

369/ET/DL/2005-06 and AA- 371/ET/DL/2005-06 confirming the orders of assessment passed by the Assessing Authority, Dhenkanal Circle, Angul (in short, 'assessing officer') u/S. 7(4) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') for the years 2003-04 and 2004-05 respectively in respect of the dealer-assessee.

2. The facts as revealed from the case records are that the dealer-assessee which is a Government of India undertaking engaged in mining of coal and in terms of its business requirements purchases machinery parts, HSD, lubricant, chemicals and produces coal out of its mining work which it sells alongwith rejecting scraps. The books of account of the dealer for the relevant assessment years i.e. 2003-04 and 2004-05 were examined by the assessing officer though there was no adverse report against it. On verification the assessing officer found the dealer to have purchased certain chemicals but had not paid entry tax in respect of those chemicals on the ground that those were explosives and as such not liable for levy of entry tax. However, the assessing officer on thorough examination of the purchases could find that the dealer had purchased goods like nitrate, ammonium nitrate, calcium nitrate, sodium nitrate, guar, gum, hydrocarbon, thio cynite, ammonium nitrate prill etc. According to the assessing officer these chemicals after being brought into mining site are mixed together and charged to a hole at the mining site. Thus those chemicals acquire

the character of explosives when those are mixed together and go inside the hole beneath the earth because only thereafter the explosion occurs when the aforesaid chemicals being mixed together are detonated. Thus he (the assessing officer) gathered that the dealer-Company bought chemicals for preparing the explosives and since chemicals are scheduled goods as per Entry 6 of Part-I of the Schedule to the OET Act the dealer was liable to pay entry tax. Therefore, while discarding the argument advanced by the dealer that the goods in dispute are only explosives he calculated the tax dues of the dealer and demanded a sum of `5,66,364.00 for the year 2003-04 and a sum of `5,42,286.00 for the year 2004-05 from it by issuing demand notices accordingly.

Being dissatisfied with the aforesaid orders of the assessing officer the dealer-appellant preferred appeals before the first appellate authority. The first appellate authority while considering the appeals concluded as follows :-

Quote : "It is found from the bills produced by the appellant before this forum and those produced before the assessing authority that it has purchased goods like ammonium nitrate, calcium nitrate, sodium nitrate, guar gum, ammonium nitrate etc. which is used for preparation of

explosives. Therefore, the items purchased by the appellant is not SMS Slurry nor Bulk Emulsion Explosives as claimed but various types of chemicals purchased for preparation of explosives. The explosive so prepared is put up in the whole dug upon the earth and exploded with the help of geltine. It is common knowledge that crackers is prepared by using potash carbon, sulphur and when cracker is hit to the ground or the wall, it explodes.

This process of preparation and use of explosives has been adopted by the appellant. It has mixed various chemicals as mentioned above and has prepared the explosives. Therefore, chemicals purchased by the dealer make into "explosives" Explosive is scheduled or non-scheduled goods are immaterial. It constituents are chemicals and are scheduled goods" Unquote.

Thus the first appellate authority held that those items i.e. chemicals are exigible to tax @ 1% as per Entry No.6 of Part-I of the schedule and ultimately with this view he confirmed the orders of assessment and dismissed the appeals.

3. Being aggrieved with the aforesaid finding of the first appellate authority the dealer preferred these appeals. Both the appeals were heard together as the facts and circumstances in both the cases

are same though they pertained to two separate assessment periods. Both the second appeals are also disposed of by this common order for the above reason.

4. In these appeals the grounds advanced by the dealer-appellant are also same. The dealer challenged the order of the first appellate authority on the ground that both the authorities below failed to distinguish the articles i.e. 'chemical' and the 'explosive'. The first appellate authority failed to appreciate the evidence placed before him because nowhere the dealer had revealed that it had purchased chemicals of different types for preparation of explosives at its end but the assessing officer as well as the first appellate authority without confronting the same to the dealer itself as well as experts on the subject whose opinion matter on such issues held the goods 'explosive' as mixture of some chemicals just to bring the same within the scheduled goods for levy of tax under the OET Act which is not proper. In the aforesaid circumstances he urged before the Court to set aside the impugned orders. In course of advancing its argument the dealer assessee also filed some purchase orders dated 01.07.2002, 12.08.2003 and another date not being fully legible vide Annexure-1 through its representing Counsel. Learned Counsel for the dealer submitted that the dealer-appellant had never placed purchase order for different chemicals to prepare explosives at its required sites. It always purchases

explosives, detonators and accessories and the explosives are usually brought to the site by the suppliers themselves who detonate the same and explosions occur at the sites under their supervision only. It is not understood as to why the assessing officer and the first appellate authority who are obviously not technical persons themselves on this particular matter visualized the situation in a different manner and concluded that the dealer had brought chemicals and prepared explosives on sites for explosions.

5. In the instant case the State has not filed any cross-objection in both these appeals. However, in course of argument learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that orders of the assessing officer as well as the first appellate authority reveal that they both had seen bills produced before them by the dealer which indicated that the dealer had purchased goods like ammonium nitrate, calcium nitrate, sodium nitrate, guar gum, etc. which were used for preparation of explosives. However, none of those bills as aforesaid is made available before this Tribunal for perusal or appreciation. Learned Addl. Standing Counsel (CT) for the State also did not try to get those bills from the dealer if those bills had already been returned to the dealer and not available with the Revenue at present with the assistance of the Bench for proper appreciation and decision in the case. On the other hand the dealer could furnish some purchase

orders, delivery chalang dated 22.05.2004, bill dated 23.05.2004, invoice dated 23.06.2004, delivery order dated 20.08.2004, invoice dated 21.08.2004, classification sheet dated 21.04.2003, provisional invoice dated 13.03.2003, invoice dated 04.02.2003 and invoice dated 05.12.2004 to prove that it had never purchased the chemicals as held by the assessing officer and the first appellate authority. A bare perusal of all these bills, purchase order and invoices indicate that the dealer had brought Bulk Emulsion Explosive, POWERGEL B1 Bulk, EMULKING and INDOGEL- series i.e. prepared explosives and the same are now kept on record for reference. The Addl. Standing Counsel (CT) for the State does not explain that these are the articles about which the assessing officer and the first appellate authority have referred as chemicals in their orders. On the contrary all these above documents reveal that the dealer had purchased only explosives and that too in bulks. The Revenue have nowhere reconciled that the chemicals which are scheduled goods as per Part-I of the Schedule to OET Act were purchased by the dealer separately and then those were mixed for preparation of explosives. Therefore, considering all these materials we feel that there is absolutely no justification for the assessing officer and the first appellate authority to hold that the dealer is liable to pay entry tax for purchasing chemicals like ammonium nitrate, calcium nitrate, sodium nitrate, guar gum, hydrocarbon, thio cyanite, ammonium nitrate

prill etc. which were required by it as composition of explosive when the dealer could establish with some cogent and convincing evidence that it had purchased explosives only which is not being a scheduled goods is not taxable under the OET Act.

6. In the result, as per the discussion made in the foregoing paragraphs the appeals are allowed and the orders passed by the first appellate authority confirming the orders of assessment are hereby set aside. Excess tax paid, if any, be refunded to the dealer-appellant as per the provisions of law.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Prabhat Ch. Pathy)
Accounts Member-I