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

A.R.A. No.15 of 2012-13

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

M/s. Gayatri Wire & Cables Ltd.,
At:- Banaparia, P.O.- Kuruda,
Dist.- Balasore – 756056,
Odisha. ... Applicant

-Versus-

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

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

Date of hearing: 24.10.2013 **** Date of order: 25.10.2013

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 "AAAC" i.e. All Aluminium Alloy Conductors @ 4% which is being used as over head lines for transmission of electric energy with effect from 01.04.2005 but not with effect from 01.06.2007.

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

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The petitioner M/s. Gayatri Wires & Cables Ltd. is registered under the Act vide TIN – 21501501235. It deals in manufacturing and sale of AAAC. This product was not coming under goods taxable @ 4% from 01.04.2005 to 31.05.2007 vide Entry No.10 of schedule 'B' Part II of the Act vide Notification No.10823/Legis dated 30.06.2005 published in Orissa Extraordinary Gazette No.1034 dated 01.07.2005. The said entry was for Aluminium Conductors, AARs and Aluminium Conductor Steel Reinforced (ACSRs). This product comes under the aforesaid entry vide Notification No.24984-CTA-14/2007-F (SRO-343/07) published in the Orissa Ex-Gaz No.974 dated 31.05.2007 w.e.f. 01.06.2007. Thus "AAAC has been substituted for AARs with effect from 01.06.2007 and prior to this date the goods AAAC" was not appearing in any of the entries in the schedule. Therefore, the claim of the petitioner is to make AAAC VAT rate @ 4% w.e.f. 01.04.2005 to 30.05.2007.

3. The Revenue resisted the claim of petitioner on the following grounds: -

(i) The application is vague since the applicant has not mentioned any specific reply it seeks to be clarified by this Hon'ble Authority.

(ii) As provided under Section 78A of the OVAT Act, particular transaction relatable to the present dealer is required to be explained. The dealer has enclosed materials relating to other dealers which are subject matter of dispute by quasi judicial authorities/courts. In case any authority goes wrong in properly levying appropriate rate of tax on a particular transaction relating to specific commodity the same is subject to reassessment u/s.43 or suo moto revision u/s.79 by the Commissioner or his delegate. Under such premises the applicant cannot take help to claim "AAACs" to fall within the

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sweep of Entry 10 of Part-II of Schedule B appended to the OVAT Act.

(iii) The applicant has not explained as to pendency of its audit/assessment proceeding. As per Section 78A of the OVAT Act, in the event the applicant receives audit notice, the advance ruling application would not be entertained.

(iv) The applicant has not produced the commodity before this Hon'ble Tribunal in order to bring out the correct fact. Unless the commodity in respect of which advance ruling is sought for is produced, the opponent has no opportunity to ascertain as to whether the goods claimed to have been manufactured by the applicant would fit into the description enumerated in any of the entries in the schedule appended to the OVAT Act.

(v) With regard to determination of the nature of the commodity (claimed to have been manufactured by the applicant), opinion of technical expert is required. In absence of such opinion and the such an opinion having not been brought on record, the true nature of the commodity in which the applicant deals in would not be possible to be ascertained.

(vi) Unless the said commodity is identified with its true nature and functioning, it would not be possible to say in which of the entries of the schedule appended to the OVAT Act it falls.

(vii) The applicant has not enclosed registration certificate, if any, granted to it by the department in order to demonstrate that it manufactures "AAACs".

(viii) The applicant having not explained the process of manufacture of the commodity, and having also not

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furnished the licenses granted to it under the Factories Act and/or by the Excise Department, etc. it is not possible to say by the department-opponent that it can fit into Entry 10 of Part II of Schedule B appended to the OVAT Act.

4. From the aforesaid rival contentions, the following questions arise for our consideration –

(i) Whether the present petition is maintainable ?

(ii) Whether AAACs is an Aluminium conductor ?

(iii) Whether the rate of tax on AAAC be @ 4% w.e.f. 01.04.2005 ?

5. Mr. M.S. Raman, learned Addl. Standing Counsel (CT) appearing on behalf of the Revenue submitted that the petitioner has not explained as to pendency of its audit or assessment proceeding. As per Sec.78A of the Act, in the event, the petitioner receives audit notice the advance ruling application would not be entertained. Secondly, when similar matter of dispute is pending before quasi judicial authority or court the present petition is incompetent to be maintained. Mr. N. Mohanty, the learned Advocate on the other hand has submitted that substitution of AAACs in the original notification in the place of AARs, a commodity which was not manufactured anywhere in India or abroad and the same was replaced by AAAC vide notification No.24984-CTA-14/2007-F (SRO 343/07) by way of rectification it shall be deemed to have been included in the original notification attracting tax @ 4% but giving it with effect from 01.06.2007 raises fair question of law to be answered by this Tribunal to remove the shadow of doubts on fair taxation on the commodity and therefore, the petition is maintainable. Speaking differently he urged upon that the present petition is maintainable to dissipate the confusion or contradiction as to the correct rate of tax.

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6. Section 78A (1), (2) & (3) is the cookie cutter to the contretemps. It is extracted in extenso herein below which reads as follows: -

> "(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 this Act."

7. A fair reading of the aforesaid section of law it is as much clear as a noonday that an application is not maintainable (a) when it does not relate to any disputed question either (i) determination of rate of tax of a particular commodity or (ii) admissibility of input tax credit on a particular transaction of purchase & etc. (b) if the disputed question on which advance ruling has been sought is subject matter of any assessment/appeal proceeding concerning the applicant-dealer or if the disputed question arises from any order already passed under the Act.

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The Revenue could not show existence of any of grounds to say that the present application is not maintainable. On the other hand, the applicant raised an important issue whether the subsequent notification substituting 'AAAC' in place AARs is as a clarification, speaking differently, if the subsequent notification be held as clarificatory to the earlier notification then ultimately the impact of rate of tax of AAAC shall be retrospective, as such, it fulfils the first condition of the maintainability of application, that is to say, the determination of the rate of tax of 'AAAC' with effect from 01.04.2005. Thus, we squarely say, the application is maintainable.

8. The next contention of Mr. Raman, is that the applicant having not demonstrated the product or having explained the process of manufacturing of the commodity and having not furnished the licenses granted to him under the Factory Act and/or by Excise Department, it is not possible to say by the department/opponent that the product of the applicant fit into Entry 10 of Part-II of Schedule B appended to the OVAT Act, hence no advance ruling possibly be permissible to be given. He further contended that the applicant has not enclosed registration certificate, if any, granted to it by the department in order to demonstrate that it manufactures "AAACs". It is needless to combat that 'AAACs' is an alluminus conductor. Had it not been so, it would not have been substituted in schedule of goods under the Act. Now, the pithy point is whether the applicant must necessarily be registered dealer for manufacturing the product in his registration certificate in order to make him eligible to apply for an advance ruling. We are not gullible to sustain such restricted meaning of "any registered dealer" to a registered dealer who holds a registration certificate to deal with a specified commodity. We are not concerned with technical meaning of "any registered dealer" who holds registration certificate to deal with a commodity specified with R.C.

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as in a fiscal statute plain meaning rule is applied (see Partigtion Vrs. Attorney General (1869) LR 4 HS 100 page 122).

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

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

11. 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).

12. 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."

13. 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

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ruling on any disputed question referred supra. The applicanit is a registered dealer under the Act having assigned with TIN – 21501501235. Mr. Mohanty appearing on behalf of the applicant has brought to our notice that subsequent notification substituting 'AAAC' in place of 'AARs' giving the notification effect from 01.06.2007, creates confusion as to imposition of tax with effect from 01.04.2005 or with effect from 01.06.2007. 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.

14. Now, the next question for consideration is whether the Notification No.974 dated 31.05.2007 substituting "AAAC" in place of "AARs" though given effective from 01.06.2007 yet has retrospective effect or not ?

15. Mr. Raman relying on Jay Mahakali Rolling Mills v. Union of India (UOI) & Others reported in 2007 (215) ELT 11 (S.C.) submitted that when the notification itself contains a date from when it comes into force/it becomes effective and there is no warrant for interpreting as to when it would come into force. It has not been disputed that AAR has not been manufactured anywhere in India and abroad although the same was found mentioned in Entry 10 of Part-II of Schedule B of the Act. When we have quizzically asked Mr. Raman what is the abbreviation of AARs and its function, he zapped by replying that he has no knowledge about it. AAAC has been substituted in place of AARs. We have discussed what AAAC stands for. When it was found that there was no commodity by name AARs, the same was replaced by substituting AAAC. What we mean to convey is that AAAC is substituted to remedy unintended consequences and to make the Entry No.10 workable, a commodity which

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supplies an obvious omission in the entry and therefore, it is required to be read into the Entry No.10 to give the Entry No.10 to a reasonable interpretation requires to be treated as retrospective in operation, so that a reasonable interpretation can be given to the Entry No.10 as a whole. Therefore, we are not persuaded with to accept the contention of Mr. Raman on this point. Our view is that the substitution of AAAC shall be treated as it was in the original notification and must be given effect from 01.04.2005 but not from 01.06.2007.

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

Dictated & corrected by me,

(P. Mishra) 25/10/2013
1st Judicial Member

(P. Mishra) 25/10/2013
1st Judicial Member

I agree,

(A.K. Mohapatra)
2nd Judicial Member 25-10-13

I agree,

(R. Rout) 25/10/2013
Accounts Member-III