BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK

S.A. No. 10(ET)/2006-07
&
S.A. No. 26(ET)/2006-07

P R E S E N T :

Smt. S. Misra, Chairman — Sri S. Mohanty, 2nd Judicial Member — & — Sri P.C. Pathy, Accounts Member-I

S.A. No. 10(ET)/2006-07

(From the order of the ld.ACST, Koraput Range, Jeypore, in Appeal Case No. AAE(KOII) 123/2004-05, dtd.28.01.2006, modifying the assessment order of the Assessing Officer)

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

-Versus -

State of Orissa, represented by the
Commissioner of Sales Tax,
Orissa, Cuttack. ... Respondent

S.A. No. 26 (ET)/2006-07

(From the order of the ld.ACST, Koraput Range, Jeypore, in Appeal No. AAE(KOII) 123/2004-05, dtd.28.01.2006, modifying the assessment order of the Assessing Officer)

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

-Versus –

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

(Assessment year : 2003-2004)

Appearance :
For the Dealer ... Mr. P.K. Jena, Advocate
For the State ... Mr. M.S. Raman, A.S.C. (CT)

Date of Hearing: 13.12.2018 Date of Order: 26.12.2018

ORDER

As both the appeals arose out of the same order of FAA, both are decided by this common order for sake of convenience and to avoid repetition.

Questions raised for decision in these two appeals are broadly stated as follows :

Revenue appeal : Whether the First Appellate Authority/Asst. Commissioner of Sales Tax, Koraput Range, Jeypore (in short, FAA/ACST) has committed wrong in treating the goods which were treated as chemicals covered under the Entry Sl.No.6 of Part-I by the Assessing Authority, Koraput-II Circle, Rayagada (in short, AA) as unscheduled good not exigible to Entry Tax ?

Dealer appeal : (i) "Whether the FAA has committed wrong by not allowing set off of tax paid on the goods which were treated and covered under Entry Sl.No.13 and 73, even though it has been held as taxable by both the fora below? (ii) Whether the FAA has committed wrong by not imposing tax at 50% of the rate to which the goods are exigible under sub rule (2) by treating these goods covered under Entry Sl.No.13 and 73 as raw material in the production of paper? (iii) Whether the FAA is wrong in imposing tax on packing materials as because these packing materials were tax suffered goods and tax on it on the finished product amounts to double taxation which is not permissible? (iv) Whether the FAA has committed wrong in adoption of method of calculation i.e. levying entry tax on sale price including VAT in the sale value? (v)Whether the fora below on wrong interpretation of provision under law has denied the dealer to the full amount of set off admissible and instead allowed the same at proportionate rate?

3. The assessee-dealer in this case is engaged in manufacturing of paper and paper board by its manufacturing unit at two places within the State of Odisha for the purpose of production of above goods. It effects purchases of goods/raw materials outside as well as inside State and on production it effects sale within the State as well as outside the State and even causes export sale for the period 2003-04. In course of assessment of entry tax, the dealer had shown to have purchased unscheduled goods worth Rs.1,11,49,76,973/-. The AA took cognizance of commodities purchased by the dealer as unscheduled and categories the commodities

broadly under 98 number of heads. In course of assessment, the AA found that, some of the goods which are coming under the schedule goods like chemical as defined under Entry Sl.No.6 were claimed as unscheduled goods. Similarly, the AA also found other different goods which are claimed as unscheduled goods but in fact those are covered under the schedule item and exigible to entry tax. The AA thereafter proceeded with the assessment treating these goods which are scheduled goods which are taxable under the entry tax @1%. He also taxed the packing materials purchased and used by the dealer for packing of the finished products. He denied the concession in rate of tax against the goods/chemicals which the dealer claims to have used as raw materials with an explanation that, these goods do not directly go into the composition of the final product. Similarly, the AA also allowed the set off at proportional rate to the extent of the finished product in respect of the OST sales only. The calculation of GTO, TTO and tax liability thereupon by the AA arrived as follows : The GTO was determined at Rs.1,29,38,50,103.00 whereas TTO was fixed at Rs.100,98,97,423.48. Out of which some are imposed @ 0.5%, some @1%, 2% and 12% as the same may be. Tax liability was calculated at Rs.127,76,444.97. Set off was allowed at Rs.3,514.00. Interest on balance tax due was calculated and then penalty as per Sec.7(5) on balance tax due was also imposed, thereby the total tax due, interest with penalty became raised to Rs.62,71,222.00.

4. Being aggrieved with the assessment and demand as above, the dealer preferred appeal, whereby the FAA in the impunged order reduced the demand to Rs.62,71,222.00. The AA has reversed the findings of the AA such as tax liability on the goods/chemicals to the extent of treating the same covered under Entry Sl.No.6 but at the same time the FAA has denied the concession in tax on the claim of the dealer like, the goods are used as raw materials, set off was allowed proportionately as determined by the AA, tax on packing materials was also remained undisturbed in the impugned order.

When the matters stood thus, State has preferred S.A.No. 26(ET)/2006-07 against the impugned order claiming the finding of the FAA to the extent of treating the chemicals as non-scheduled goods which were assessed as per Entry Sl.No.10 by the AA. On the other hand, the dealer has challenged the impugned order, claiming therein that, wrongful calculation of set off, illegal imposition of tax on packing materials, illegal denial of concession in rate of tax against the raw materials like chemicals.

5. With regard to imposition of entry tax on packing materials such as PP bags, HDPE bags and cotton yarn etc., the packing materials above are schedule goods but the same were not used as raw materials which go into the composition of the final product. Proviso to Section 3(2) of the Act prohibits levy of entry tax on goods which are already been subjected to entry tax. As per the provision, if any goods entering into a local area once subjected to entry tax, then it cannot be taxed again. The packing materials were initially charged with tax and the same is sold by the dealer as a container of his products and it is the claim of the dealer that, it has not collected entry tax from the purchaser on these containers or packing material. Therefore, the packing material once subjected to tax is not exigible to further tax being actually used as a container by the dealer. Accordingly, it is held that, both the fora below has failed to appreciate the use of packing materials and the fact like it was already tax suffered goods. As a result, the findings of the fora below imposing tax on packing materials cannot withstand in law, hence reversed. It is also pertinent to mention here that, learned Counsel for the dealer placed the Notification of the C.C.T. dtd.26.07.2013 vide Notification No.16389-III(III)-23/2012-CT and pointed out that, the authority has also left a column in the return form towards packing materials upon which tax collected if any should be deducted. This is an addition to the view above as accepted by the taxing authority in a latter period.

6. As regards the main issue such as the chemicals purchased and used by the dealer, which are not covered under Entry Sl.No.13 or 62 were treated as chemical as per Entry Sl.No.6 by the AA whereas the FAA

reversed the findings by holding the view that, the chemicals are not covered under Entry Sl.No.6.

7. Gone through the impugned order. The FAA has visited the dealer's unit and has verified the disputed goods/chemicals. Learned Counsel for the dealer argued that, the chemical as entered in Entry Sl.No.6 is related to the drugs and medicines only. It does not cover any kind of chemical and that is the reason why some other chemicals are entered in Entry Sl.No.13 and 62 and that too Entry Sl.No.73 is introduced by way of amendment for the year 01.06.2004 to include all kinds of chemical under the term "chemical used for any purpose". While amending the Act and making a separate Entry like chemicals for all purpose is created vide separate Sl.No. the term chemical in the Entry Sl.No.6 was deleted. The FAA after a threadbare discussion of the different authorities held that, the entries under the Entry Sl.No.6 are grouped together and in that event, it attracts the principle of "Noscitur a socits' and in the conclusion, it is rightly held by the FAA that the, word 'chemical' used in Entry Sl.No.6 of the schedule is chemicals which can be used in the manufacture of drugs and medicines and that is what the intention of the legislature while mentioning the term 'chemical' in the Entry Sl.No.6, Part-I such as "drugs and chemicals including medicines". Chemicals used for any purpose as per Entry Sl.No.73 w.e.f. 01.06.2004 indicates the chemicals which were specified in the Entry Sl.No.6. Entry Sl.No.13 and Entry Sl.No.62 are having limited interpretation in generic term. If that be, the view of the FAA is correct in the eye of law that, the chemicals included under the Entry Sl.No.6 is taxable whereas the chemicals of other kinds should be treated as unscheduled goods under the entry tax and then it is not exigible to entry tax.

8. The next point raised by the dealer is, the fora below has allowed set off only to the extent of Rs.4,33,964/- instead of the legitimate claim i.e. the tax collected from the selling buyers. The impugned order as it revealed, the learned FAA has duly taken consideration of the provision under Rule 19(5) of the OET Rules which was in force by then i.e. w.e.f.

01.12.1999 to 15.10.2005/11.10.2004 and hold that, whatever entry tax collected by the manufacturer from the buying dealer on sale of finished goods and deposited into the Government treasury shall be set off against entry tax on raw materials subject to limited up to the collection amount. However, on perusal of the impugned order, it is found that, the calculation of set off is apparently wrong. So, without further discussion on this question, it is held that, the findings of the FAA regarding the ratio applicable for calculation of set off is correct. However, the calculation as made, which found to be wrong need to be corrected.

9. So far as the question like whether the local tax need to be included in the sale value before imposition of entry tax or after, is a question decided in either way by the authorities time to time, which has been set at rest in a later period with a view that, the dealer can impose entry tax on the sale value and then impose sales tax. In accordance to the observation above, it is held that, this is a fit case where the matter should be remitted back to the AA for assessment afresh as per the observation above. Hence, ordered.

Lastly, learned Counsel for the dealer submitted, for the tax period prior to and after the period in question, the taxing authority has accepted the claim of dealer and further, for some tax period, the dispute is settled at FAA level. The authority has held all the issues raised and decided hereinabove in favour of the dealer. It is argued that for the reason above the impugned order is not sustainable.

Consistency, is the well accepted principle in tax matter. Even though, principle of *res judicate* has no strict application in tax matter, but, if the dealer is assessed over a long period of time i.e. before or after the disputed period and parties are satisfied with such assessment and the tax liability is fixed accordingly, then the taxing authority cannot take a different view for a particular tax period which is against the theory of consistency, continuity and parity. Hence the argument of the counsel for the dealer has considerable force.

The appeal by the dealer is allowed on contest. The appeal by the Revenue is dismissed as of no merit. The impugned order by FAA is reversed. The matter is remanded back to the AA for assessment afresh in the light of observation above. The AA is requested to complete the remand assessment within a period of four months from the date of receipt of this order.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Smt. S. Misra)
Chairman

I agree,

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