BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 59 (ET) of 2018

(Arising out of order of the learned Additional CST (Appeal), North Zone, Odisha, Sambalpur in Appeal Case No. AA - RL41 (E)/2015-16 disposed of on dated 30.01.2018)

Present: Shri R.K. Pattanaik, Chairman

M/s. Time Steels & Power Ltd.,
Plot No.98, Industrial Estate, Kalunga ... Appellant

-Versus-

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

For the Appellant : Sri S.C. Agarwal, Advocate
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 21.01.2021 ***** Date of order: 09.02.2021

O R D E R

Instant appeal under Section 17(1) of the Odisha Entry Tax Act, 1999 (hereinafter referred to as 'the Act') is at the behest of the dealer assessee assailing the impugned order dated 30.01.2018 promulgated in Appeal Case No. AA- RL41 (E)/2015-16 by the learned Additional Commissioner of Sales Tax (Appeal), North Zone, Odisha, Sambalpur (in short, 'FAA'), who allowed its claim in part vis-a-vis assessment dated 30.01.2016 passed under Section 9C of the Act by the learned Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (hence called, 'AA') for the tax period from 01.04.2012 to 31.03.2014 on the grounds inter

alia that the same is bad in law and thus, liable to be set aside to the extent alleged.

2. The dealer assessee is, in fact, engaged in manufacturing and selling of sponge iron by utilizing different kinds of raw materials and also involved in trading of sponge iron besides having integrated crusher units within its factory premises to produce sized iron used as raw material in the production of sponge iron. It is made to understand that an audit was held and completed which led to submission of the Audit Visit Report (AVR) indicating therein certain discrepancies in the tax compliance by the dealer assessee, who was, accordingly, served with a notice to explain the position with production of books of accounts and other documents. The AA considering the books of accounts and other materials finally reached at a decision that the dealer assessee is liable to pay entry tax of ₹4,45,968.00 and levied interest and penalty thereon and demanded a sum of ₹14,32,327.00. The dealer assessee disputed the alleged claim and approached the FAA in appeal contending that levy of entry tax @ 1% on coal fines is not sustainable and also challenged the imposition of interest and penalty. The FAA deleted the interest but upheld the additional demand with the penalty and concluded that the dealer assessee is to pay ₹9,44,817.00 instead. Thus, the assessment was reduced from ₹14,32,327.00 with the deletion of interest. Further being dissatisfied, the dealer assessee has preferred the present appeal and not only challenged the decision of the authorities below in demanding entry tax on coal fines, but also, as an additional ground claimed that the differential entry tax

to the tune of ₹48,309.00 along with interest of ₹9,600.00 albeit paid on 04.02.2015, its realization to be untenable in view of the fact that sponge iron was purchased at a concessional rate of 0.5% and was sold to other manufacturers as ET paid, inasmuch as, when there is no embargo in that respect in view of Rule 3(4) of the OET Rules, 1999 (in short, 'the Rules').

3. The State, on the contrary, by way of a cross-objection, justified the decision as to levy of entry tax on coal fines @ 1% on the ground that the dealer assessee allegedly sold it which is a portion of the scheduled goods i.e. coal purchased for use as a raw material on payment of concessional rate of tax. As regards the additional ground of the dealer assessee, so advanced in course of argument, it was objected too contending that the dealer assessee is not a trader of the scheduled goods and therefore, Rule 3(4) of the Rules is not invocable. The rest part of the impugned order as to penalty is justified by the State on the ground that it is merely consequential and inevitable in view of Section 9C(5) of the Act.

4. There is no denial to the fact that coal including coke in all its forms is scheduled goods as per Entry No. 1 of Part-I of the Schedule to the Act and likewise, sponge iron in view of Entry No.3 thereof. In so far as coal fines is concerned, it is not in dispute that the same is generated after screening of coal being a by-product or waste not used for manufacture of sponge iron. The dealer assessee is a manufacturer of sponge iron which is produced by utilizing raw materials, such as, iron ore, coal and dolomite. Whether, as a by-product or waste

on account of screening of coal, coal fines is to be held taxable @ 1% under the Act?

5. The learned Counsel for the dealer assessee contends that for the manufacture of sponge iron, coal is purchased at concessional rate of 0.5% by furnishing declaration in Form E-15, whereafter, it is screened and coal fit for manufacturing process is used and the percentage of coal at about 7% remains as coal fines is unutilized, since it contains mixture of substances, like dust and soil and hence, otherwise disposed of or sold only as ET paid goods. It is also contended that entry tax is payable at first point of purchase and not thereafter at the time of sale. Again, it is contended that coal fines is not generated in course of production of sponge iron which is nothing but a by-product or waste disposed of otherwise and at times even found unsaleable and for that, it cannot be again subjected to tax and moreover, when it has a different value tag not linked to the price of coal. The contention to the effect that the coal fines generated on screening of coal as a by-product not usable in the manufacture sponge iron was found to have been accepted by the authorities below. The dealer assessee is not involved in purchase and sale of coal fines. It is also not a product generated in the manufacturing process of sponge iron. As is understood, coal is subjected to screening whereby coal fines are segregated and coal which is fit for consumption in the manufacture of sponge iron is used and utilized. It is not that the dealer assessee purchased and brought coal fines into the local area. Admittedly, coal is a scheduled goods which was brought into the local area. When coal is purchased and brought into the local

area for being used as a raw material, in view of Rule 3(4) of the Rules, it is made exigible to tax at a concessional rate of 0.5%. When coal is taxed as scheduled goods at a concessional rate, its by-product or waste, such as, coal fines, which is only a product emerging out of screening of coal and not on account of any manufacturing process with distinct commercial identity, so to say, if again taxed @ 1%, in the considered opinion of the Tribunal, is wholly unjustified. Even though a portion of coal is generated as coal fines, but then, coal as scheduled goods has suffered entry tax. In the humble opinion of the Tribunal, a segregated by-product or waste which has not been consumed and utilized in the manufacture of sponge iron, cannot again be taxed under the Act on a plea that it has been sold without payment of ET. As coal is made taxable at the first point of purchase, the Tribunal is of the considered view that to tax a portion of it once again on the ground that as a by-product or waste, it has been disposed of is an argument which does not really appeal. What is taxed is scheduled goods, which has been levied at the first point of purchase and thereafter, to demand entry tax again on a by-product or waste @ 1% and that too when, it is initially screened and segregated from the scheduled goods and not used in the manufacture of sponge iron, or not being an outcome of any manufacturing process having an independent commercial identity, really stands to no reason.

6. With respect to the second limb of argument as to differential entry tax and its deposit with interest on 04.02.2015, which according to the learned Counsel for the dealer assessee was made inadvertently, it is contended

that demanding differential tax @ 0.5% vis-a-vis sponge iron sold to other manufacturers is within the purview of Rule 3(4)(c) of the Rules. The learned Standing Counsel (CT) for the State would contend that the dealer assessee cannot be permitted to act as a trader and sale the scheduled goods to other manufacturers for use as raw material and hence, differential amount was to be deposited, which it rightly did and was accepted. As earlier mentioned, sponge iron is also a scheduled goods as per Entry No.3, Part-I of the Schedule. The fact that the dealer to be a trader in sponge iron is indisputable. The dealer assessee appears to be a manufacturer as well as a trader of sponge iron. In other words, the dealer assessee with the use of raw material manufactures sponge iron and also purchases and sells it to other manufacturers for being used as raw material. In fact, on a bare reading of Rule 3(4) of the Rules, it is made to reveal that a scheduled goods specified in Part-I and II of the Schedule to the Act shall be exigible to tax at a concessional rate of fifty percentum of the rate to which such goods are taxable under sub-rule (3) and (2) respectively, when such goods are brought either as a raw material by a manufacturer as per Clauses (a) and (b); or by a dealer, who thereafter sells to a manufacturer for use as a raw material, according to Clause (c) thereof. In the instant case, sponge iron is a scheduled goods as per Entry No.3 of Part-I of the Schedule and the dealer assessee having brought and then sold it to other manufacturers, a fact which has not really been disputed by the State, is certainly eligible and entitled to a concessional rate of tax, i.e. fifty percentum of the rate of tax as specified therefor in Part-I, in view of Clause

(c) to sub-rule (4) of Rule 3 of the Rules. Even though the dealer assessee has deposited the differential tax of ₹48,309.00 along with interest of ₹9,600.00, it cannot be a ground to reject the contention so raised at present. In such view of the matter, the Tribunal, thus, reaches at a conclusion that additional deposit of differential tax with interest deserves to be refunded to the dealer assessee who was liable to pay tax on scheduled goods only at concessional rate of 0.5% as a trader of sponge iron.

7. Hence, it is ordered.

8. In the result, the appeal stands allowed. As a logical sequitur, the impugned order dated 30.01.2018 passed in Appeal Case No. AA-RL41 (E)/2015-16 is hereby set aside. The cross-objection by the State is dismissed. Consequently, the AA is directed to undertake recomputation as to the tax liability vis-a-vis the dealer assessee for the tax period from 01.04.2012 to 31.03.2014 in the light of the observations of the Tribunal, as aforesaid 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

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman