

AFR



IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.6 of 2022

and

STREV No.7 of 2022

M/s. Aman Enterprises ...

Petitioner

-versus-

State of Odisha and others ...

Opposite Parties

Advocates appeared in these cases

For petitioner :

Mr. R.P. Kar, Sr. Advocate

Mr. B.P. Mohanty, Advocate

Mr. S.A. Mohanty, Advocate

For Opposite Parties :

Mr. A.K. Sharma, AGA

Mr. S. Mishra, Advocate

(Standing Counsel for revenue)

CORAM:

THE HON'BLE MR. JUSTICE ARINDAM SINHA

AND

THE HON'BLE MR. JUSTICE M.S. SAHOO

JUDGMENT

Dates of hearing : 4th September, 2024 and 11th September, 2024

Date of judgment : 11th September, 2024

ARINDAM SINHA, J.

1. Mr. Kar, learned senior advocate appears on behalf of revision-petitioners and submits, his client's case is that entry tax is not leviable on



the product being a tractor trailer. He draws attention to annexures-1 and 2 in the petition to demonstrate from the permanent registration certificate and communication by the Joint Commissioner Transport (Tech.) to his client, item of manufacture is 4 ton 2 Wheeled capacity Tractor Trailer. His client was unsuccessful before the Tribunal and hence seeks revision of order dated 6th December, 2021 made by the Full Bench of Odisha Sales Tax Tribunal, Cuttack in S.A. nos.218 (ET) and 76 (ET), both of 2013-14.

2. He relies on **order dated 14th December, 2022** made by co-ordinate Bench in **STREV no.28 of 2017 (M/s. Laxmi Govinda Agro Industries v. State of Odisha, represented by the Commissioner of Sales Tax)** to submit, question of law arose in that case and answered in the negative, in favour of the manufacturer, is relevant. The question of law dealt with by said order is reproduced below.

“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?”

He submits, the revision be admitted on said question and accordingly answered as covered.

3. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of opposite party no.1.



4. Mr. Mishra, learned advocate, Standing Counsel appears on behalf of revenue and submits, a tractor trailer is not a tractor. Only tractor is excluded from definition of motor vehicle by section 2(h) in Orissa Entry Tax Act, 1999. Said section makes applicable definition of motor vehicle given in section 2(28) in the Act of 1988 excluding, inter alia, tractor. It does not exclude trailer. In the circumstances, no question of law arises for the revision to be admitted.

5. Mr. Misra relies on **M/s. Natwar Parikh & Co. Ltd. v. State of Karnataka & others**, reported in **AIR 2005 SC 3428**. He draws attention to paragraph 24 to submit, there was declaration in the judgment that even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor trailer would constitute a goods carrier. He lays emphasis on the Supreme Court having said a trailer is drawn by a motor vehicle, it by itself is a motor vehicle with reference to definition under section 2(28) in Motor Vehicles Act, 1988. Mr. Kar in reply draws attention to question arisen for determination in the civil appeal being whether the taxation authority under the Karnataka Motor Vehicles Taxation Act, 1957 was right in taxing the 'tractor trailer'. In this case, he submits, question is whether entry tax is chargeable on his client's



manufacture of trailers that are attached to and hauled by a tractor. The decision has no application to facts of the case.

6. Question of law framed in **M/s. Laxmi Govinda Agro Industries** (supra) also arises in this case. The petitions are admitted on the question, again reproduced below.

“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?”

7. We find from paragraph 9 in **M/s. Laxmi Govinda Agro Industries** (supra), co-ordinate Bench answered the question as would appear, inter alia, from two sentences in said paragraph, reproduced below.

“... .. A trailer attached to a tractor by itself cannot be classified as ‘Motor vehicle’. It is nobody’s case that the trolley has any ‘motor so as to attract such a definition.”

8. Section 2(28) from the Act of 1988, is reproduced below.

*“(28) “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];”

(emphasis supplied)

Section 2(h) from Orissa Entry Tax Act, 1999 is reproduced below.

“(h) “Motor Vehicle” means a motor vehicle as defined in clause (28) of Section 2 of the Motor Vehicles Act, 1988 (59 1988) [excluding any tractor, earthmover, excavator, bulldozer or road-roller];”

9. We have already seen definition given of ‘motor vehicle’ and ‘vehicle’ in section 2(28) (Act of 1988). Section 2(h) in the Entry Tax Act defines only motor vehicle to mean the same as defined in clause (28) of section 2 (Act of 1988) excluding, inter alia, tractor.

10. There is no dispute that product manufactured by petitioner does not have a motor. As such, it can only find meaning as given for ‘vehicle’, by section 2(28) in Motor Vehicles Act. 1988. Section 2(h) in Entry Tax Act, 1999 defines ‘motor vehicle’. There is no definition of ‘vehicle’ in that Act. We accept Mr. Kar’s submission regarding **M/s. Natwar Parikh & Co. Ltd.** (supra) being distinguishable of facts. In the circumstances, the question is answered in the negative and in favour of petitioner.



11. The petitions are allowed and disposed of.

(Arindam Sinha)
Judge

(M.S. Sahoo)
Judge

dutta/puspa