BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No.263 (V) of 2015-16

(Arising out of order of the learned Additional CST (Appeal),South Zone,
Berhampur in First Appeal Case No. AA-(VAT)-37/2013-14
disposed of on dated 28.08.2015)

Present: Shri R.K. Pattanaik, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member, and
Shri R.K. Pattnaik, Accounts Member-III

M/s. Gopal Agro Agency,
At/Po: Auto Nagar, Stage-I, Haladiapadar,
Ganjam. ... Appellant

-Versus-

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

For the Appellant : Sri B.B.Panda, Advocate
For the Respondent : Sri D.Behura, SC (CT)

Date of hearing: 10.11.2020 ***** Date of order: 13.01.2021

O R D E R

In so far as the instant appeal under Section 78(1) of the Odisha Value Added Tax Act, 2004 (in short, the 'Act') is concerned, it is at the behest of the dealer assessee which is directed against the impugned order dated 28.08.2015 promulgated in Appeal Case No. AA.(VAT) 37/2013-14 by the learned Additional Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, FAA), who confirmed the order of assessment dated 01.10.2013 in a proceeding under Section 42 of the Act for the tax period 01.04.2011 to 31.03.2013 passed by

the learned Deputy Commissioner of Sales Tax, Ganjam-II Circle, Berhampur, (in short, AA) raising demand of ₹1651413.00 including the penalty amount imposed under sub-section (5) thereof on the grounds inter alia it is bad in law and against the weight of evidence and materials on record and thus, liable to be set aside.

2. In fact, the dealer assessee is engaged in the business of manufacturing Trailers for Tractors inside the State of Odisha. It is made to reveal that, an audit inspection was held with respect to the dealer assessee for the alleged tax period and audit visit report was submitted to initiate assessment in terms of Section 42 of the Act, consequent upon which, notice in Form VAT-306 was served to cause production of books of account for necessary examination. In response to the above, the dealer assessee produced the accounts and all other documents. The AA noticed that the dealer assessee did not maintain any stock register towards purchase of raw materials and its finished products. In course of the assessment, the discrepancies pointed out in the audit report were confronted to the dealer assessee. It was alleged that the dealer assessee purchased tyres and tubes and utilised it for the Trailers sold @4% or 5% tax as against the fact that as automobile tyres and tubes, it constitutes a separate taxable entry. According to the audit visit report, the tyres and tubes could not be treated as spare parts. As per the audit report, during the year 2011-12 and 2012-13, the dealer assessee availed ITC on the purchase of tyres and tubes and at the time of sale of Trailers, charged tax @4% and 5% treating the same as agricultural implements, the fact which was confronted during the assessment which was

responded with an explanation that the tyres and tubes have been sold at lower rate of tax as manufactured items of agricultural implements @4% and 5% instead of 13.5%, which did not find favour with the AA and ultimately, additional demand of ₹1651413.00 was raised. The dealer assessee being unsuccessful approached the FAA, who, however, dismissed the appeal with the conclusion that it is liable to pay VAT @13.5% on the sale value of tyres and tubes utilised in Trailers meant for the Tractors. According to the dealer assessee, the tyres and tubes are, indeed, the components of agricultural implements, such as, the Trailers which are attached to Tractors and therefore, accordingly, taxed @4% and 5%. In other words, as per the interpretation of the dealer assessee, the tyres and tubes are components of Trailers which are agricultural implements and hence, it charged tax @4% for 2011-12 and 5% for 2012-13 and, thus, it would be an illegality to demand VAT @13.5% on its sale value as has been directed by the FAA confirming the assessment order dated 01.10.2013..

3. The pertinent question is, whether, on the sale value of tyres and tubes, VAT @13.5% is to be charged as against the claim of the dealer assessee, who is said to have utilised it as raw materials of the Trailers? The learned counsel for the dealer assessee's contention is that a registration certificate has been issued under the Act authorising them to purchase goods directly used in the manufacture of Trailers is clearly discernible from the certificate at Annexure-A to the written note of submission. It is also contended that at Column No.4 of the R.C. under the head 'raw material' as item No.1, automobile tyres and tubes have

been mentioned and the dealer assessee is authorised to manufacture and sale the finished goods i.e. Trailers for Tractors. Under the above circumstances, with reference to the Trade Certificate and other documents, such as, Test Report of Tractor Trailer and bunch of invoices besides an undertaking submitted by a beneficiary, who purchased a Tractor Trailer and availed subsidy from the Agricultural Department, it is contended that the tyres and tubes since are used as the components of the Trailers, rightly tax @4% and 5%, as the case may be, were charged. The State opposed it and justified the conclusion of the authorities below that the tyres and tubes ought to be tax independently @13.5%

4. Admittedly, from Annexure-A, it is made to understand that automobile tyres and tubes have been classified as raw materials in the manufacture of the finished goods i.e. Trailers for Tractors. Now, the point is, if at all, the tyres and tubes purchased @13.5% tax were to be separately charged at the same rate instead of being passed off as raw materials, while selling the Trailers at 4% and 5% tax for 2011-12 and 2012-13?

5. It is claimed that the dealer assessee is selling Trailers on obtaining Trade Certificate from the Transport Authority as per Rule 35(1) of the OMV Rules w.e.f.10.11.2005 within the State of Odisha. The learned Counsel for the dealer assessee highlighted upon the statutory obligation required in terms of Section 58(2) of the MV Act and application of Section 61 thereof which demand that the Trailers are required to be qualified for the purpose of registration. The copies of Trade Certificate and Test Report certified by OUAT, Bhubaneswar at

Annexure-B&C have been produced by the dealer assessee, while claiming the Trailers as agricultural implements. It is also contended that there has been no breach of Rule 68(1) f of the OVAT Rules at the time of sale of Trailers mentioning in detail all the particulars, such as, description, quantity, volume and value of goods sold with the amount of tax charged thereon indicating separately in the invoices as at Annexure-D.

6. An analogy is sought to be made referring to the definition of 'capital goods' which received a wide meaning by including components and spare parts vide Finance Department Notification No.27252-CTA-11/07(SRO No.248/2008) dated 28.05.2008 and it is contended that unfortunately such is not the case here. Said argument, according to the Tribunal, is clearly unacceptable. Indeed, the contention of the dealer assessee is that the tyres and tubes, since are one of the components used in the manufacture of Trailers could not have been separately and independently taxed @13.5%. In this regard, a decision of the Hon'ble Bombay High Court in the case of Commissioner of Sales Tax Vrs. Acme Mfg. Company Ltd. reported in (1990) 78 STC 79 (Bombay) is cited by the learned Counsel for the dealer assessee, wherein, components are held to be items or parts which are used in the manufacture of final products and without which such products cannot be conceived of, whereas, spare parts stood described as such components which in course of use, wear and tear out frequently and therefore, kept in readiness for use, as and when necessary, while making a reference to its lexicological meaning attributed in the Shorter Oxford English Dictionary. In the

instant case, the tyres and tubes have been used as raw materials in the manufacture of Trailers which are claimed as agricultural implements taxable @4% as per Part-II Schedule-B of the Act. As is normally understood, there are different types of agricultural implements and Trailers of Tractors are one of such kind. That apart, the tyres and tubes even though did not fall in the category of spare parts but are certainly components which are used in the manufacture of Trailers. It is not that the dealer assessee sold the tyres and tubes separately but used it in the manufacture of Trailers. That apart, it can also be classified as components of the Trailers though not as spare parts. But, the fact of the matter is, the tyres and tubes have been used in the Trailers which are normally used as agricultural implements. Having said that, the Tribunal is of the considered view that the authorities below could not have levied VAT @13.5% on the sale value of tyres and tubes utilised in the Trailers. It is further highlighted upon the fact that input tax calculation mechanism is prescribed in Rule 11 of the OVAT Rules but as such, there is no provision available for adjustment of higher input tax as against the lower rate of output tax paid. Considering the totality of the circumstances and the claim of the dealer assessee, the Tribunal arrives at an inescapable conclusion that the tyres and tubes since as components have been used in the Trailers without which its manufacture cannot be conceived of and for the fact that, the Trailers are agricultural implements, rightly tax @4% and 5% for the year 2011-12 and 2012-13 have been charged. In other words, the authorities below,

for that matter, could not have made the dealer assessee liable to pay VAT @13.5% on the sale value of tyres and tubes utilised in the Trailers of Tractors.

7. Hence, it is ordered.

8. In the result, the appeal stands allowed. As a necessary corollary, the impugned order dated 28.08.2015 promulgated in Appeal Case No. AA-(VAT)-37/2013-14 for the period under assessment vis-a-vis the dealer assessee is hereby set aside. Consequently, the AA is directed to undertake recomputation as to the tax liability of the dealer assessee for the period under assessment in the light of the observations made herein above and to complete the exercise preferably within a period of three months from the date of receipt of the above order.

Dictated & Corrected by me

(R.K. Pattanaik)
Chairman

(R.K. Pattanaik)
Chairman

I agree,

(A.K.Dalbehera)
1st Judicial Member

I agree

(R.K. Pattnaik)
Accounts Member-III