BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No. 1798 OF 2006-07

(Arising out of order of the learned ACST, Sundargarh Range,
Rourkela in First Appeal Case No. AA.- 256(RL-I)/2005-06
disposed of on dated 28.09.2006)

Present: Shri R.K. Pattanaik, Chairman,
Smt. S. Mishra, 2nd Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

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

-Versus-

M/s. Utkal Minerals and Ores,
Koira, Sundargarh ... Respondent

For the Appellant : Sri M.S. Raman, Additional Standing Counsel (CT)
For the Respondent : Sri Damodar Pati, Advocate

Date of hearing: 07.10.2020 ***** Date of order: 05.11.2020

O R D E R

Instant appeal under Section 23(3) of the Odisha Sales Tax Act, 1947 (in short, 'the Act') is at the behest of the State challenging the impugned order dated 28.09.2006 promulgated in Appeal No. AA- 256(RL-I)/2005-06 by the learned Assistant Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, 'FAA'), who set aside the order of assessment dated 30.01.2006 passed by the learned Sales Tax Officer, Rourkela-I Circle, Uditnagar (in short, 'AA') under Section 12(4) of the Act for the tax period 2004-05 vis-a-v-s the dealer assessee on the

grounds inter alia that the findings are bad in law and, therefore, deserve to be set aside in the interest of justice.

2. From the record, it is revealed that the dealer assessee is into business of manufacturing and sale of iron ore and fines and for the relevant year, it was served with a statutory notice under Section 12(4) of the Act in order to verify the authenticity of the returns filed. In response to the said notice, the dealer assessee appeared before the AA along with books of account and other documents for the purpose of verification with reference to the returns furnished. On examination of the returns for the year 2004-05, the AA found that the dealer assessee disclosed its GTO and claimed the entire amount as deduction of tax paid which was found inadmissible on the ground that it was involved in manufacturing and sale of iron ore and fines from iron lumps and as a result, since distinct commercial product was manufactured out of the raw material, sales tax @ 4% was levied. The AA held that there is a basic difference between stone and minerals and concluded that the iron ores and fines for having a distinctive commercial value and different in form than the raw materials and accordingly, raised additional demand and levied surcharge under Section 5-A of the Act for an aggregate amount of ₹10,52,134/- payable as per the terms of the demand notice. The said decision of the AA was assailed before the FAA who, however, had a different view and reached at a decision that the activity of the dealer assessee is not manufacture and the iron ores and fines are no different product so as to invite tax @ 4%. While arriving at such a conclusion, the FAA discussed different rulings on the subject matter. The conclusion of the FAA is to the effect that no distinct and

different commodity of commercial identity results in iron ore crushing and in the making of the iron ores and fines from the lumps. The State being dissatisfied with the aforesaid finding of the FAA preferred present appeal alleging that the activity of the dealer assessee in crushing the lumps into iron ores and fines is nothing but an act of manufacture within the definition of Section 2(ddddd) of the Act.

3. In this connection, the State cited a ruling of the Hon'ble Apex Court in the case of Commissioner of Sales Tax, Orissa and another Vs. Jagannath Cotton Co. and another reported in 99 STC 83 (SC), while claiming that the process which is adopted by the dealer assessee is a manufacture, as goods of different kind emerge as a result of crushing of the iron ore lumps. One more decision is referred i.e. State of Orissa and others Vs. Rourkela Mineral Co. Pvt. Ltd. and others in Civil Appeal No. 23483 of 1995 decided on 26.04.1996 in support of its claim that the activity of the dealer assessee to be manufacturing, the end product being iron ores and fines out of the lumps. That apart, it is also contended by the State that since a new product is emerged on account of crushing of iron ore lumps, Section 8 of the Act does not apply and, therefore, the dealer assessee is liable to sales tax @4%. The Tribunal is to examine as to if there is manufacturing in the process of crushing of iron ore lumps as is being done by the dealer assessee and if at all rate of tax at 4% is exigible thereon.

4. In contra, the dealer assessee contends that the impugned order dated 28.09.2006 is perfectly justified and in accordance with law and it does not suffer from any legal infirmity. It is also contended that mere crushing of iron ore lumps to smaller forms of ores and fines is no an activity of manufacture as is

alleged by the State. In this regard, the dealer assessee claims that the Tribunal has already taken such a view in a recently disposed of matter i.e. in S.A. No. 351 (ET) of 2005-06 decided on 10.07.2020 by a Full Bench. A decision of the Hon'ble Court in the case of State of Orissa and others Vs. D.K. Construction & others reported in (2017) 10 VST 24 (Orissa) is also placed in reliance while contending that iron ore lumps are basically minerals.

5. The term 'manufacture' is defined in Section 2(ddddd) of the Act, according to which, it means producing, extracting, altering, ornamenting, finishing or otherwise processing or adopting any goods, but shall not include such manufacture or manufacturing process as duly notified by the State Government from time to time. According to the learned Additional Standing Counsel (CT), the activity of the dealer assessee in crushing the iron ore lumps is a manufacturing process and there is conversion of goods from one form to another, end product being distinctly separate from the original, possessing a new commercial identity. The learned Counsel for the dealer assessee, on the other hand, contends that in the earlier case i.e. in S.A. No. 351 (ET) of 2005-06 ibid, the Tribunal have had the occasion to consider such aspect of the matter with a finding that the activity is not manufacture as only bigger form of iron ore lumps are crushed to smaller sized iron ores and fines which do not bear any distinct commercial identity and value. In fact, such has been the view of the Tribunal in the recent case. It is reiterated that none of the activities is undertaken by the dealer assessee so as to include crushing of iron ore lumps as a manufacturing process within the definition of Section 2(ddddd) of the Act. Production, extraction, alteration, ornamentation or

processing is carried out in the manufacture or manufacturing process as per the said definition. The expression 'manufacture' in Section 2(ddddd) of the Act is, of course, artificial in nature. However, it has been the view of the Tribunal that mere crushing of iron ores which is a mineral into smaller forms of iron ores and fines cannot be treated as an activity of manufacture. In fact, such crushing only results in conversion of lumps into ores and fines which are not substantially different than the original. Indeed, vide notification dated 09.01.2002, stone crushing units have been excluded from the activity of manufacture or manufacturing process duly been notified by the State Government. It is claimed that since such an activity has been excluded by a notification, it was earlier held to have been a manufacturing activity. Inclusion or exclusion of any such activity by a notification dated 09.01.2002 does not debar the Tribunal from considering as to whether any other activity involves manufacture or manufacturing process. The learned Counsel for the dealer assessee had cited some decisions of the Hon'ble Apex Court which were referred to by the Tribunal in S.A. No. 351 (ET) of 2005-06 along with the earlier views expressed in S.A. Nos. 350 (ET) 2005-06, 37 (ET) of 2006-07 and 2113 of 2005-06 while arriving at a conclusion that process of minerals being crushed into smaller sizes does not involve any manufacturing activity. According to the Tribunal, the decision of the Hon'ble Apex Court in Jagannath Cotton Co. case ibid if read and understood properly, it would appear that manufacture signifies creation of a new and different goods and if a process is applied, the test which is to be adopted is to ascertain, if at all different goods are the result of it. In the ruling of the Rourkela Mineral Co. ibid, a whole lot of process, the minerals were subjected to in the

making of its end product. However, in the instant case, it is not that any such a processing activity is being undertaken which is merely crushing of bigger lumps into smaller sizes. Without elaborating further and having regard to the fact that a similar view has recently been expressed by the Tribunal in S.A. No. 351 (ET) of 2005-06, it is concluded that the activity of the dealer assessee cannot be treated as manufacture or manufacturing process. Having said that, when as per the above finding, no new and distinct product is said to have been manufactured as a consequence of crushing, it is to be held that the dealer assessee is entitled to the benefit of Section 8 of the Act. Thus, the Tribunal is of the conclusion that the findings of the FAA do not suffer from any serious legal infirmity necessitating any kind of interference.

6. Hence, it is ordered.

7. In the result, the appeal stands dismissed. As a logical sequitur, the impugned order dated 28.09.2006 promulgated in Appeal No. AA- 256(RL-I)/ 2005-06 is hereby confirmed.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(Smt. S. Mishra)
2nd Judicial Member

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