

**BEFORE THE FULL BENCH:ODISHA SALES TAX TRIBUNAL:CUTTACK.**

**S.A.No.1578/2006-07**

(Arising out of the order of the Id.ACST (Appeal) Sundargarh Range,  
Rourkela, in First Appeal Case No. AA 17(RL II) -2006-07  
disposed of on 16.09.2006.)

**Present: Shri A.K. Panda      Shri Subrat Mohanty      Shri P.C. Pathy**  
**Judicial Member-I      Judicial Member-II      Accounts Member-I**

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

... Appellant.

**- V e r s u s -**

M/s. Vijay Laxmi Minerals, Lassay,  
Biramitrapur Dist-Sundargarh.

... Respondent.

For the Appellant

... Shri M.S. Raman, Addl. S.C.(C.T).

For the Respondent

... Shri D. Pati, Advocate.

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Date of Hearing: 27.11.2018      \*\*\*      Date of Order: 03.12.2018  
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**ORDER**

The State has preferred appeal against the impugned order dtd.16.09.2006 of the Assistant Commissioner of Sales Tax (Appeal), (in short, 'ACST'), Sundargarh Range, Rourkela passed in first appeal Case No. AA 17(RL II)-2006-07 in allowing the appeal and reducing the order of assessment to return figure against the demand raised to the tune of Rs.8,95,475.00 by the learned Sales Tax Officer, Rourkela-II Circle, Panposh (in short, 'Id. STO'), in his order passed on 24.02.2006 Under Section 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the year 2004-05.

2. The dealer-respondent is a partnership concern dealing in stone chips and ballast which are received from its own crushing unit. Besides, the dealer-assessee undertakes

trading of chips and ballast by effecting purchases of the same from registered dealers of locality. As the instant dealer failed to participate in hearing, for assessment the ld. STO completed the assessment to the best of his judgment on exparte basing on the materials available in the record in absence of production of books of accounts by the dealer-assessee. This resulted in demand of tax and surcharge to the tune of Rs.8,95,475.00. The ld. STO has taxed the sale turnover amounting to Rs.67,55,568.00 @ 12% OST and the taxable turnover of Rs.85,000.00 @4% OST. This led the dealer-assessee to assails the order of assessment before the ld. ACST on the following grounds:-

- (i) The assessment completed to the best of judgment on exparte is not maintainable and against the principle of law as the notice for assessment were not served on proper person.
- (ii) The assessment was completed on exparte without giving sufficient and reasonable opportunity to the dealer for production of books of accounts.

The ld. ACST after carefully considering the impugned order of assessment, averments of ld. Advocate on behalf of the dealer-assessee and materials available, the relevant books of accounts produced with reference to purchases of raw materials and sales of goods with the opening and closing stock of raw materials and finished goods has treated stone boulder, ballast and chips to be the same item as mineral as per sl. No.117 of the rate chart and as such made exigible to tax @4% at the first point of sales in the series of sales in Odisha and accepted the stands taken by the ld. Advocate on behalf of the dealer-appellant. The ld. ACST held that the

appellant having already paid tax at the time of purchase of raw materials further levy of tax thereon is illegal. The ld. Advocate cited the order of the Hon'ble Chairman, Odisha Sales Tax Tribunal vide order dtd.03.04.2006 S.A. No.1438 /2004-05 wherein stone chips and ballast were treated as mineral under Entry at Sl. No.117 of List -C of the Rate Chart under the OST Act. Further the appellant relied on the decision of the Hon'ble Supreme Court in case of the M/s. Lal kuwan Stone Crusher Pvt. Ltd. Vrs. Commissioner of Sales Tax reported in 118 STC 287 and the Case of State of Maharashtra Vrs. Mahalaxmi Stones 129 STC 79 where it has been decided that crushing of stone boulder into stone chips is not an activity of manufacturing. As the boulder has already suffered tax at the first point in a series of sales stone chips manufactured out of boulder don't attract tax on it's sale. It was further mentioned that as per notification of F.D. S.R.O.-22 dtd. 09.01.2002 stone crushing unit is not manufacturing unit in the light of the above decision. Accordingly, in the light of aforesaid judgments and the notification of Finance Department, the ld. ACST has come to the finding in appeal order that stone is subject to tax at the first point of sale in the series of sales. Hence to tax sale of goods at last point as done by the ld. STO is not sustainable hence deleted the demand.

3. Being aggrieved the State has filed second appeal with the following grounds:-

a. The order of the Ld. ACST reducing the demand to return figures is arbitrary, illegal, and not maintainable.

- b. Chips being a separate commercial commodity, different from boulders utilized as raw-material. The ld. A.O. has rightly taxed sale of chips.
- c. The ld. ACST has erred in allowing chips sale as sale of tax paid goods.
- d. The order of the ld. ACST is liable to be quashed & order of the ld. AO to be restored.

4. Following cross objections have been filed by the respondent-dealer.

- (i) The order of the learned ACST, Sundargarh Range is not erroneous, arbitrary and bad in law.
- (ii) The learned ACST has rightly and judiciously adjudicated upon the judgment of the Hon'ble Supreme Court, other relevant judgments and the legal position and has come to the conclusion that the stone chips is nothing but the same commodity in other shape and size, hence the order of the learned ACST does not need to be intervened.

5. Mr. M.S. Raman, the ld. Addl. S.C. (C.T.) appearing on behalf of the Revenue stated that in view of the recent judgment of the Hon'ble High court of Odisha reported in (2017) 100 VST 24 (Orissa) in the case of State of Odisha and Others Vrs. B.K. Construction and Others delivered on 1<sup>st</sup> march, 2017 has held that ballasts or boulders or chips being mineral as per Entry 117 of the taxable List are exigible to tax @4%.

6. Mr. D. Pati, the ld. Advocate appearing on behalf of the dealer-respondent reiterated the grounds taken in the memorandum of cross objection and has supported the order of the ld. ACST and argued that the matter has already been

put to rest by the well-settled position of law as per the verdict of our Hon'ble High Court. Mr. Pati, Id. Advocate also stated that the Hon'ble High Court of Odisha in case of B.K. Construction has held that "We are of the view that ballasts or boulders or chips being mineral as per Entry-117 of the taxable List are exigible to tax @4% of taxable List."

7. Heard both the parties, gone through the grounds of appeal and memorandum of cross objection and the impugned orders of the appeal and assessment. The question before us is to answer whether the order of the Id. ACST is illegal and not maintainable on the ground that chips being separate commercial commodity from boulder there is error in sale of chips as sale of tax paid goods. The Id. ACST accepted the contention of the instant dealer that stone boulder, ballast and chips to be the same item as mineral as per Sl. No.117 of the rate chart and as such liable to tax at the first point in the series of sales inside the State and the appellant having already paid tax at the time of purchase of raw materials further levy of tax thereon is illegal. The Id. ACST has referred the order of the Hon'ble Chairman, Odisha Sales Tax Tribunal in S.A. No.1438/2004-05 and the decision of Hon'ble Supreme court in case of M/s. Lal kuwan Stone Crusher Pvt. Ltd. Vrs. Commissioner of Sales Tax and the case of State of Maharashtra Vrs. M/s. Mahalaxmi Stones and has rightly came to the conclusion that stone crushing unit is not manufacturing unit in the light of above decisions. In view of the findings of the Id. ACST in the appeal order and the judgment of the Hon'ble High Court in the case of State of Odisha and Others Vrs. B.K. Constructions and Others reported in (2017) 100 VST 24 (Orissa) we don't find any

incongruity or illegality in the order passed by the ld. ACST. As the dealer-respondent has effected purchase of goods from registered dealers of the locality and there is no involvement of manufacturing activity, the grounds of appeal filed by the Revenue are not acceptable. Hence the same merits no consideration.

8. In the result, the appeal is dismissed and the order of the ld. ACST is confirmed. The cross objection is disposed of accordingly.

Dictated and corrected by me,

**Sd/-**  
**(P. C. Pathy)**  
**Accounts Member-I**

I agree,

I agree,

**Sd/-**  
**(P. C. Pathy)**  
**Accounts Member-I**

**Sd/-**  
**(A.K. Panda)**  
**Judicial Member-I**

**Sd/-**  
**(Subrat Mohanty)**  
**Judicial Member-II**