

BEFORE THE ADVANCE RULING AUTHORITY
ODISHA SALES TAX TRIBUNAL, CUTTACK.

A.R.A.No. 6(ET) of 2013-14.

Present:

Miss.S.Mohapatra, & Sri A.K.Mohapatra & Sri R.K.Rourt,
1st Judicial Member 2nd Judicial Member Accounts Member-III.

M/s.Kuber Enterprisers,
Ganesh Ghat,Cuttack-753002
TIN:21101203374

... Applicant,

- Versus -

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

... Respondent.

For the Applicant
For the Respondnet

... Mr.M.Agrawal, Advocate.
... Mr. M.Wright, Advocate(Rev.)

Date of Hearing
Date of Order

... 03-06-2014.
... 13-06-2014.

ORDER

The petitioner in this petition calls in question seeking determination of ~~taxability~~/liability under Section 78(A)(1) of the Odisha Entry Tax Act, 1999 on some of the packed namkeen goods sold by the petitioner in course of his business to be unscheduled goods and are not liable to entry tax.

2. The facts which leading to this appeal are as follows :-

The petitioner is one of the distributors in Cuttack District, of M/s.Haladiram Food International Pvt. Ltd, Nagpur, which is engaged in manufacture of food products in the trade name of "Haldiram's and manufactures food items such as Namkeen, Mixtures, Snacks, etc. marketed in different packs and sizes and the petitioner purchases the same directly in course of inter-State purchse. The petitioner has claimed that some of the packed Namkeen goods are unscheduled goods and not exigible to entry tax.

The said goods are :-

1. Moong Dal
2. Peanuts
3. Chana Chur
4. Matar
5. Chudwa

3. The Ld. Counsel appearing on behalf of the appellant submitted that the Ld. Sales Tax Authority of the Circle are now doubting the exigibility of tax in respect of the above goods sold. The Assessing Officer is presently of the view that the aforesaid namkeen goods are taxable goods, liable to entry tax @2% holding the same to be "mixture" coming under Sl.No.1 of Part-II of Taxable Schedule. He further submitted that the goods in question are i.e. Moong Dal, Peanuts, Chana Chur, Matar, Chudwa are non-schedule goods as they do not fall within the definition of "Mixture", the same is not considered in common and commercial parlance to be "Mixture". The Entry Tax, (unlike the VAT and OST Act) is being collected on specified goods mentioned in the schedule and not otherwise on the basis of any analysis or analogy. The commodities for taxation under the OET Act, is imposed as per the charging Section 3 of the Act, which is only charged on specific specified goods, clearly mentioned in the schedule. In view of the charging Section only those goods which are specifically mentioned in the scheduled are only to be taxed and not otherwise. In fine, the Ld. Counsel on behalf of the appellant relied on the case of State of Orissa Vrs. Bharat General Store (2002)127 STC 333 (Orissa) Which has held that "it is a settled position of law that a taxing statute is to be strictly construed and the words used are to be given their natural meaning, it is also the settled position that entries in the Schedule are to be interpreted in their popular sense unless they are expressly defined in the enactment. In other words, they are to be construed according to the common commercial understanding of the term and in the sense in which it is sold by the dealer and purchased by the consumer'.

4. He has further submitted that goods "Moong Dal", "Peanuts", "Chana chur", "Matar", "Chudwa", are not been specified in the schedule, therefore, the same are unschedule goods. These are separate, distinct and independent commodities which do not fall under definition of "Mixture". The entry under the Taxable Schedule of the Act is an inclusive definition and cannot be expanded to fall within its ambit of the above goods.

5. Mr. Mark Wright the Ld Counsel appearing on behalf of the Revenue in reply submitted that the appellant has been assessed to entry tax for the period 2004-05 in Entry No.1 of Schedule II of the Entry Tax Act, as amended to include "Bhujia and Mixture" on which goods he has admitted and paid entry tax @2%.

6. The Ld. Counsel on behalf of the Revenue has also pointed out the relevant portion of Orissa Value Added Tax under which the said petition is drawn out.

78A. Advance Ruling on disputed questions:-

(1) Any registered dealer may apply in the prescribed form and manner, to the Tribunal for obtaining an advance ruling on any disputed question relating to ,

(i) determination of rate of tax of a particular commodity, or

(ii) admissibility of input tax credit on a particular transaction of purchase and if admissible, the conditions and restrictions subject to which such input tax credit shall be admissible.

(2) If, in the opinion of the Tribunal, the application does not relate to any disputed question as referred to in sub-section (1) or the application is incomplete or incorrect, the Tribunal may, after giving the applicant a reasonable opportunity of being heard, reject the application.

(3) An application seeking advance ruling by any registered dealer shall not be entertained on the following grounds, namely:

(i) if the disputed question on which advance ruling has been sought is the subject matter of any assessment or appeal proceeding concerning the said dealer, or

(ii) if the disputed question arises from any order already passed under the Act.

7. The appellant has stated in his petition that "the assessing officer is presently of the view that the aforesaid namkeen goods are taxable goods, liable to entry tax @2%, by misinterpreting and misapplying entry Sl.No1 of Part-II of the Taxable Schedule". In the instant case the appellant dealer has admitted that the Ld. Assessing Officer seeking to assess the dealer, has already framed his mind regarding the exigibility of the goods sold by the dealer to entry tax. Hence, the Ld. counsel on behalf of the revenue strongly pleaded that the instant petition of the dealer is liable to be dismissed and it is in contravention of 78A (3) of Orissa Valued Added Tax Act, 2004.

8. The Ld. Counsel on behalf of the Revenue submitted that the said goods are exigible to tax @2% as it is revealed from the return filed by the dealer for the period 1.4.2014 to 31.5.2014. It is seen that dealer him-self has admitted entry tax @2% of the items "Sweets and Namkin" in col. No.14 of its return. Even in 2011 i.e. for the period 1.4.2011 to 30.4.2011, the appellant has admitted entry tax @2% on the said goods.

9. In view of such rival contentions the contentious issue is to examine the merits of the petition. The Ld. Counsel on behalf of the Revenue has relied on the judgement laid down by Hon'ble Supreme Court in the case of Commissioner of Central Excise, New Delhi Vrs. Connaught Plalza Restaurant (P) Ltd, New Delhi, reported at 2012 (286) ELT 321 (S.C) which held that :-

"31. Therefore, what flows from a reading of the aforementioned decision is that in the absence of a statutory definition in precise terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words they have to be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. Resort to rigid interpretation in terms of scientific and technical meaning should be avoided in such circumstances".

10. Sl.No.1 of Schedule Part-II of Odisha Entry Tax Act, 1999 reads as follows:-

“Cakes, pastries, Sweetmeat, [toffees, biscuits, chocolates, Ice cream] [Bhujia and Mixture]”

11. The word “Bhujia and Mixture” have been added by the legislature vide Finance Department Notification No.23878-CTN-16/2000-F(SRO No.288/04) dt.31.05.2004 and the same were not appended to the entry prior to the said date. Here it could be seen that by adding the specific entry “Bhujia and Mixture” along with other snacks, sold over in packaged, ready to eat form, the Legislature intended to levy entry tax on all such ready to eat snacks commonly known to the lay man as “mixture”.

12. In the case in hand the appellant has filed copies of ingredients of the products like Moong Dal, Peanuts, Chana Chur, Matar and Chudwa before this forum. It is found in the said literature filed by the dealer that each of the goods for which the petitioner seeks clarification are mixture of various edible substances to arrive at the end product which the dealer terms as “Indian Snack” on the face of its packaging.

13. We have already held that all the items disputed by the dealer are commonly known as “Mixture” in the local market by the lay man and that the eatable “mixture” is no more than a “Namkin” i.e. a salted snack which is sold by the dealer. Namkin is the Hindi Word for savoury or salty foods. The word is derived from the Hindi Word salt, which is “Namak”. In local parlance in Orissa “Mixture” is commonly used to connote such salty, savoury snacks.

14. Here in the instant issue, the Ld. Counsel on behalf of the Revenue has drawn an analogy from the case of Amrit Agro Industries Ltd, and Another Vrs. Commissioner of Central Excise, Ghaziabad, AIR 2007 (SC) 1523 wherein the Hon'ble Supreme Court of India have held that :-

“Moongfali masala mazedar is the mixture of material other than the nuts. It is an oil preparation. It makes use of gram flour (besan). It undergoes the

process of deep frying. When such a process is applied one cannot apply the principle of predominance. The only difference between allo bhujia and moongfali masala mazedar is that in the former case the namkeen is essentially made of alloo whereas in the later case it is a namkeen essentially made from a pulse (dal). Pulse can be Chana, Malka, Masoor, Moong, Urad etc. All these products are only known as namkeens in the market”.

15. Accordingly “Bhujia is the mixture of material other than the nuts, it is an oil preparation and makes use of gram flour (Besan) undergoing the process of deep frying. In case of Bhujia i.e. not only salt but even masala, salt, gram flour are some of the ingredients which are used in the preparation of Bhujia but mixture is a preparation of nuts like peanuts, ground nuts etc. They are products which are prepared or preserved by process like roasting. Bhujia and Mixture are species of “namkeen” and “namkeen” is the genesis of the two.

16. In the ultimate analysis we are of the view that the goods sold by the dealer i.e. Moong Dal, Peanuts, Chana Chur, Matar and Chudwa are classified to one class i.e. “Mixture” coming under Sl.No.1 of Part –II of the Schedule of Orissa Entry Tax Act, 1999 and hence the said goods are schedule goods and exigible to 2% entry tax.

17. Accordingly, the petition is disposed of.

Dictated and corrected by me,

Sd/-

(Miss. S. Mohapatra)
1st Judicial Member.

I agree,

I agree,

Sd/-

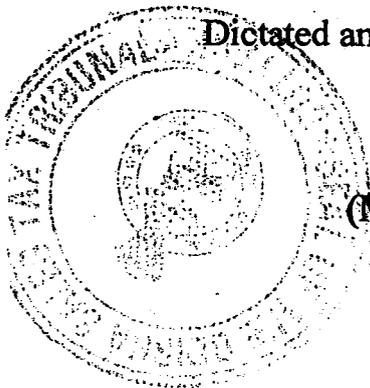
(Miss. S. Mohapatra)
1st Judicial Member.

Sd/-

(A.K. Mohapatra)
2nd Judicial Member.

Sd/-

(R.K. Rout)
Accounts Member-III



TRUE COPY ATTESTED

Secretary