IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18512 of 2013

M/s. Novateur Electrical & Digital Systems (P) Ltd., Bhubaneswar	....	***Petitioner***

Mr. A. K. Roy, Advocate

-versus-

Commissioner of Sales Tax, Cuttack and others	....	***Opposite Parties***

Mr. Sunil Mishra,
Additional Standing Counsel for the Revenue Department

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
08.08.2022

Order No.

6. 1. The challenge in this writ petition is to an order dated 30th April, 2013 passed by the Additional Commissioner of Sales Tax (Appeal) [ACST], South Zone, Berhampur, partly allowing the revision petition filed by the Petitioner against an order of tax and penalty passed by the Deputy Commissioner of Sales Tax (Vigilance), Berhampur Division, Berhampur (DCST) raising a demand of tax and penalty under Section 62 (7) of the Odisha Value Added Tax Act, 2004 (OVAT Act) in the sum of Rs.87,480/.

2. The Petitioner carries on business in UPS i.e. uninterrupted power supply systems, electrical and electronic goods. On 8th January 2013, the vigilance officials of the Berhampur Division

intercepted a goods vehicle carrying goods meant for customers of Berhampur, Phulbani and Rayagada. The vigilance officials on inspecting the documents produced by the driver of the vehicle noticed that the rate of VAT charged on Battery was less than the prescribed rate of 13.5%. As a result, the Petitioner dealer was issued a notice through the driver of the vehicle to show cause and pay the appropriate tax and penalty. Notwithstanding the reply of the Petitioner to the aforementioned notice, the impugned order of tax and penalty under Section 62(7) of the OVAT Act was issued.

3. In the impugned order, the ACST noted that the UPS is a name given for collection of components connected together to achieve a predetermined functionality. It was observed on verification of the stock transfer of goods that there were no 'package' systems declared by the company towards sale of Battery with UPS system. This despite noticing that "on receipt of orders placed from the buyer, the company has sent UPS system, Batteries and M.S. Rack." The ACST concluded that "Batteries and M.S. Rack will not be the spare parts of the UPS system rather being a supporting part" and, therefore, the Batteries had to be taxed under the residual entry at 13.5% and not at 5% as raised in the invoice.

4. This Court has heard the submissions of Mr. A. K. Roy, learned counsel appearing for the Petitioner and Mr. Sunil Mishra, learned Additional Standing Counsel for the Revenue Department.

5. As noted in the order of ACST, which is challenged in the present writ petition, UPS is a collection of the following components:

> *"a. Rectifier (AC to DC Inverter)*
>
> *b. Battery charger*
>
> *c. Sealed lead acid battery*
>
> *d. An inverter from DC to AC*
>
> *e. Static by-pass switch*
>
> *f. An anti-nose filter*
>
> *g. Digital display for input volt/ampere, output volt/ampere, battery volt and output frequency."*

6. In other words, there can be no UPS, which can be made functional, without a battery. It is an integral part of the UPS system. In fact, as explained by the Petitioner, and not contradicted by the Department, the very function of the UPS is to supply power when there is a power cut or a black out when the main source of power is not available. In order to ensure that there is a continuous power supply notwithstanding such power cut, till such time the power is restored, the UPS provides continuous power. The UPS converts the Alternating Current (AC) power supplied to the batteries by Electricity Boards to Direct Current (DC). The DC discharged from the batteries is then converted into AC by the inverter of the UPS, so as to supply conditioned AC power to the computer. Thus, the UPS is a combination of two converters, one rectifier and another inverter with a battery in between which stores DC energy.

7. Serial No.69 (g) of the rate chart under the OVAT Act talks of "uninterrupted power supply (UPS) and their parts". The residual entries if you read "all other goods except those specified in schedule-C." The question therefore is whether the batteries supplied with the UPS is a part of the UPS?

8. The Petitioner has referred to a circular dated 10th October, 1990 of CBEC regarding proper classification of the UPS. The relevant part of the said circular reads as under:

> *"4. It was observed by the Conference that Power Supply Units covered under Heading 8471 are those whose main function is to supply continuously under the control of the system to which they belong. The appropriate power level responds to the requirements of various units making up that system and therefore have to be specifically designed to form under Heading 8471. The conference also took note of HSN Explanatory Notes at PP.1337-39 for Heading 8504 where under Electric Static Convertors, Emergency Power Pack and semiconductor convertors were specifically mentioned and the IEC, 1986 standards for semi-conductor which defines uninterruptible power system as a combination of convertors/switches and energy storage machines, for e.g. Batteries, constituting power system for maintaining of load power in case of power failure and was of the view that the uninterrupted power supply is essentially an emergency power pack. Consequently, the Conference decided that UPSS will be more appropriately covered under Heading 8504 of the Central Excise Tariff Act, 1985 and resort to classification under residuary Heading 8543 would not be necessary."*

9. The above clarification is consistent with what the Petitioner is contending in the present case viz., the battery is an integral part of

the UPS. The supplied of the UPS by the Petitioner has therefore to contain the battery as without the Battery, there can be no complete UPS at all.

10. For the aforementioned reasons, the Court is unable to agree with the ACST that the Petitioner had incorrectly charged 5% tax for the UPS sold by it instead of 13.5%. Consequently, the penalty amount is also unsustainable in law.

11. Accordingly, the Court sets aside the impugned order dated 30th April, 2013 of the ACST as well as the order of the DCST levying tax and penalty.

12. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda