

BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK

S.A.No. 52(C)/2013-14

(Arising out of order of the Id.Addl.CST (Appeal), Central Zone, Odisha, Cuttack,
in Appeal No. AA/DCST/CUII/602/2012-13,
disposed of on dtd.30.03.2013)

P R E S E N T :

Sri Sashikanta Mishra Sri S. Mohanty & Sri R.K. Pattnaik
Chairman Judicial Member-II Accounts Member-III

State of Orissa, represented by the
Commissioner of Sales Tax,
Orissa, Cuttack

... Appellant

-Versus -

M/s. Kay Bee Salt Pvt.Ltd.,
Plot No.S-2/184, N.I.E., Jagatpur,
Dist. Cuttack.

... Respondent

Appearance :

For the Appellant ... Mr. M.S. Raman, Addl. Standing Counsel (C.T.)

For the Respondent ... Mr. B.B. Panda, Advocate

Date of Hearing: 21.06.2018

Date of Order: 21.06.2018

ORDER

The Revenue has preferred this second appeal against the order of the First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack (in short, FAA/Addl.CST) passed in First Appeal No.AA/DCST/CUII/602/2012-13 dtd.30.03.2013 whereby the FAA has reduced the tax due calculated by the Assessing Officer/Deputy Commissioner of sales Tax, Cuttack-II Circle, Cuttack (in short, AO/DCST) in a proceeding u/r.12(3) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules for the period assessment from 21.11.2006 to 31.03.2011 relating to the dealer.

2. The facts giving rise to the present appeal may be stated as follows

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The assessee-dealer is engaged in manufacturing and sale of alum, bauxite, aluminum hydrate and sulphuric acid. On the strength of reports submitted by the Audit team, a proceeding u/r.12(3) of the CST(O) Rules was initiated for the period from 21.11.2006 to 31.03.2011 whereby, the taxing authority disallowed the dealer's claim of availing concessional rate for non-submission of declaration in Form 'D' and 'C' and finally determined the GTO at Rs.1,92,50,300/-. After allowing the deduction against the declaration form found correct and then taxing the goods @4%, 12.5%, 2% and 3% as applicable to the goods, the total tax payable was calculated at Rs.11,74,761.87. Adjusting the tax already paid, the tax due was raised to Rs.3,78,294.87. Penalty u/r.12(3)(g) of the CST(O) Rules was calculated at two times and thereby the total demand was raised at Rs.11,34,885/-.

3. The assessee-dealer carried the matter before the FAA in First Appeal Case No. AA/DCST/CUII/602/2012-13 whereby, the FAA in the impugned order has treated 'alum' as an industrial input to be taxed @4% and resultantly the tax due became reduced to Rs.71,596/-. Penalty was imposed two times on it as per Rule 12(3)(g) of the CST(O) Rules, resulting in total demand being calculated at Rs.2,14,788/-.

4. Feeling aggrieved, the Revenue has preferred this appeal on the contentions that, the concessional rate of tax allowed against Form 'D' is contrary to law since the concession is not available w.e.f. 01.04.2007. It is further contended that, the FAA has gone wrong in treating alum as an industrial input and thereby reduced the rate of tax on erroneous interpretation of the relevant Entry in the Schedule B, Part-II.

5. The appeal is heard with cross objection from the side of the dealer stating therein that the imposition of penalty and denial of concession for want of Form 'D' is wrong and the FAA had rightly treated alum as an industrial input for manufacturing/processing of the water. So the finding to that effect should not be disturbed.

6. At the outset, it has brought to our notice by learned Counsel for the dealer Mr. Panda that, the dealer had preferred Second Appeal

No.10(C)/2013-14 before the Single Bench of this forum against the impugned order and the same was allowed vide Order dtd.28.02.2014 and the matter was remanded back to the AO for assessment afresh. The present appeal is preferred by the Revenue before the Full Bench, we fail to understand how the impugned order challenged by one party before the Single Bench and other bench before the Full Bench. The disputed amount and pecuniary jurisdiction always should be in accordance with the original assessment. So appeal by either side must be in accordance with the original assessment.

Learned Counsel for the dealer argued that, the present appeal has no legs to stand since the impugned order under challenge is no more in force in view of the decision in S.A.No.10(C)/2013-14.

Contended contra, learned Addl. Standing Counsel, Mr. Raman vehemently argued that, State has preferred this appeal on a question of law, which was never dealt with by the Single Bench. It is a fact that, the impugned order has been set-aside by the Single Bench and the matter is now pending before the Assessing Officer. It is also fairly submitted that, at the time of decision of the earlier Appeal vide No.10(C)/2013-14 by the Single Bench, the fact of the present appeal was not brought to the notice of the Single Bench. When the question relates to law, it can be raised by either side at any stage including appeal even if it has not been taken as a ground therein. If 'alum' sold by the dealer is used as an 'industrial input' by the purchaser or not is a mixed question of law and fact. Similarly, after substitution of the provision u/s.8(1) of the CST Act w.e.f. 01.04.2007, whether any concession can be granted against a sale to Railway (Government) as per the substituted provision is also a pure question of law. On this backdrop, when the impugned order is not in force and the matter is remanded and is now under the domain of AO as per the order of this Tribunal, then in this case definite finding on the contentions raised by the Revenue will lead to erroneous conclusion and conflicting decision. Hence, we are of the view that, direction may be given to the AO to look into the contentions like application of the substituted provision and whether the goods sold by the dealer is to be treated as 'industrial input'

thereby enabling the dealer to get rate of tax as per the relevant entry during remand assessment. Accordingly, it is ordered.

The appeal by the State accordingly disposed of with the observation that, the AO is to take consideration of the tax rate of the alum as per the use by the purchasing dealer and to fix the tax rate in course of the fresh assessment in the remand assessment case.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Sashikanta Mishra)
Chairman

I agree,

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