

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

S.A. No. 152 (ET) of 2008-09

(Arising out of order of the learned ACST, Balasore Range,
Balasore in First Appeal Case No. AA. 75/BA/2007-08 (ET),
disposed of on dated 15.04.2008)

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

M/s. Shree Annapurna Conductors Ltd.,
At- Banaparia, PO- Kuruda, Dist. Balasore ... Appellant

-Versus-

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

For the Appellant : Sri Mukesh Agarwal, Advocate
For the Respondent : Sri M.S. Raman, Additional S.C. (CT)

Date of hearing: 16.06.2020 ***** Date of order: 06.07.2020

ORDER

Impugned order dated 15.04.2008 in Appeal No. AA- 75/BA/2007-08 (ET) by the learned Assistant Commissioner of Sales Tax, Balasore Range, Balasore (in short, 'FAA') is under attack in the instant appeal under Section 17(1) of the Odisha Entry Tax Act, 1999 (in short, 'the Act') for having confirmed the assessment order dated 31.03.2007 directed by the learned Sales Tax Officer, Balasore Circle, Balasore (in short, 'AA') which is with respect to applicability of rate of tax vis-a-vis

sale of aluminium wires for the year 2003-04 on the sole ground that taxing @ 1% concessional rate instead of 0.5% and placing it under Entry 2 of Part-II of the Schedule is wholly unjustified.

2. The assessment order dated 31.03.2007 appertains to purchase of raw materials, sale of PVC cables and aluminium wires and its taxability at different rates against which the appeal was carried before the FAA confining the challenge to the aluminium wires and in applying the tax rate. According to the appellant, the aluminium wires fall in the category of Entry 11, Part-I instead of Entry 2, Part-II of the Schedule and to that extent, the assessment is to be corrected. However, the FAA rejected the said claim of the appellant and confirmed the finding to the effect that the aluminium wires are to be treated as a commodity that falls under Entry 2, Part-II of the Schedule. In the view of the FAA, the appellant sold the aluminium wires for the manufacture of conductors/cables and thus, exigible to tax @ 2% and therefore, the tax liability stands @ 1% i.e. fifty percentum of actual rate. The aforesaid contention of the appellant is reiterated before the Tribunal. In other words, as per the appellant, such commodity ought to have been categorized under Entry 11, Part-I of the Schedule as there remain no distinction between aluminium wires and rods or sheets. It is further claimed that under said category, the rate of tax was to be levied but the authorities below treated it to be a commodity under Entry 2, Part-II of the Schedule, which is completely erroneous, considering the fact that aluminium wires and rods are one and the same goods

and accordingly to be made taxable and not to be treated as an item under Part-II for being sold as a raw material in the manufacturing of conductors/cables.

3. Respondent's stand is that there is no wrong or illegality in the assessment, inasmuch as, the appellant has been found to have sold the aluminium wires to the dealers, who are in the manufacture of conductors/ cables and correctly under the relevant entry, the concessional rate of tax has been demanded. According to the respondent State, aluminium wires do not find a place in Part-I and it cannot be equated to aluminium rods, or sheets. That apart, the respondent claim that since the commodity has been sold to the manufacturing units, in absence of a specific entry in Part-I, one has to fall back upon Entry 2 of Part-II of the Schedule. On the above ground, the impugned order dated 15.04.2008 which confirmed the assessment dated 31.03.2007 has been justified by the respondent calling upon the Tribunal not to interfere with it.

4. The learned Counsel for the appellant citing an order dated 29.05.2020 of the Tribunal in S.A. Nos. 346 (ET) & 347 (ET) of 2005-06 contended that already an opinion is formed to the effect that aluminium wires alike rods and sheets fall in the category under Entry 11, Part-I and not Entry 2, Part-II and it is simply to be applied to have a consistent view on the subject. The learned Additional Standing Counsel (CT) for the respondent State fairly conceded that such a view that the aluminium wires falls in the category of Entry 11, Part-I of the Schedule has been expressed by the Tribunal in the order (supra) concerning the

self same parties. It is further contended that if the same opinion is formed in the instant case, then the impugned order dated 15.04.2008 is accordingly to be modified.

5. It is also apprised by the appellant that there has been a change in opinion for the fact that in respect of the same goods tax was levied as a commodity under Entry 11, Part-I of the Schedule which corresponds to the original order of assessment under Section 7(1) of the Act corresponding to the years 2001-02 and 2002-03. It is lastly contended that once a rate has previously been applied by treating the aluminium wires as falling under Entry 11, Part-I of the Schedule, the AA could not have had a changed opinion in that respect which is absolutely incomprehensible. The respondent State as usual claim that it cannot be scheduled goods under Part-I, but falls under Entry 2, Part-II of the Schedule, since the aluminium wires have been sold to manufacturing units. Now, the question is, whether aluminium wires would have to be treated as scheduled goods under Entry 11, Part-II or Entry 2, Part-II of the Schedule?

6. It depends on the classification of the scheduled goods. As informed by the appellant, a similar question had earlier been considered by the Tribunal involving the same parties and a view stands expressed i.e. in S.A. Nos. 346 (ET) & 347 (ET) of 2005-06 for the assessment years 2001-02 and 2002-03. The learned Counsel for the appellant passed on a copy of the said order dated 29.05.2020 of the Tribunal and urged that the present appeal may perhaps be

disposed of in the same line. In fact, the Tribunal had an occasion to consider such a question regarding the taxability of scheduled goods involving the same parties, wherein, a view has been expressed that the commodity which is no different from aluminium rods, sheets falls under Entry 11, Part-I of the Schedule and while arriving at such a conclusion, the respondent State's contention that the aluminium wires having been sold to manufacturing units and thus, it falls under Entry 2, Part-II of the Schedule was outrightly rejected. In other words, the Tribunal was clear in its view that aluminium wires are no less different from the scheduled goods appearing in Entry 11, Part-I and it cannot be taxed as an item under Entry 2, Part-II of the Schedule for being sold as raw material to the manufacturing units. The user theory was duly considered and discarded by the Tribunal and in the cases (supra), the ultimate conclusion was that aluminium wires find a specific place in Part-I under Entry 11 and therefore, not to be treated as scheduled goods disposed of as a raw material to the manufacturing units so as to fall under Entry 2, Part-II of the Schedule. In view of the above, the Tribunal, in order to maintain discipline and judicial propriety and to have a consistent view on the subject matter, considers it appropriate to reiterate the opinion which it has already formed in S.A. Nos. 346 (ET) & 347 (ET) of 2005-06 and thus, therefore, arrives at a logical conclusion that the impugned order dated 15.04.2008 with respect to the sale of aluminium wires and the rate of tax shall have to be modified, accordingly.

7. Hence, it is ordered.

8. In the result, the appeal stands allowed. As a corollary, the impugned order dated 15.04.2008 in First Appeal Case No. AA. 75/BA/2007-08 (ET) is hereby set aside to the extent indicated above. Consequently, the AA is directed to consider the recomputation vis-a-vis the tax liability of the appellant for the assessment year 2003-04 on receipt of a copy of the above order.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree,

Sd/-
(A.K.Dalbehera)
1st Judicial Member

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III