

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

✓ A.R.A. No.03 of 2013-14

Present: **Shri P. Mishra**, 1st Judicial Member,
Shri A.K. Mohapatra, 2nd Judicial Member,
&
Shri R. Rout, Accounts Member-III.

M/s. Barbil Steel Fabrication Works,
Industrial Estate, Barbil,
P.O.- Matkamedia,
Dist.- Keonjhar – 758036 (Odisha). Applicant

- Versus -

State of Odisha, represented by the
Commissioner of Sales Tax (O),
Cuttack. Respondent

For the Applicant . . . Mr. B.B. Panda, Advocate
For the Respondent . . . Mr. M.S. Raman, Addl. Standing Counsel (CT)

Date of hearing: 20.01.2014 **** Date of order: 22.01.2014

ORDER

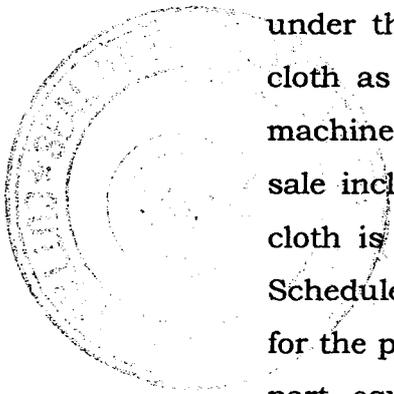
The petitioner in a petition u/s.78(A)(1) of the Orissa Value Added Tax Act, 2004 (in short, the Act) asks this Tribunal for determination of rate of tax of its product "steel spring cloth" @ 5% under Part-II Sl.No.24 of the Schedule 'B' of capital goods instead of 13.5% under Part-III of Schedule 'B' which is being used as spare parts of a crusher machine.

2. The backdrop of filing of this petition may be stated as follows:-

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The petitioner is authorized by Industry Department and Sales Tax Department to manufacture and sale the machinery and spares mostly used in mining i.e. crusher plant. The aforesaid spare part is being used in crusher machine for production of different sizes of ores and stones to meet the requirement of the customers. The petitioner while generating bills used to mention the name of the spare part as steel spring cloth instead of mentioning its general name as spare parts. As most of the revenue officers are non-technical persons having not been trained with mechanical engineering or being acquainted with the Guide or Manual to know about the aforesaid spare parts they used to collect tax @ 13.5% as "unspecified goods" in terms of Part-III of Schedule 'B' of the Act. The petitioner had made a delivery challan for supply of one piece of steel spring cloth to one of its customer M/s. Shree Hardware, College Square, Cuttack vide challan No.158 dtd.22.09.2013 and when the said goods was in transit by the person/carrier by bus, the Mobile Squad of Sales Tax Officer, Cuttack I East Circle, Cuttack collected tax @ 13.5% vide tax receipt No.608968 dtd.23.09.2013 instead of @5%. This obliged the petitioner to file the present petition before this Tribunal for determination of the rate of tax for the aforesaid product.

3. The contention of Mr. Panda, the learned counsel appearing on behalf of the petitioner is that the petitioner is a registered dealer under the Act who is authorized to manufacture and sale steel spring cloth as a spare part of crusher unit. According to Sec.2(8) of the Act machinery and equipments directly used in process of manufacturing and sale include the component and spare parts and therefore, steel spring cloth is a capital good and hence, it comes under Entry 24 Part-II of Schedule 'B'. He has further contended that both under the facts and law for the purpose of commercial identity in trade and commerce each spare part, equipment and component has distinct name for different use and value etc. like washing machine, printing machine and spares like pulley, handle, starter, bearing, spring and sockets, chains, etc. When the Act is



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silent for declaration of nature or use of any goods in tax invoice or retail invoice but prescribes the rate of tax of such goods, the burden is shifted to department for collection and assessment of proper rate of tax, as capital goods, use for the purpose of manufacturing and sale of its products. The Act and Rule does not require any declaration for the end use or nature of goods at the time of sale but only commercial name for the above should be mentioned by the dealer. Like a dress traders should mention in his invoice shirt, pant or frock, trousers, panjabi but not to mention one dress, two dresses likewise although the rate of all readymade garment is same in rate schedule and this aspect has been overlooked by the taxing authority at the time of making the collection of tax under this Act. The advance ruling should be issued for clarification of rate of tax on any name of spare parts should be taxed @ 5% instead of 13.5% as capital goods as disputed above or some declaration forms should be introduced for the said purpose even though the item has no second use in order to avoid any complexity in trade and collection of correct rate of tax.

4. The State-respondent filed rejoinder to the petition. The petition is contested on trident grounds. They are:- firstly: the petition is not maintainable on the ground that the petitioner opted to pay tax and penalty and further when the petitioner has alternative remedy for claiming relief as provided under the statute particularly under sub-section (3) of Section 78A, the petition is liable to be rejected and secondly the particular commodity was not produced before the Bench for its examination to identify it inasmuch as there is no expert report and thirdly, the registration certificate does not indicate that the registration certificate is granted in respect of crushing machine or spare part of the same i.e. steel spring cloth.

5. From the aforesaid rival contentions two points emerged for our consideration. They are:- firstly, whether the petition is maintainable

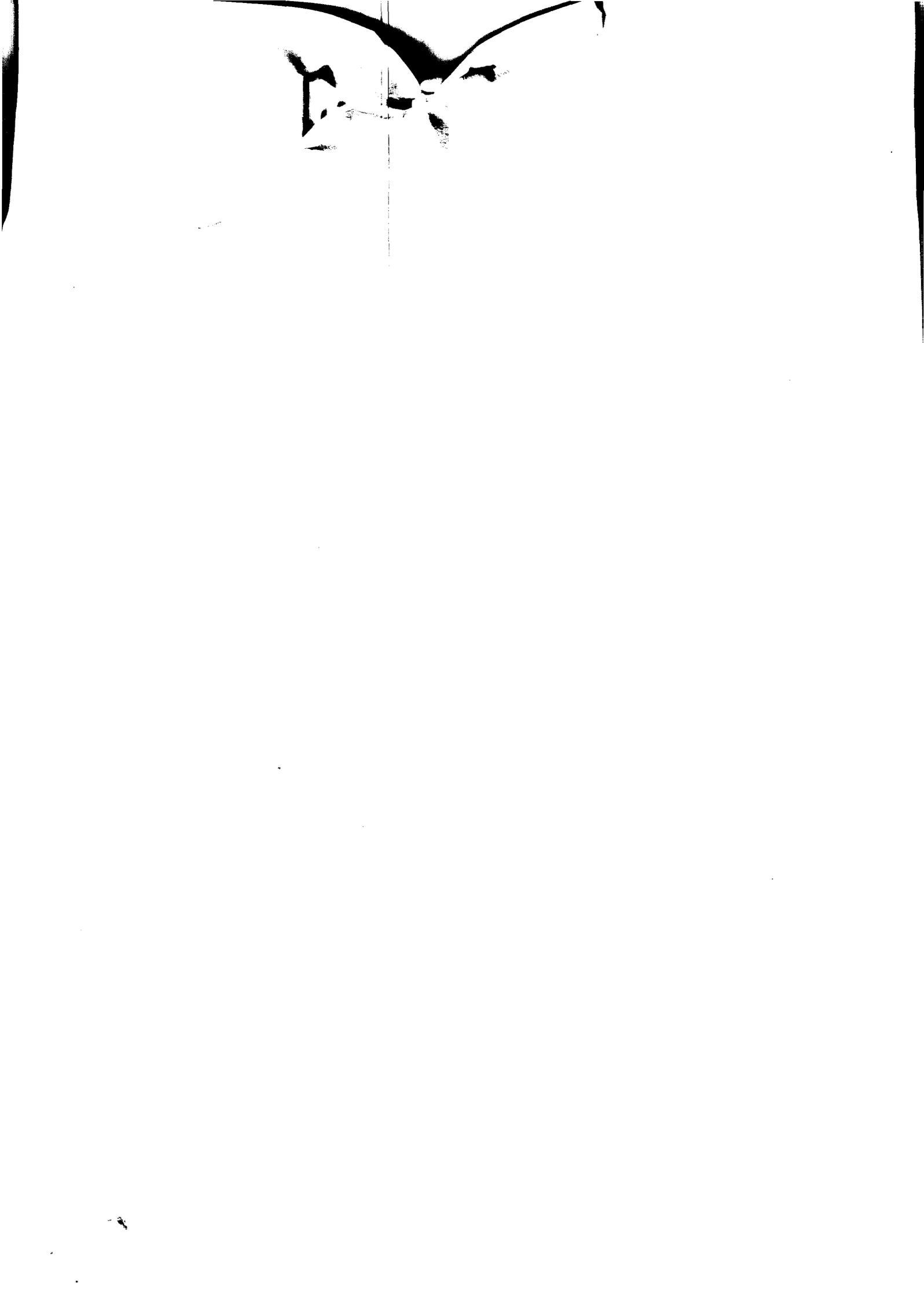
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and secondly, whether steel spring cloth comes under Part-II Sl. No.24 of the Schedule 'B' of the capital goods ?

6. Mr. M.S. Raman, the learned Standing Counsel (C.T.) appearing on behalf of the Revenue submitted that the petition is not maintainable on quadruple grounds. They are: firstly, the petitioner has opted to pay tax and penalty, secondly, when the petitioner has alternative remedy for claiming the relief under the statute particularly under sub section (3) of Section 78 of the OVAT Act, the petition is liable to be rejected, thirdly, the commodity having not been produced before the Bench or no expert report is produced the identity of the property could not be determined and last but not the least is the registration certificate of the petitioner does not indicate in respect of crushing machine or spare part. Let us dilute on each point in seriatim.

7. Section 78(3) of the OVAT Act creates as inhibition when a petition for advance ruling is not maintainable. This section stipulates two conditions. They are: firstly, 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 secondly, if the disputed question arises from any order already passed under this Act. The Revenue was baffled in establishing either of these two conditions in regard to maintainability of the petition. The next frank of the argument is that the petitioner has opted and paid the tax and he has an alternative remedy and therefore, the petition is not maintainable. We are not gullible to sustain such submission. Well settled is the rule of law that when two modes of reliefs are available to a party, the party is at liberty to invoke either on one but not the two and once he opts for a particular mode he cannot divert to the other mode subsequently. What do we mean to convey is that he has to exhaust the mode which he has adopted for seeking his relief. As because alternate modes are available it does not wipe out the statutory remedy available to a party. Similarly, option to pay tax and tax paid, exercise of such option

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does not curtail the statutory right of a party. To apply for an advance ruling it always relates to either any disputed question as to determination of rate of tax of a particular commodity or on the question of admissibility of input tax credit on a particular transaction on purchase. The petitioner's product on interception at the checkgate was taxed by the taxing authority @ 13.5% treating the same under Part-II of Schedule 'B'. Therefore, the petitioner has come up with a disputed question as regard to determination of rate of tax of the product.

8. The next contention of Mr. Raman is that the petitioner having not demonstrated the product or having explained the process of manufacturing of the commodity and having not been granted a license to manufacture spare part it is not possible to say by the department/opponent that the product of the petitioner fit into the Sl.No.24 Part-II of Schedule 'B' and hence, no advance ruling possibly be permissible to be given. Need less to say, the petitioner has produced the literature of its product i.e. steel spring cloth which demonstrates that the same is used in the crusher unit as spare part. In that view of the matter, non-production of the product before the Bench could not be considered that the product has not been demonstrated to identify it.

9. Now, the next question is whether the petitioner must necessary be a registered dealer for manufacturing the product in the registration certificate in order to make him eligible to apply for an advance ruling. We are not persuaded to sustain such restricted meaning of such registered dealer to a registered dealer who hold a registration certificate to deal with a specified commodity to apply for an advance ruling. We are not concerned with technical meaning of "any registered dealer" who holds registration certificate to deal with a commodity specified with R.C. as in a fiscal statute plain meaning rule is applied (see Partigton Vrs. Attorney General (1869) LR 4 HS 100 page 122).

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10. In interpreting an expression used in a legal sense, the courts are required to ascertain the precise connotation which it possesses in law.

11. It is furthermore trite that the court should not be overzealous in searching ambiguities or absurdities in words which are plain. (see Inland Revenue Commissioner Vrs. Rossminster Ltd. (1980) ALLER 80 page 90).

12. It is now well settled that when an expression is capable of more than one meaning the court would attempt to resolve that "ambiguity" in a manner consistent with the purpose of the provisions and with regard to the consequences of the alternative construction (see Clark & Tokelay Ltd. (=/a Spellbrook) vrs. Oakas (1998) 4 ALLER 353).

13. In Inland Revenue Commissioner Vrs. Trustees Sir John Aird & Settlement (1984) 1 ch 382, it is stated: -

"Two methods of statutory interpretation have at times been adopted by Court, one meticulous examination of the precise words used. The other sometimes called purposive is to consider the object of the relevant provision in the light of other provision of the Act the general intendment of the provisions of law. They are not mutually exclusive and both have their part to play even in the interpretation of a taxing statute."

14. Bearing these parameter of law in our mind when we examined Section 78A(1) of the Act we found that 'any deal' may apply in the prescribed form and manner to the Tribunal for obtaining an advance ruling on any disputed question referred supra. The applicant is a registered dealer under the Act having assigned with TIN - 21641400860. Mr. Panda appearing on behalf of the applicant has brought to our notice that the petitioner has been granted a license by the DIC to manufacture mechanical spares, equipments, machine and the R.C. stands for

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manufacturing of machinery use in mining. The contention of taxing authority treating steel spring cloth in Part III Schedule 'B' goods and taxing the same @ 13.5% instead of treating the same as spare part of mining crusher and as such a capital obliged to file this advance ruling for determination of correct rate of tax for growth of business and economy of State. Thus when any purposive meaning is given to the words "any registered dealer" squarely dissipates that the registered dealer whose registration certificate specifies a particular commodity to deal with can apply for obtaining an advance rule u/s.78A(1) of the Act. Accordingly, this point is answered in negative against the Revenue.

15. Steel spring cloth used in a crusher unit to remove all refinements. These steel spring cloth are used in gold project like Lincoln Gold Project, Amador Country, California, Moss Mine Gold-Silver, Bullhead City, Arizona, Argyle Diamond Mine, Kimberley, Reveuboe Coal Mine, Tete, Large Gear Unit for powerful crushers, sangdong Tungsten Molybdenum Project, Twiflex Disc Brakes Meet the needs of Overland Coal Conveyors, Marandoo Iron Ore Mine, Pilbara, Channar Iron Ore Mine, Pilbara etc. The steel spring cloth is used as a spare part.

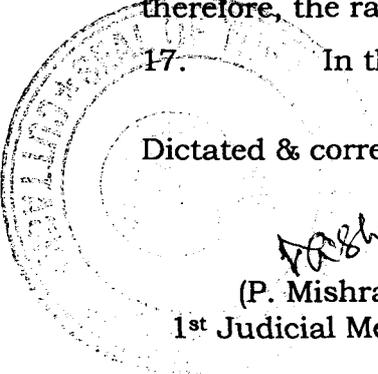
16. Sl. No.24 Part-II Schedule 'B' speaks capital goods as defined in sub-section (8) of Section 2 of the Odisha Value Added Tax Act, 2004, which is to be taxed @ 4%. Section 2(8) defines capital goods, which means plant, machinery and equipments used directly in the process of manufacturing and shall include the component and spare parts thereof but shall not include such plant, machinery and equipments which are used for the purpose or in the circumstances specified in Schedule 'D'. The component as spare part of plant, machinery and equipments have been inserted vide Notification No.5495/Legis dt.07.05.2008 published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008. Steel spring cloth being a spare

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part of crusher, it comes under the Entry 24 of Part II of Schedule 'B' and therefore, the rate of tax is 4%.

17. In the ultimate analysis, the petition is allowed.

Dictated & corrected by me,


P. Mishra
(P. Mishra)

1st Judicial Member

P. Mishra
(P. Mishra)

1st Judicial Member

I agree,

A.K. Mohapatra
(A.K. Mohapatra)

2nd Judicial Member

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I agree,

R. Rout
(R. Rout)

Accounts Member-III

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