



2. The appellant-dealer is a wholesaler-cum-retailer of petrol, diesel, lubricants, tyres, tubes, electrodes, welding rods, equipments and accessories. In an assessment u/s.12(4) of the OST Act for the assessment year 2002-03, the appellant-dealer produced the books of account before the learned Assessing Authority after being noticed and on examination of the books of account and the other relevant documents, the learned Assessing Authority found out that, among other transactions, the appellant-dealer has sold electrodes of an amount of Rs.17,33,863.08 and has calculated its tax liability by splitting the goods into two parts. It has treated the cap portion of the goods as mechanical accessories taxable @ 8% and the rest of the portion as iron wire taxable @ 12%. But, the iron wire and the cap taken together constitutes electrodes which is liable to be taxed @ 12% and as such on consideration of the same, the learned Assessing Authority determined the GTO and TTO at Rs.17,61,69,867.42 and Rs.26,86,636.71 respectively and levied tax and surcharge at the appropriate rates on different items and finally the order of the learned Assessing Authority resulted in a balance tax demand of Rs.84,858.00, to be paid by the appellant-dealer.

3. After the assessment, being aggrieved with the order of the learned Assessing Authority, the appellant-dealer preferred an appeal before the learned ACST bearing Appeal Case No. AA.55(O)/ACST/DL/09-10. On hearing and on consideration of the materials on record, the learned ACST found no merit in the contention of the appellant-dealer and accordingly dismissed the appeal by confirming the order of the learned Assessing Authority. Thus, again being aggrieved with the order of the learned ACST, the appellant-dealer has preferred this second appeal.

4. Cross objection has been filed by the respondent-Revenue supporting the order of the learned forums below.

5. Heard both the sides. The learned Counsel appearing for the appellant-dealer submitted that, though the appellant-dealer has sold "copper coated steel wire" liable to be taxed @ 4%, the learned forums below have determined the same to be electrodes wrongly and have levied tax thereon @ 12%. He also submitted that, when one of the items is covered by

one specific entry, the Revenue is not permitted to travel to the residuary entry for the purpose of taxation. But, without considering the entire facts and circumstances in its proper perspective, the learned forums below have passed the order erroneously which is liable to be rectified by this forum and the appeal preferred by the appellant-dealer is liable to be allowed. In support of his contention he has relied upon in a number of decisions. On the other hand, the learned Addl. Standing Counsel appearing for the respondent-Revenue supported the order of the learned forums below and urged for dismissal of the appeal.

6. Perused the orders of both the learned forums below and the other materials available on record. Also perused the materials furnished by the appellant-dealer in support of his contention including the order passed by the learned ACST in Appeal Case No.CU-II-AA-DL-26/2006 which relates to its assessment u/s.12(4) of the OST Act for the assessment year 2003-04. On perusal of the entire materials available on record, it is seen that, while considering the appeal preferred against the order of assessment for the assessment year 2003-04 u/s.12(4) of the OST Act, the learned ACST has determined one part of the goods in question to be copper coated steel wire taxable @ 4% and the other part to be equipments and accessories taxable @ 8% which is contradictory to his earlier order i.e. the order relating to the present proceeding. There is no material to show that, the order passed by the learned ACST in Appeal Case No.CU-II-AA-DL-26/2006 has further been challenged by the respondent-Revenue before the higher forums. The law is very much well settled that the Revenue should take a consistent view for levy of tax for a particular item.

7. As per Sl. No.86 of the entry in the OST Act, iron and steel, that is to say – wire rods and wires-rolled, drawn, galvanized aluminized tined or coated such as copper are liable to be taxed @ 4%. Similarly, as per Sl. No.113 of the entry, machineries excluding those specified elsewhere are liable to be taxed @ 8%. On examination of the materials available on record including the materials furnished by the appellant-dealer, it is seen that, the goods in question are clearly coming under these entries and are liable to be taxed @ 4% and 8% respectively.

8. In the case of **Voltas Ltd. v. State of Gujarat (2015) 80 VST 12 (SC)**, the Hon'ble Court held that-

“21. Qua the issue of classification of goods to determine the chargeability thereof and the rates of levy applicable, it is no longer *res-integra* that the burden of proof is on the taxing authority to demonstrate that a particular class of goods or item in question is taxable in the manner claimed by them and that mere assertion in that regard is of no avail.”

9. In the case of State of **M.P. v. Marico Industries Ltd. (2016) 94 VST 83 (SC)**, the Hon'ble Court held that-

“18. The stand of the assessee before the authorities was that it is not a chemical. It is not sold or used for that purpose. It is a starch manufactured by using Tapioca roots. The revenue, per contra, without any material brought on record, put it in the category of a chemical. In *Union of India v. Garware Nylons Ltd.* AIR 1996 SC 3509 it has been held that the burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them. Elucidating further, the Court has held that there should be material to enter appropriate finding in that regard and the material may be either oral or documents and it is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority.”

10. In the case of **CIT v. S.S. Ayodhya Distillery (2009) 19 VST 251 (SC)**, it is held that:-

“If any entry in a notification imposing tax is ambiguous, the assessee cannot suffer there from.”

11. In the case of State of **Maharashtra v. Bradma of India Ltd. (2005) 140 STC 17 (SC)**, it is held that-

“7. A specific entry in the schedule to a taxing statute could override the general entry. Resort has to be had to the residuary heading only when a liberal construction by the specific heading cannot cover the goods in question.”

12. In the case of **Hindustan Poles Corporation v. Commissioner of Central Excise (2006) 6 Revenue Cases 405 (SC)**, it is held that-

“It is well settled that when one particular item is covered by one specified entry then the Revenue is not permitted to travel to the residuary entry. The residuary entry is meant only for those categories of goods which clearly fall outside the ambit of specified entries.”

13. In the case of **Maruti Yeast India Pvt. Ltd. v. State of U.P. (2008) 14 VST 259 (SC)**, it is held that-

“56. It is now well settled principle of law that when two views are possible, one which favours the assessee should be adopted. 67. We, therefore, are of the opinion that if there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred.”

14. In the case of **Sunder India Ltd. v. CCT (2011) 38 VST 124 (Mad.)**, it is held that-

“Ambiguity in view of Department as to rate of tax applicable-interpretation in favour of the dealer to be adopted.”

15. In view of the above discussion, the appeal succeeds. The order passed by the learned forums below is set aside. The goods in question are held to be the goods as held by the appellant-dealer and are liable to be taxed @ 4% and 8% respectively as mentioned above. Consequently, the tax demand and the consequential penalty as passed and imposed by the learned forums below are reduced to nil. The cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-  
1<sup>st</sup> Judicial Member,  
Odisha Sales Tax Tribunal

Sd/-  
1<sup>st</sup> Judicial Member,  
Odisha Sales Tax Tribunal

I agree,

Sd/-  
Accounts Member-II,  
Odisha Sales Tax Tribunal