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

S.A. No. 1261 of 2006-07

(Arising out of the order of learned ACST, Sundargarh Range, Rourkela, in First Appeal Case No. AA- 252 (RL-I) of 2005-06, disposed of on dt. 19.06.2006)

Present : **Smt. Suchismita Misra**, **Chairman**
Sri A.K. Dalbehera, 1st Judicial Member
&
Shri Rabindra Ku. Pattnaik, Accounts Member-III

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

- V e r s u s –

M/s. Suraj Minerals, Daily Market, Rourkela, Dist. Sundargarh. . . . Respondent

For the Appellant … Mr. M.S. Raman, Addl. S.C. (CT)
For the Respondent … Mr. D.K. Agarwal, Advocate

Date of hearing: 15.11.2019 **** Date of order: 06.12.2019

O R D E R

This appeal is directed against the order dated 19.06.2006 passed by the Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, "first appellate authority") in First Appeal Case No. AA- 252 (RL-I) of 2005-06 reducing the assessment done by the Sales Tax Officer, Rourkela-I Circle, Uditnagar (in short, 'assessing officer') in respect of the dealer-assessee u/S. 12(4) of the Odisha Sales

Tax Act, 1947 (in short, 'OST Act') for the tax period i.e. from Quarter Ending 12/2004 to 3/2005 (2004-05).

2. The facts as revealed from the case record are as follows :

The dealer-assessee M/s. Suraj Minerals being a manufacturing concern manufactures sized iron ores and iron ore fines out of iron ore lumps. In response to a notice issued u/S. 12(4) of the OST Act, one of its partners alongwith their Advocate had appeared before the assessing officer. They had produced their books of account comprising of purchase register, sale register and manufacturing-cum-stock register before the assessing officer for his verification. The assessing officer on examination of the aforesaid documents found that the dealer had filed its quarterly returns disclosing its turnover at `2,45,09,645.35 for the Quarter Ending 12/2004 and at `2,84,21,651.98 for the Quarter Ending 3/2005. During the period under assessment it had procured capital goods worth `3,42,394.03 and 37920.91 MT of iron or lump valued at `4,86,93,148.74 from the registered dealer of Odisha. It produced iron ore fines as well as sized iron ore which it sold as per the stocks reflected in its books of account and claimed the entire turnover under the OST Act as sale towards first point tax paid goods. The assessing officer, however, determined its tax liability while holding as the dealer was engaged in a manufacturing process of the aforesaid

goods which have a distinct commercial value on account of those being completely different from the iron ore lumps, the turnover of the dealer had to be taxed at appropriate rate. Apart from this he also came across a Fraud Case Report (FCR) against the dealer-assessee indicating some transactions of the dealer to have been held in a clandestine manner. He thus on verification found purchase suppression of `4,83,249.00 and sale suppression of `5,16,453.00 in the business transactions of the dealer. Accordingly he rejected the books of account of the dealer and completed the assessment to his best judgment requiring the dealer to pay `23,86,177.00 towards its tax dues for that relevant period.

Being aggrieved by the order of assessment the dealer preferred an appeal before the first appellate authority challenging the same on the grounds that the said order was bad in law and facts and further the dealer was assessed most arbitrarily in the instant case. The dealer being a registered both under OST and CST Act carries on business in purchase of iron ore lumps which it converts to sized iron ore and iron ore fines in its crusher Unit. The dealer in the instant case had paid Odisha Sales Tax while purchasing the raw material i.e. iron lumps. Section 2(ddddd) of the OST Act defines the term 'Manufacture' which was amended by the State Government vide Notification dated 09.01.2002 bearing SRO No. 22 of 2002 and as such excludes Stone

Crushing Unit from the provision of the definition of 'Manufacture' w.e.f. 01.03.2002. The Sales Tax Officer treated the dealer to have manufactured iron ore sizes and iron ore fines out of iron lumps and then levied tax on the pretext of those being distinct commercial items. Since iron ore comes under the category of mineral and is a first point tax paid item w.e.f. 01.03.2002 no further sales tax should have been levied on dealer's subsequent sale. The FCR against the dealer was also illegal. Therefore, enhancement of its GTO and TTO was also illegal and ought to be deleted.

The first appellate authority considering all the above grounds of appeal vis-à-vis the order of assessment concluded that the goods such as iron ore fines and size irons sold by the dealer cannot be treated as products of iron ore lumps through the process of 'manufacture' and further ores being nothing but minerals coming under 1st point tax paid goods claim of the dealer towards sale of size iron and iron ore fines as 1st point tax paid goods was justified. In the aforesaid circumstances he held that the dealer was not liable to pay further tax as levied by the assessing officer and accordingly he reduced the assessment to the returned figures submitted by the dealer with further direction to refund the excess amount, if any, paid by the dealer.

3. The State then carried this appeal before the Tribunal on the grounds that conversion of size iron ores or fines from iron ore lump is a process of manufacture since the goods acquire a specific

marketable size for the buyers who would never prefer to purchase iron lump. Therefore, the first appellate authority has wrongly held that there was no new taxable event in converting the raw material i.e. iron ore lumps into size iron ores and fines which so to say are finished products only. The size irons as well as fines are also distinct commercial commodity. The State also challenged the impugned order as illegal being contrary to the provisions of law.

No cross-objection has been filed on behalf of the dealer-assessee in this appeal.

4. In course of hearing both the parties placed their respective argument and counter argument in the case alongwith case laws. Perused the order of assessment as well as the impugned order passed by the first appellate authority alongwith the ratio of the decisions rendered by the Hon'ble Apex Court in the case of Commissioner of Sales Tax Vs. Lal Kunwa Stone Crusher Pvt. Ltd., reported in [2000] 118 STC 287 (SC), and in the case of Divisional Deputy Commissioner of Sales Tax and another Vs. Beheraghat Minerals Industries, reported in [2000] 120 STC 205 (SC). Admittedly in the instant case the dealer had purchased iron ore lumps on payment of tax at first point. The size iron ores and iron ore fines were obtained by it through the process of crushing of iron ore lumps in its business establishment. Whether this process of crushing iron ore lumps could be treated as a manufacturing process and attracts tax liability of the

dealer for the production and sale of size iron ores and iron ore fines are to be determined in the present case. In this regard law is well settled as decided in the cases i.e. Commissioner of Sales Tax Vs. Lal Kunwa Stone Crusher Pvt. Ltd. (supra) and Divisional Deputy Commissioner of Sales Tax and another Vs. Beherahat Minerals Industries (supra) and in view of the principles laid down in the above decisions iron ore fines and size iron ores are not leviable to tax on account of the same being not different commodities than iron ore which was already subjected to tax at the first point of purchase. Therefore, it can be safely concluded that there is no infirmity in the order of the first appellate authority in deletion of tax on the sales turnover of size iron ores and iron ore fines. As no other issue has been raised by the State in this appeal for adjudication we feel that it would be appropriate on our part to confirm the impugned order passed by the first appellate authority.

5. In the result, the appeal is dismissed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

I agree,

Sd/-
(Rabindra Ku. Pattnaik)
Accounts Member-III