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IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 28 of 2017

M/s. Laxmi Govinda Agro Industries .... ***Petitioner***

Mr. Bhabani Prasad Mohanty, Advocate

-versus-

State of Odisha, represented by the Commissioner of Sales Tax ... ***Opposite Party***

Mr. Sunil Mishra, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
14.12.2022

Order No.

Dr. S. Muralidhar, CJ.

08. 1. This revision petition by the Assessee arises from an order dated 28th February, 2017 passed by the Orissa Sales Tax Tribunal (Tribunal) allowing the State's/Department Appeal i.e. S.A. No.115 (ET)/2015-16 for the tax period 1st April, 2007 to 31st March, 2012 under Section 9-C of the Orissa Entry Tax Act, 1999 (OET Act).

2. By the impugned order, the Tribunal reversed the order dated 30th June, 2015 passed by the Joint Commissioner of Sales Tax (JCST), Balasore Range in the first appeal filed by the Assessee thereby reducing the tax demand raised by the Sales Tax Officer (STO), Balasore Circle on the Assessee from Rs.9,38,490/- to Rs.33,261/- for the aforementioned period.

3. Admit. The following question of law is framed for consideration:

> "Is a tractor trolly 'motor vehicle' for the purposes of Section 2 (h) of the Orissa Entry tax Act, 1999 (OET Act) and is it amenable to entry tax?"

4. The Petitioner-Assessee is a dealer engaged in business of manufacturing and selling 'tractor, trollies' and other agricultural equipments at Balasore. On the basis of a tax audit conducted in its premises, the STO initiated proceedings under Section 9-C of the OET Act. *Inter alia* it was found that the Petitioner had not discharged entry tax liability in purchase of certain scheduled goods from unregistered dealers outside the local area. The STO also subjected the sale of 'tractor trolly' amounting to Rs.3,06,07,898/- by the Petitioner to entry tax liability @ 1% treating 'tractor trolly' as a scheduled goods manufactured and sold by it. The aforementioned demand was accordingly raised apart from penalty.

5. While the Assessee succeeded in his first appeal before the JCST, who agreed with him that 'trolly' was not a 'motor vehicle' thereby not attracting entry tax within the meaning of the OET Act, the Tribunal reversed that order of the JCST and held in favour of the Department.

6. This Court has heard the submissions of Mr. Bhabani Prasad Mohanty, learned counsel for the Petitioner and Mr. Sunil Mishra, learned Additional Standing Counsel for the Opposite Party-Department.

7. Section 2(h) of the OET Act defines the expression 'motor vehicle' as under:

> "Motor Vehicle" means a motor vehicle as defined in clause (28) of Section 2 of the Motor Vehicles Act, 1988 (59 of 1988) *excluding any tractor, earthmover, excavator, bulldozer or road-roller.*" (emphasis supplied)

8. The above definition refers to Section 2 (28) of the Motor Vehicles Act, 1988 (MV Act) which defines the expression 'motor vehicle' to mean as follows:

> "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres."

9. It is evident from a comparison of both the definitions that while Section 2(h) of the OET Act adopts the definition of the Motor Vehicle as contained in Section 2(28) of the MV Act, it excludes from that definition 'any tractor, earth mover, excavator, bulldozer or road-roller". Interestingly, Section 2 (28) of the MV Act includes 'trailer' whereas Section 2(h) of the OET Act does not. Section 2 (28) of the MV Act envisages 'trailer' being attached to the vehicle. There is no exclusion of 'tractor' from the definition of 'motor vehicle' under the MV Act. However, there is such exclusion under Section 2(h) of the OET Act. A trailer attached to a tractor by itself cannot be classified as 'motor vehicle'. It is nobody's case that the trolly has any 'motor' so as to attract such a definition.

10. The Tribunal on an analysis of the above provisions held as under:

> "Section 2(28) is a comprehensive definition of the words 'motor vehicle'. Although, a 'trailer' is separately defined under Section 2(46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included in the definition of the words "motor vehicle" under Section 2(28). Similarly the word "tractor is defined in Section 2(44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words 'motor vehicle' have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over the motor vehicle, transport vehicles etc. A combined reading of the aforesaid definition under Section 2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any machinery propelled vehicles adapted for use upon roads irrespective of the source of power and it includes a trailer…"

11. The Court notes that the impugned order of the Tribunal while noticing Section 2(h) of the OET Act stops short of noticing what was excluded from the definition. The conclusion of the Tribunal that 'trolly' is comprehended in the definition completely misses the point that the trolly cannot exist as a motor vehicle independent of the 'tractor' to which it is supposed to be attached. In fact, the Tribunal notes that under Section 2(46) of the MV Act 'trailer' has been separately defined to mean any vehicle 'drawn or intended to be drawn by a motor vehicle'. This underscores the legislative intent that only such 'trailer' intended to be drawn by the motor vehicle will attract the definition of 'motor vehicle' under Section 2(28) of

the MV Act. As far as the OET Act is concerned, since the tractor itself is excluded from the definition of 'motor vehicle' under Section 2(h) of the OET Act, the question of bringing 'trolly' as a stand-alone vehicle within the purview of that definition does not arise.

12. For the aforesaid mentioned reasons, this Court answers the question framed in the negative i.e. in favour of the Petitioner Assessee and against the Department, sets aside the impugned order of the Tribunal and restores the order of the 1st Appellate Authority. The revision petition is allowed to the above terms, but in the circumstances, with no order as to costs.

13. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Jena/Secy.