, reported in 45 STC 454, came to the conclusion that stone boulders are not minerals. The first appellate authority without forming any independent opinion, concurred with the findings of the assessing authority. In our humble view the findings reached by the forums below that boulders are not minerals are not legally sustainable for the following reasons.

7. The word 'mineral' has not been defined anywhere in the OST Act, 1947 under which tax was levied and extra demand was raised. It is settled position of law that in absence of a statutory definition in precise terms; words, entries, items in taxing statute must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words, they have to be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. Resort to rigid interpretation in terms of scientific and technical meaning should be avoided in such circumstances. This, however, is by no means an absolute

rule. When the Legislature has expressed a contrary intention, such as by providing a statutory definition of the particular entry, word or item in specific, scientific or technical terms, then, interpretation ought to be in accordance with scientific and technical meaning and not according to common parlance understanding. The word 'mineral' having not been defined in the OST Act under which tax was levied, whether the word 'boulder' would come under entry No. 117 of List-C which is meant for ores and minerals is to be decided on applying the principle of common parlance. The stone boulders having been extracted by way of quarrying from the limestone mines, the same according to our humble view would come within the purview of minerals as mentioned under entry No. 117 of List-C. That apart, when the word 'mineral' has not been defined in the statute, we can borrow the definition of 'minerals' from Section 2(jj) of the Mines Act, 1952 and Section 3(e) of the Mines and Minerals (Development & Regulation) Act, 1957, which is quoted hereunder :-

“2(jj). “minerals” means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying, or by any other operation and includes mineral oils (which in turn include natural gas and petroleum):”

“3(e). “minor minerals” means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;”

8. It is clear from the word ‘minerals’ as defined in the aforesaid statute that boulders extracted by way of quarrying from limestone mines is nothing but minerals, which would come under entry No. 117 of List-C. The judgment on which the assessing authority placed reliance was not applicable to the facts and circumstances of the present case. In the said judgment, there was no dispute whether boulders were minerals or not. The dispute before the Hon’ble Allahabad High Court was whether dolomite was mineral or not and their Lordships’ taking note of the definition of ‘minerals’ in different dictionaries and interpreting the provisions of the U.P. Sales Tax Act came to the conclusion that dolomite was mineral and that decision cannot be applied to the present case to determine whether boulders are minerals nor not. It is pertinent to mention here that when the orders were passed by the forums below, the decision of our own Hon’ble High Court in case of **State of Orissa and others Vs. D.K. Construction and others,**

**reported in [2017] 100 VST 24 (Ori.)**, was not there. Therefore, the forums below on their own interpretation held that the boulders were not minerals and would not come under entry No. 117 of List-C of the Rate Chart. But after the decision of our Hon'ble High Court in case of D.K. Construction (supra), there is no dispute that boulders or chips are minerals. The Hon'ble Court in para-28 of the judgment observed as follows :-

“28. In the assessment order, the learned assessing officer admitted that the present opposite party in STREV No. 101 of 2011 has taken a quarry located at Basupali on lease from the Tahsildar, Balangir on payment of royalty and extracted the spalls from the quarry and then crushed same into ballasts as per the specification and then supplied to the railways. Of course, the learned assessing officer has mentioned that except payment of royalty, the ballasts supplied have not suffered any tax under the provisions of the Act. Even if it had not suffered from any tax, the fact remains that the ballasts have been extracted from the quarry if it had not suffered any tax, definitely it would be chargeable but question arises as to what is the rate of tax ? So, the conclusion of the learned assessing officer that since it had not suffered from payment of sales tax, it should be treated as entire sale exigible to 12 per cent of tax is not correct.”

9. Learned Standing Counsel (CT) for the revenue challenging the applicability of aforesaid decision to the facts and circumstances of the present case vehemently urged that in case of D.K. Construction *ibid*, the Hon'ble Court held the boulders are minerals, but in the present case the dealer-assessee purchased rejected boulders, which cannot be termed as minerals for the purpose of levying tax. Such contention raised by the learned Standing Counsel (CT) for the revenue, in our view, is absurd and vague. Boulders and rejected boulders are not two different commodities. Boulders and rejected boulders are obtained by mining operation, therefore, the claim of the dealer-assessee cannot be rejected on flimsy ground that it purchased rejected boulders and not boulders as contended by the learned counsel for the revenue. Now, the question arises whether boulders are minerals as per entry No. 117 of List-C of the Rate Chart, it would be first point tax paid goods. Learned Standing Counsel (CT) for the revenue did not dispute that minerals were first point tax paid goods as notified by the State Government. So, we hold that boulders are minerals and the same would be first point tax paid goods. The assessing authority rejected the claim of the dealer-assessee that boulders are first point tax paid goods

on the ground that in the process of manufacture, boulders lost its identity and new commodity, i.e. stone chips, came out as a different commercial commodity and added more value in the market and the use of boulders and stone chips are different goods in commercial field. This finding of the assessing authority, which is confirmed by the first appellate authority, was contrary to the view expressed by the Hon'ble Apex Court in the case of **Commissioner of Sales Tax, U.P. Vs. Lal Kunwa Stone Crusher (P) Ltd., reported in [2000] 118 STC 287 (SC)**. The Hon'ble Apex Court in para-5 of the judgment held that stone, as such, and gitti and articles of stones are all of similar nature though by size they may be different. Even if gitti, kankar, stone-ballast, etc. may all be looked upon as separate in commercial character from stone boulders offered for sale in the market, yet it cannot be presumed that entry 40 of the notification is intended to describe the same as not stone at all. The term 'stone' is wide enough to include the various forms such as gitti, kankar, stone-ballast. So, in view of such observation of the Hon'ble Apex Court, the view expressed by the assessing authority and confirmed by the first appellate authority that in the process of manufacture boulders lost its identity and new commodity, i.e. stone chips, came up as a different

commercial commodity is not sustainable in the eye of law. Hence, the impugned orders passed by both the forums below being contrary to the law laid down by the Hon'ble High Court in case of **D.K. Construction *ibid***, the same cannot be withstand the scrutiny of law and, therefore, liable to be set aside.

10. For the foregoing reasons, we are inclined to interfere with the impugned orders of the forums below. As a necessary corollary, the appeal is allowed, the impugned orders of the forums below are set aside and the assessment is reduced to the figures returned.

Dictated & Corrected by me

Sd/-  
(A.K. Das)  
Chairman

Sd/-  
(A.K. Das)  
Chairman

I agree,

Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(S. Mishra)  
Accounts Member-II