BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. Nos. 1407 & 1408 of 2005-06

(Arising out of order of the learned ACST, Balasore Range, Balasore in First Appeal Case Nos. AA- 411 & 412/BA-2003-04, disposed of on dated 30.05.2005)

Present: **Shri A.K. Das, Chairman**
Smt. Sweta Mishra, 2nd Judicial Member
&
Shri S. Mishra, Accounts Member-II

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

-Versus-

M/s. Ceeta Industries (Polymer) (P) Ltd., Ganeswarpur, Balasore ... Respondent

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

Date of hearing: 02.11.2021 *** Date of order: 08.11.2021

O R D E R

Both the appeals are heard analogously and disposed of by this common order as both the cases involve common question of fact and law.

2. These two appeals are directed at the instance of the State against the common order dated 30.05.2005 passed by the Asst. Commissioner of Sales Tax, Balasore Range, Balasore (hereinafter called as 'first

appellate authority') in Appeal Case Nos. AA- 411 & 412/BA-2003-04 annulling the orders of assessment dated 24.10.2002 passed by the Sales Tax Officer, Balasore Circle, Balasore (in short, 'assessing authority') raising tax demands of ₹20,47,843.00 for the assessment year 1988-89 and ₹21,43,598.00 for the assessment year 1989-90 under Section 12(8) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

3. The short facts relevant for adjudication of the present appeals are that the dealer-respondent carries on business in manufacture and sale of HDPE/PP fabrics at Ganeswarpur, Balasore in the name and style 'M/s. Ceeta Industries Ltd.' duly registered under the OST Act. Pursuant to the direction of the Hon'ble High Court of Orissa passed in O.J.C. Nos. 2722 & 2732 of 1996 on 31.01.2002, notice was issued to the assessee for reassessment and in pursuance of such notice, the dealer-respondent appeared through learned Advocate Sri M.P. Jena and claimed for tax exemption in view of entry No. 22 of List-A of goods exempted from OST. The assessing authority negatived the claim of the dealer-respondent holding that HDPE/PP fabrics are not exempted under entry No.22 of the list of goods exempted from OST and confirmed the earlier orders

of assessment raising tax demands of ₹20,47,843.00 for the year 1988-89 and ₹21,43,598.00 for the year 1989-90.

3(a). The dealer-respondent being aggrieved with the said findings of the assessing authority preferred appeals before the first appellate authority who vide order dated 30.05.2005 annulled both the assessment orders holding that HDPE/PP fabrics are artificial silk and come under entry No.22 of the list of goods exempted from OST. The State being aggrieved with the findings of the first appellate authority has preferred the present second appeals.

4. When the matter was called on for hearing, none appeared on behalf of the dealer-respondent inspite of valid service of notice. So, both the appeals were taken up for exparte hearing in the presence of the learned Standing Counsel (CT) representing the State.

5. It was vehemently urged by the learned Standing Counsel (CT) for the State that the first appellate authority illegally allowed the claim of the dealer-respondent for tax exemption on HDPE/PP fabrics in view of entry No.22 of the list of goods exempted from OST. HDPE/PP fabrics being made of plastic, it does not come under any of the category enumerated in entry No. 22 of the list of goods

exempted from OST. Therefore, the dealer-respondent is not entitled to tax exemption on those goods. It was further argued that this Tribunal in S.A. No. 1284 of 2007-08 in similar facts and circumstances held that HDPE/PP fabrics being plastic goods exigible to sales tax. The appellate forum illegally took note of the judgment of this Tribunal passed in S.A. Nos. 1604 & 1605 of 1990-91 ignoring the decision of the Hon'ble High Court of Orissa in the case of M/s. Soosree Plastic Industry (P) Ltd. and others Vs. Union of India (O.J.C. No. 1755/1988 & others). Therefore, the earlier decision of this Tribunal passed in S.A. Nos. 1604 & 1605 of 1990-91 is not binding on the later bench. He submitted to allow both the appeals and set aside the orders passed by the forum below holding HDPE/PP fabrics as exempted goods.

6. The only dispute in the present cases is whether HDPE/PP fabrics are artificial silk as held by the first appellate authority and coming under entry No. 22 of the list of goods exempted from OST. Before addressing the issue involved in the present appeals, it would be profitable to take note of entry No. 22 of the list of goods exempted from OST.

"22. Millmade fabrics wholly or partly of cotton, staple fibre, rayon, artificial silk or wool including processed fabrics made in the processing mills and as described in Col.3 of the first Schedule to Addl. Duties of Excise (Goods of Special Importance) Act, 1957."

Entry No.22 makes it clear that a commodity in order to be tax free under this category must be –

(a) a fabric;

(b) must be a mill-made fabric;

(c) partly or wholly of –

(i) cotton, or

(ii) staple fibre, or

(iii) rayon, or

(iv) artificial silk, or

(v) wool;

(d) processed fabrics made in processing mills, and having one of the above five goods as raw material in part or in whole; and

(e) fabrics as described in Col.3 of the first schedule to Addl. Duties of Excise (Goods of Special Importance) Act, 1957.

'Fabric' as defined in Chamber's English Dictionary means the act of constructing texture, anything framed by art and labour, a building, stonework etc.,

manufactured cloth, any system of connected parts. 'Cloth' means a woven material from which garment or coverings are made.

7. On close reading of entry No. 22 of the list of goods exempted from OST, we find that there is no mention of HDPE/PP fabrics. It reveals from the impugned order of the first appellate authority that it, relying on judgment of this Tribunal passed in S.A. No.1167 of 2000-2001, came to the conclusion that HDPE/PP fabrics are artificial silk and accordingly treated the same as tax free vide entry No. 22 of the list of goods exempted from OST.

8. On going through the order passed in S.A. No. 1167 of 2000-01 on which the dealer-respondent relied upon, we find that this Tribunal held HDPE/PP fabrics as artificial silk basing on the judgment of the **Hon'ble Madras High Court in case of State of Tamil Nadu Vs. Polyweb Pvt. Ltd. reported in 51 STC 364 and judgment of the Hon'ble Allahabad High Court in case of Commissioner of Sales Tax, U.P., Lucknow Vs. Kanpur Plastics reported in 57 STC 188 and another Full Bench decision passed in S.A. No. 1604-1605 of 1990-91.** The earlier Bench of this Tribunal did not accept the judgment dated 28.08.1992 rendered in case of M/s. Soosree Plastic Industry (P) Ltd.

(O.J.C. No. 1755 of 1988). On perusal of the judgment passed by the Hon'ble Court in case of M/s. Soosree Plastic Industry (P) Ltd., we find that the Hon'ble Court took note of judgment of Apex Court and the judgments rendered by the Special Bench of CEGAT wherein it was held that HDPE fibre having been made of plastic would not be treated as textile and came to the conclusion that fabrics made of plastic would not be textile goods. In our view, the judgment of our own High Court in M/s. Soosree Plastic Industry (P) Ltd. (supra) though was rendered in different facts and circumstances, the observations made therein that the HDPE/PP fabrics being made of plastic is not textile would be applicable to the facts and circumstances of the present cases. HDPE/PP fabrics neither have been mentioned in entry No.22 of the list of goods exempted from OST nor have been mentioned in Col.3 of the first schedule to Addl. Duties of Excise (Goods of Special Importance) Act, 1957. Moreover, in a recent judgment in S.A. No. 1284 of 2007-08 in case of M/s. Hena Poly Products (P) Ltd., Januganj, Balasore Vs. State of Odisha, this Tribunal came to the categorical conclusion that HDPE/PP fabrics are plastic goods which is exigible to sales tax which has not yet been challenged or set-aside. In the earlier order of this Tribunal relied upon by

the first appellate authority, Col.3 of the first schedule to Addl. Duties of Excise (Goods of Special Importance) Act, 1957 was not discussed or taken note of and the judgment of our own High Court was held to be not applicable because of different facts and circumstances.

9. It is pertinent to mention here that as per the Finance Department Notification No. 14687-CTA-37/2001 (pt)-F (SRO No. 149/2001) dated 31.03.2001 (w.e.f. 01.04.2001) and No. 1686-CTA-37/2001 (pt)-F (SRO No. 16/2002) dated 09.02.2002 (w.e.f. 01.03.2002), HDPE fabrics (the disputed commodity in the present appeals) come under the entry at Sl. No. 136 of List-C of OST Rate Chart. Since from 01.04.2001 “plastic goods” are being placed under taxable list which also got substituted by way of clarificatory notification w.e.f. 01.03.2002 to include “HDPE woven fabric”. Moreover a sample of goods in question is available on record, which cannot be termed as artificial silk on any angle. The claim of the dealer-respondent to classify it under entry No.22 of the list of goods exempted from OST is without any basis and is not legally sustainable.

10. In view of the discussions made above, we are of the unanimous view that HDPE/PP fabrics do not

come under entry No. 22 of the list of goods exempted from OST and the dealer-respondent is not entitled to tax exemption on those goods. The impugned order passed by the first appellate authority holding HDPE/PP fabrics as tax free goods is erroneous, illegal and unsustainable in the eye of law. Accordingly, the impugned order of the first appellate authority is hereby set aside and the orders of the assessing authority for the assessment periods under challenge are upheld. Hence, the second appeals are allowed. Cross-objection filed in S.A. No. 1407 of 2005-06 is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(Sweta Mishra)
2nd Judicial Member

I agree,

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