

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

S.A.No. 1493 of 2002-03

(Arising out of the order of the ACST, Koraput Range,
Jeypore, in Sales Tax Appeal No. AA. (KOII) 73/2001-02,
disposed of on 26.07.2002)

Present: **Mrs. Suchismita Misra**, Chairman,
Shri Ashok Kumar Panda, 1st Judicial Member,
&
Shri Prabhat Ch. Pathy, Accounts Member-I

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

... Appellant

- V e r s u s -

M/s. J.K. Corp. Ltd.,
Presently M/s. J.K. Paper Ltd.,
Jaykaypur, Dist. Rayagada.

... Respondent

For the Appellant : Mr. M.S. Raman, Addl. S.C. (CT)
For the Respondent : Mr. P.K. Jena, Advocate

Date of Hearing: 03.12.2018 **** Date of Order: 04.12.2018

ORDER

This appeal is directed against the order dated 26.07.2002 passed by the Asst. Commissioner of Sales Tax, Koraput Range, Jeypore (first appellate authority) in Sales Tax Appeal No. AA. (KOII) 73/2001-02 allowing the appeal in part by reducing the assessment of the Sales Tax Officer, Koraput-II Circle, Rayagada (in short, 'assessing authority").

2. The facts as revealed from the case record are that the dealer-Company (assessee) in this case is a Public Limited Company engaged in manufacturing and sale of paper, paper board etc. within the jurisdiction of Koraput-II Circle, Rayagada in the State of Odisha.

pursuant to the notice issued u/S.12(4) of the OST Act pertaining to the assessment period 1997-98 the Manager of the dealer-Company had appeared and produced the books of account, i.e. manufacturing account, stock account, purchase account and sale account with purchase invoices and sale memos for the business carried in the dealer's establishment before the assessing officer. In course of verification of books of account, the assessing officer could find that the dealer-Company had made sale transactions with M/s. Bharat Paper Products, Keonjhar and M/s. Sakti Paper Products, Rairangpur during the assessment year 1997-98 against declarations Form-IV in violation of certain conditions such as cancellation of registration certificate in the case of M/s. Bharat Paper Products and sale of paper as a raw materials in the case of M/s. Sakti Paper Products though the said papers were used by M/s. Sakti Paper Products as finished products. Thus, the assessing officer held the dealer-Company liable to pay the balance of tax dues amounting to Rs.8,19,605.00 in terms of the demand notice issued by him.

The dealer-Company being aggrieved with the aforesaid decision of the assessing officer preferred an appeal before the first appellate authority. Learned first appellate authority while deciding the matter came to a conclusion that since the fact of cancellation of R.C. of the purchasing dealer, viz. M/s. Bharat Paper Products had not been published in the Commercial Tax Gazette when the relevant transaction was effected between the parties, the dealer-Company was eligible for concessional rate of tax in respect of the sale made to M/s. Bharat Paper Products. Similarly, so far as the sale transaction of the dealer-Company with M/s. Sakti Paper Products is concerned, again the first appellate authority held that the latter Company had purchased the paper from the dealer-Company to manufacture exercise book and further following a decision of the Hon'ble High Court of Orissa in the case of State of Orissa Vs. Bharat Petroleum Corporation Ltd., reported in [2001] 122 STC 559 (Ori.), held that as there was an endorsement in the Certificate of

Registration of the purchasing dealer that the papers purchased by the latter were intended to be used by him in the manufacture of exercise books while satisfying other conditions of furnishing requisite declaration in the prescribed form, no tax was to be paid by the selling dealer for the same since the selling dealer had no control over the use of the goods purchased on the strength of aforesaid declaration furnished by the purchasing dealer. While holding thus, learned first appellate authority allowed the appeal preferred by the dealer-Company in part and directed him to pay Rs.6,462.00 in lieu of Rs.8,19,605.00 as assessed by the assessing officer.

3. The State then came up with the present appeal before this Tribunal challenging the order of the first appellate authority on the ground that the same is wrong, illegal and prejudicial to the interest of Revenue. The State further contended that learned assessing officer after a thorough examination of relevant facts had taxed the transactions of the dealer-Company held with M/s. Bharat Paper Products and M/s. Sakti Paper Products against declaration in Forms-IV respectively. Therefore, the said order of the assessing officer should be restored.

4. In course of argument, learned Addl. Standing Counsel (CT) for the State urged before this Tribunal that the dealer-Company had sold papers worth Rs.79,71,193.21 during the relevant period of assessment even though it was fully aware that by that time the R.C. of the said purchasing dealer was cancelled. Therefore, the purchasing dealer must not have furnished Form-IV to the dealer-Company enabling him to avail concessional rate of tax. Similarly, the dealer-Company had sold cut and sized papers worth Rs.1,01,16,151.70 to M/s. Sakti Paper Products, who had utilized those papers for preparing Exercise books. M/s. Sakti Paper Products had not manufactured those papers and those papers were simply bound in bunches to be sold as Exercise books. Therefore, it cannot be said that the said Company, viz. M/s. Sakti Paper Products had purchased the paper from the dealer-Company as a raw material and as

such, the dealer-Company cannot claim concessional rate of tax on that score also.

In reply to the argument as advanced by learned Addl. Standing Counsel (CT) for the State, learned Counsel for the dealer-Company submitted that the dealer-Company was not aware about the cancellation of R.C. of the purchasing Company, i.e. M/s. Bharat Paper Products since no such information was published in the Commercial Tax Gazette. That apart, till the date the State also does not come forward with any information regarding such cancellation of R.C. of M/s. Bharat Paper Products which was supposed to have been duly published in terms of Rule 17 of the OST Rules in order to make the dealer-Company liable for depositing full rate of tax in respect of its transaction with the aforesaid purchasing Company. Learned Counsel for the dealer-Company also cited a number of decisions, i.e. Arjan Radio House Vs. Assessing Authority (Excise and Taxation Officer), Gurdaspur and another reported in [1973] 31 STC 49 (P&H); Commissioner of Sales Tax, New Delhi Vs. Hari Ram Oil Co. reported in [1992] 87 STC 493 and Lanco Packers & others Vs. State of Tamil Nadu and others reported in [1999] 113 STC 40 (Mad.), to apprise this Tribunal that the particulars of all R.Cs. cancelled under the Act has to be notified by the authority in the Official Gazette as soon as possible as otherwise the dealers having transactions with such companies cannot be made liable for depositing full rate of tax. It is further contended by the learned Counsel for the dealer-Company that so far as transaction of the dealer-Company with M/s. Sakti Paper Products, Rairangpur during the relevant period of assessment is concerned the said company had certainly purchased papers at concessional rate against declaration in Form-IV. The plea of the State that those papers were not used as raw material by the said Company is not tenable in the facts and circumstances of the case. He also apprised this forum that all the papers manufactured by the dealer-Company will come under the broad heading 'paper' as mentioned in Sl. No.72A of the Rates of Sales Tax Notification

No. 21987-CTA-98/90-F (SRO Nno.366/90) dt.30.06.1990 issued in exercise of the powers conferred by sub-section (1) of Sec.5 of the OST Act, 1947. Since the purchasing Company – M/s. Sakti Paper Products is not a manufacturing concern of paper which has been mentioned in Sl. No.6 of the aforesaid Rates of Sales Tax Notification, the paper manufactured by the dealer-Company would come under Sl.No.72A of the Rates of Sales Tax Notification. In the instant case, if the registered manufacturer of Exercise note books intended to purchase papers for manufacturing of those note books, then he must have specifically mentioned under Col. No.3 of its R.C. to use those papers as raw materials. In case the said purchasing Company utilized those papers in some other way, then the dealer-Company who had sold those papers could never be made liable for such use and pay the full tax. In the instant case, the purchasing Company, i.e. M/s. Sakti Paper Products has mentioned 'paper' to be purchased for manufacturing of Exercise note books in its Certificate of Registration. Therefore, the dealer-Company is bound to sell paper against declaration in Form-IV. In this regard also learned Counsel for the dealer-Company cited some decisions, i.e. State of Madras Vs. Radio and Electricals Ltd. and another reported in [1966] 86 STC 453 (Ori.); State of Orissa Vs. Bharat Petroleum Corporation Ltd. reported in [2001] 122 STC 559 (Ori.); Nandi Printers Pvt. Ltd. Vs. State of Karnata reported in AIR 1979 SC 180 and Sri Jagannath Industries and others Vs. State of Orissa and others reported in [1995] 97 STC 375, from which it could be gathered that the expression 'paper' include or exclude certain type of papers which has to be made clear by appropriate provision and further it cannot be disputed that an Exercise note book is nothing but a collection of sheets of paper (blank or lined) stitched together by a piece of string or pinned together with pins of a stapler and is a substance used for writing and, therefore, would clearly fall within the item 'paper' and further conversion of such papers into Exercise books is a process of manufacturing. Therefore, in the aforesaid circumstances it

cannot be held that M/s. Sakti Paper Products had not purchased those papers from the assessee dealer-Company as raw materials for its products i.e. Exercise note books. Thus, as per the discussion made in the foregoing paragraphs, it is found that the argument advanced by the State for levy of full tax from the dealer-Company with regard to the transactions made by it with M/s. Bharat Paper Products and M/s. Sakti Paper Products during the relevant period of assessment does not seem to be appropriate and correct.

5. In the result, we find no reason to interfere with the order passed by the learned first appellate authority in respect of the dealer-Company. Accordingly, the impugned order is hereby confirmed and the appeal is dismissed.

Dictated & corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Ashok Kumar Panda)
1st Judicial Member

I agree,

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