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

S.A. No. 67(ET) of 2018

(Arising out of the order of the learned JCST (Appeal), Sambalpur Range, Sambalpur, in First Appeal Case No. AA 21/JSG/ET/2015-16, disposed of on dtd.29.01.2018)

P r e s e n t: **Shri A.K. Dalbehera, O.S.J.S. M.A., LL.M. 1st Judicial Member**

M/s. Fromm Packaging Systems India Pvt. Ltd., Duplex Building, B/20, Vasant Vihar, Badmal, Jharsuguda. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. N.K. Panda, Advocate
For the Respondent ... Mr. M.L. Agarwal, S.C.

Date of hearing: 28.11.2019 ******** Date of order: 19.12.2019

O R D E R

This appeal is directed against the order dtd.29.01.2018 passed by the learned Joint Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (hereinafter referred to as, the learned JCST) in First Appeal Case No. AA 21/JSG/ET/2015-16, wherein the learned JCST confirmed the order of the learned Deputy Commissioner of Sales Tax, Jharsuguda Circle, Jharsuguda (hereinafter referred to as, the learned DCST) u/s.9C of the Odisha Entry Tax, 1999 (hereinafter referred to as, the OET Act) relating to the period 01.04.2012 to 31.03.2014.

2. The brief facts of the case are that, the appellant-dealer deals in trading of HDPE, LDPE, plastic goods, steel scrap, seal (steel & plastic), stretch film, steel strapping tools/machine, pet strap, wool, PVC, stickers, bubble guard and other packing materials by purchasing goods both in course of interstate trade and intrastate and by way of stock transfer. Upon receiving Audit Visit Report (in short, the AVR), the learned DCST initiated the assessment proceeding u/s.9C of the OET Act and issued notice to the appellant-dealer for production of the books of account. Accordingly, the authorized representative of the appellant-dealer along with the learned Advocate appeared and produced the books of account for verification. It is alleged in the AVR that, the appellant-dealer had procured pneumatic tools, their spare parts, strap tools, spare of strap tools and spare of machine and tools worth Rs.48,92,232.00. After addition of transportation charges along with the ancillary expenses @ 5% the total purchase of scheduled goods was calculated at Rs.51,36,844.00 on which Entry Tax @ 1% came to Rs.51,368.00 as per Sl. No.3 Part-I of the Schedule under the OET Act. The learned DCST found that wooden runner is the size wood/sawn used in the packing goods which falls under the 'timber' which is taxable @ 1% as per Sl. No.41 of Part-I of the schedule under the Entry Tax Act. Thus, the learned DCST during assessment calculated the total entry tax at Rs.16,99,894.00. As the appellant-dealer had paid Entry Tax to the tune of Rs.14,12,725.00, the learned DCST calculated the balance Entry Tax of Rs.2,87,169.00 and a penalty of Rs.5,74,338.00 was also imposed on the appellant-dealer u/s.9C(5) of the OET Act. Thus, the total tax and penalty were together calculated at Rs.8,61,507.00 against the appellant-dealer. Being aggrieved by such order of the learned DCST, the appellant-dealer had preferred appeal before the learned JCST and the first appeal failed where the order of assessment of the learned DCST was confirmed.

3. The appellant-dealer preferred this second appeal on the grounds that the order passed by the learned JCST is wrong and illegal. The pneumatic tools and wooden runner are not scheduled goods under OET Act. During the audit visit, the audit team has not stated anything about the wooden runner. Hence, the learned JCST and learned DCST travelled beyond the audit report by taxing wooden runner. The value of scheduled and non-scheduled goods including transportation, insurance, loading and unloading during the period comes to Rs.18,34,69,722.00 and out of this pneumatic tools is for Rs.40,31,543.00 and wooden runner is for Rs.2,02,57,644.00 which are not stated in the list of scheduled goods of OET Act. It was further submitted in the grounds of appeal that, the dealer is liable only for scheduled goods of Rs.13,91,90,718.00 for which he has paid Rs.13,99,373.00. The learned DCST has wrongly taken the value of pneumatic tools as Rs.48,92,232.00 which should be for Rs.40,31,543.00. The commodities on which tax is demanded are not stated in the schedule of goods under the OET Act but on erroneous interpretation of word tax is demanded. So, penalty should not be imposed u/s.9C(5) of the OET Act. The excess payment of OET of Rs.13,352.00 should be refunded to the appellant-dealer as stated in the grounds of appeal.

4. The Revenue has filed cross objection. As per the cross objection, the grounds raised in the appeal petition being erroneous, unreasonable, unfair and misconceived are liable to be dismissed in toto. The learned DCST has determined the tax liability basing on AVR and books of account produced in the course of assessment proceeding and confrontation with the appellant-dealer. The observation of the learned JCST in 2nd paragraph of page-3 clearly reveals that, after confrontation of the authorized representative he stated that the prescribed tools are those equipments, instruments or machines which are operated by compressed air or vacuum. Thus,

pneumatic tools fall under Part-II of the schedule of Entry Tax vide Sl. No.9 and accordingly the calculation @ 2% of OET is made on Rs.48,92,232.00. Secondly, pneumatic tools are nothing but machinery and spare parts as per Entry No.9 of Schedule-II of OET Act. The wooden runner as observed by the authorities is size wood/sawn used in packing of goods and it falls under the head 'timber' and rightly taxed @ 1% as per Sl. No.41 of Part-I of OET Act. The grounds of appeal are without any legal sanctity as stated in the cross objection.

5. In this case it is seen that, the appellant-dealer carries on business in trading of HDPE, LDPE, plastic goods, steel scraps etc. and also deals in packing of finished products on different manufacturing units. In the AVR it was pointed out that the appellant-dealer has not paid Entry Tax on entry of scheduled goods i.e. pneumatic tools and their spare parts and wooden runner which have been received by way of branch transfer from outside the State of Odisha. The learned DCST after due notice and hearing the appellant-dealer and after assigning reasons taxed pneumatic tools and their spare parts worth Rs.48,92,232.00 @ 2% under Entry-9 of Part-II of the schedule and taxed wooden runner worth Rs.2,02,67,642.00 under Sl. No.41 of Part-I of the schedule, thus raising the tax demand of Rs.2,87,169.00 and imposing penalty of twice the tax amount u/s.9C(5) of the OET Act at Rs.5,74,338.00 totaling to Rs.8,61,507.00. It is not out of place to mention here that, the pneumatic tools and their spare parts are scheduled goods which squarely fall within the scope of Entry-9 of Part-II and Sl. No.41 of Part-I. As per the preamble and charging Section 3 of the Act levy of Entry Tax is on entry of scheduled goods into the local area. The catalogue given by the appellant-dealer vide Annexure-1 clearly proves that the items fall under Entry-9 of Part-II of the schedule. The said entry is generic in nature and the goods squarely fall within the ambit of the said entry.

The Hon'ble High Court of Orissa in case of Orissa Agro Industries Corporation Ltd. v. State of Orissa (1993) 90 STC 571 (Ori.) have explained the word 'machinery' and it has been held by the Hon'ble Court that the word 'machinery' can be stated to be an instrument designed to transmit and modify the application of power, force and motion. Thus, machinery in generic sense would include all appliances and instruments whereby energy or force is transmitted and transformed from one point to another. Machinery implies the application of mechanical means to the attainment of some particular end by the help of natural forces and includes everything which by its action produces or assists in production. As per the Oxford Dictionary equipment means the necessary articles, etc., for a purpose, the process of being equipped and the meaning of 'equip' is to 'supply with what is needed'. In Black's Law Dictionary the term equipment has been explained as a 'whatever is needed in quipping: the articles comprised in an outfit; equippage'. The Hon'ble Apex Court in the case of State of Kerala v. Father Willams Fernadez (2018) 57 GSTR 6 (SC) upheld the judgment of the Hon'ble High Court of Orissa rendered in Tata Steel Ltd. v. State of Orissa (2013) 57 VST 484 (Ori.) at para 134 to 139 & para 144 of the reports that plant imported in known down condition is fully covered within the definition of machinery and equipment under Part-II of the schedule of the OET Act. The principle laid down squarely applies to the facts of the case in hand.

6. The term wooden runner are scheduled goods which squarely fall within Sl. No.41 of Part-I of the taxable schedule as it comes within the purview of timber. The learned DCST relied upon the judgment rendered in 32 STC 309 and 83 STC 338 which is squarely applicable to the present case. The Hon'ble Apex Court in the case of State of Orissa v. Titlagarh Paper Mills Co. Ltd. (1985) 60 STC 213 (SC) held that timber and sized and dressed logs are one and the same commodity. Logs are nothing more than wood cut-up or sawn and

would be timber. Planks, beams and rafters would also be timber. In view of such decision of the Hon'ble Apex Court the wooden runners are scheduled goods.

7. The determination of value of goods has to be taken as per the market value/sale value for determination of taxable turnover as per the proviso to Section 2(j) of the OET Act as the goods have been brought into the local area otherwise than by way of purchase. Therefore, the stand of the appellant-dealer with regard to valuation of goods is not tenable. During the course of hearing, the appellant-dealer admitted that the insurance charges, freight and other charges have not been included by the appellant-dealer. Thus, the learned DCST have added such charges as declared by the appellant-dealer to derive the purchase value of the goods and accordingly taxed the same. There is no argument on the issue of penalty by the appellant-dealer. However, the imposition of penalty by the learned DCST is legal which is in accordance with law.

8. In view of such findings and analysis, I hold that the second appeal preferred by the appellant-dealer has no merit at all and is liable to be dismissed. Hence, it is ordered.

9. The appeal being devoid of merit is dismissed on contest.

Dictated & corrected by me,

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

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