ORISSA HIGH COURT : CUTTACK

STREV No. 74 OF 2017

AFR

In the matter of an application under Section 80
of the Odisha Value Added Tax Act, 2004.

M/s. Corporate Engineers and Associates
S-1, Swarnalata Apartment
Bomikhal, Bhubaneswar
District: Khordha ... Petitioner

-VERSUS-

State of Odisha
represented by
Commissioner of Sales Tax
Odissa ... Opposite Party

Counsel appeared for the parties:

For the Petitioner : M/s. Chitta Ranjan Das
and Padmalaya Mohapatra,
Advocates

For the Opposite Party : Mr. Sunil Mishra,
Standing Counsel
(CT & GST Organisation)

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R. SARANGI
AND
THE HONOURABLE MR. JUSTICE MURAHARI SRI RAMAN

Date of Hearing: 04.07.2023 :: Date of Judgment: 11.07.2023

MURAHARI SRI RAMAN, J.— M/s. Corporate Engineers and Associates, a partnership firm, has approached this

Court invoking provisions of Section 80 of the Odisha Value Added Tax Act, 2004, assailing the Order dated 20.06.2017 passed by the Odisha Sales Tax Tribunal in Second Appeal bearing No. 188 (VAT) of 2015-16 partly allowing the appeal filed by the State of Odisha-opposite party against the Order dated 17.04.2015 passed by the Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar in the first appeal bearing No. AA 106221422000213 arising out of Assessment framed *vide* Order dated 10.09.2014 under Section 42 of said Act, 2004 read with Rule 49 of the Odisha Value Added Tax Rules, 2005 by the Sales Tax Officer, Bhubaneswar-I Circle, Bhubaneswar pertaining to the tax periods from 01.04.2011 to 31.03.2013.

FACTS OF THE CASE:

2. The assessee-petitioner being a registered dealer under the Odisha Value Added Tax Act, 2004 (for short referred to as "OVAT Act"), carries on its business in manufacturing and trading of electrical goods and equipments for industrial use, electric generator, pump sets and its spares and accessories *etc.* This apart, it is engaged in supply, erection, installation and commissioning of contract work.

2.1. Being selected under Section 41 of the OVAT Act, tax audit was conducted and Audit Visit Report was submitted to the Assessing Authority-Sales Tax Officer, Bhubaneswar-I Circle, Bhubaneswar, consequent upon

which Assessment under Section 42 was framed taking into account observation/objection contained in the Audit Visit Report *inter alia* that the petitioner-dealer had misclassified the item, namely 150 HP Fully Automatic ATS (Auto-Transformer Starter) Control Panel, Motor Starter Panel Board and other Control Panel (hereinafter referred to as "ATS"), as a result of which there was a short levy of value added tax. The Assessing Authority has raised a demand of tax to the tune of Rs.52,517/-. Besides demand of tax, the Assessing Authority imposed penalty twice the amount of tax so assessed invoking provisions of sub-section (5) of Section 42.

2.2. Aggrieved, the petitioner-firm availed the remedy under Section 77 of the OVAT Act by way of filing first appeal bearing No.AA 106221422000213. The Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar ("Appellate Authority", in short) acceded to the explanation proffered by the petitioner and allowed the appeal partly by observing thus:

*"*** In course of their visit, the Audit team verified the books of accounts and observed that the dealer had been selling purely electrical goods like 150HP Fully Automatic ATS Control Panel, motor starter panel board and other control panel levying VAT 5% instead of 13.5% under Part-III of Schedule B of the OVAT Act. Basic price of such sales were calculated to be Rs.5,57,534.00. On being confronted by the STO (Audit), the dealer argued that these goods are not the electrical goods in strict sense, rather those are accessories of pump sets exigible to VAT @5% under the OVAT Act. Interpreting the items in*

question as unspecified ones, the STO (Audit) recommended for realization of differential taxes. The same contention was raised in assessment also and the learned Advocate also submitted that these goods were purchased from registered dealers on payment of VAT @4%. The contention of the learned Advocate having been found to be unsatisfactory, the learned Assessing Authority rejected the averment and, thereby, accepted the allegation levelled in the AVR. Thus the dispute relates to taxability of the 'Control Panel, Motor Start Panel Board and other Control Panel'.

The learned Advocate, in the grounds of Appeal, has submitted that in the instant case, the dealer basically deals in 'Pump sets, Accessories and Spare parts' thereof under agriculture and PHD Sector. The appellant-dealer is also used to purchase the accessories and spare parts of pumps from registered dealer of inside the State by paying the tax as the rate applicable for pump sets as @4% or @5%. The copy purchase bills issued by M/s. S.L. Associates, TIN-21885600440, Bhubaneswar was furnished in this forum for confirmation and consideration. Entry No.29 of Part-II of Schedule B of the Act says that 'Centrifugal, Monoblock and Submersible pumps and pump sets for handling water operated electrically or otherwise and parts and accessories thereof' are exigible to VAT @4% / 5% as the case may be."

2.3. Alleging that the Appellate Authority having blindly accepted the explanation of the petitioner, the first appellate order being perverse, the State of Odisha represented by the Commissioner of Sales Tax, Odisha carried the matter before the Odisha Sales Tax Tribunal under Section 78 of the OVAT Act which was registered as S.A. No.188 (VAT) of 2015-16 on the ground amongst others that the ATS attracts levy of value added tax

@13.5% as it falls within ken of Part-III of Schedule-B appended to said Act.

2.4. Accepting the plea, the learned Sales Tax Tribunal allowed the second appeal preferred at the behest of the State of Odisha by stating thus:

"After going through all the aspects of the case, it is my considered opinion that, in the instant case the demand has been raised on two grounds: (i) Tax was levied @13.5% towards sale of 150HP fully automotive ATS control panel, Motor starter panel pump and other control panel as unspecified goods. Whereas the First Appellate Authority has allowed the said items to be taxed @5% as a spare parts/accessories of pump sets on the ground that the fora below has not inquired into the veracity of the items dealt by the dealer-respondent. It is pertinent to mention here that, the First Appellate Authority himself has not made any inquiry before arriving such a conclusion of taxing of aforesaid items at a lower rate. Therefore the findings given by Assessing Authority is now sustained.

Secondly, with regard to the reversal of ITC on the peruse the order of learned DCST and found the transaction relating to inverter battery is interpreted as a case of sale suppression. So an amount of Rs.14,826.00 is added to the gross turnover disclosed. Further, he has included 10% towards profit margin. Accordingly, the dealer has disclosed the purchase in the purchase register. In the above facts and circumstances the action of the learned DCST cannot be said to be wrong."

Accordingly, the learned Odisha Sales Tax Tribunal setting aside the order of the Appellate Authority, remanded the matter to the Assessing Authority for fresh

assessment by applying rate of tax @13.5% on sale of ATS as per entry specified in Part-III, Schedule-B.

3. Dissatisfied, the petitioner-dealer, with a prayer to quash the Order-in-Second Appeal dated 20.06.2017 (Annexure-4) moved this Court by way of instant revision under Section 80 of the OVAT Act, and posited the following questions of law:

I. Whether, on the facts and circumstances of the case, the Single Bench, Judicial Member-II, Odisha Sales Tax Tribunal was right in law in holding that 150HP fully automotive ATS control panel, motor starter control panel and other panel are unspecified goods liable to tax at 13.5% and not falling under Entry Sl. No. 29 of Part II of Schedule B of the OVAT Act.

II. Whether, on the facts and circumstances of the case the Single Bench, Judicial Member-II, Odisha Sales Tax Tribunal is right in law, in remanding the matter to the Sales Tax Officer for fresh assessment by directing to demand tax @13.5% on the goods 150HP fully automotive ATS control panel, motor starter control panel and other panel, which also gives scope for imposition of penalty under Section 42(5) of the OVAT Act, when the issue involved is classification and interpretation of goods, whether the above goods are falling under Entry Sl. No. 29 of Part II of Schedule B or are unspecified goods.

III. Any other question of law as the Honourable Court deems fit and proper out of the said order of the Division Bench, Odisha Sales Tax, Tribunal, Cuttack?

QUESTION OF LAW FRAMED FOR ADJUDICATION:

4. This Court while entertaining revision petition, passed the following Order on 12.03.2018:

"Heard Mr. C.R. Das, learned counsel for the petitioner.

This Sales Tax Revision is admitted on the following substantial question of law:

I. Whether in the facts and circumstances of the case, the Single Bench, Judicial Member-II, Odisha Sales Tax Tribunal was right in law in holding that 150 HP fully automotive ATS control panel, motor starter control panel and other panel are unspecified goods liable to tax at 13.5% and not falling under Entry Serial No.29, Part-II of Schedule-B of the OVAT Act.

*Issue notice. ***"*

4.1. At the stage of hearing of the matter, Sri Chitta Ranjan Das, learned counsel confined his arguments to the aforesaid question of law as framed by this Court.

4.2. Therefore, this Court is called upon to consider whether on the facts and in the circumstances of the case, the tax periods involved in the assessment being 01.04.2011 to 31.03.2013, ATS falls within the scope of Entry Serial No.29 of Part-II of Schedule-B so as to attract levy of value added tax @4% [prior to 01.04.2012] and @5% [with effect from 01.04.2012] or subject to tax @13.5% as per entry in Part-III of Schedule-B appended to the Odisha Value Added Tax Act, 2004?

4.3. Accordingly, this Court proceeded to hear the matter on the consent of the counsel for the respective parties.

ARGUMENTS ADVANCED BY THE RESPECTIVE PARTIES:

5. Sri Chitta Ranjan Das, learned counsel for the petitioner submitted that the explanation of the petitioner that the commodities in question (ATS), being "accessories" used exclusively for "Centrifugal, Monoblock, Submersible pump and pump sets for handling water" do comprehend within the description in Entry at Serial No.29 of Part-II of Schedule-B appended to the OVAT Act, but the same was treated under misconception by the Assessing Authority to be "electrical goods" so as to attract levy of tax @13.5% under residuary entry contained in Part-III, Schedule-B.

5.1. Sri Chitta Ranjan Das, learned counsel urged that it is erroneous approach of the learned Odisha Sales Tax Tribunal that the Appellate Authority instead of investigating the matter for himself, observing that the Assessing Authority did not conduct any enquiry with regard to issue as to whether ATS would fall within the meaning of the term "accessories" could not have nullified the demand. He, thus, went on to submit that fishing and roving enquiry is anathema to the assessment. When the petitioner-dealer had made rightful claim with respect to classification, without any material on record and justifiable reason the Assessing Authority ought not to have turned down the explanation of the dealer.

5.2. The learned counsel for the petitioner further submitted that ATS falls within ambit of Entry in Serial No.29 of

Part-II of Schedule-B subject to levy of tax @4% [up to 31.03.2012] and @5% [with effect from 01.04.2012], and therefore, other registered dealers including manufacturers and sellers charge said commodities accordingly. The instant petitioner-dealer could not have been saddled with huge burden of tax @13.5% by treating the same to have fallen within scope of residuary entry as per Part-III, Schedule-B. The Appellate Authority was correct in observing that "neither the STO (Audit) nor the learned Assessing Authority enquired into, at any point of time, the business activities of the selling dealer, M/s. S.L. Associates, TIN 21885600440, Bhubaneswar and other dealers dealing in these goods".

5.3. It is vehemently contended that the Assessing Authority should not have mechanically accepted the version of the STO (Audit) and discarded the explanation of the Assessee-petitioner. It has consistently been the stand of the petitioner-firm that ATS sold by the dealer is nothing but accessories to pump and pump sets. As the term "accessory" is not defined in the statute, reference has been made to the meaning given in *Black's Law Dictrionary, Fifth Edition.* Sri Chitta Ranjan Das, learned Advocate advancing argument further would submit that though ATS is not indispensable to the main article, for convenient functioning of it, the same is used. Motor Starter and Control Panel consist of electrical goods, like power contactor, thermal overload relays, AMPs, volt

meters, *etc.* Hence ATS is "accessory" for Centrifugal, Monoblock and Submersible pumps and pump sets for handling water. For this purpose, the learned counsel for the petitioner has placed reliance on the ratio of *Mehra Bros. Vrs. Joint Commercial Tax Officer, (1991) 80 STC 233 (SC) = AIR 1991 SC 1017 = 1990 SCR Supl. (3) 61.* Sri Chitta Ranjan Das, therefore, opposed the finding and conclusion of the learned Tribunal and submitted that it is inapt to hold that ATS would fall within scope of Part-III of Schedule-B.

6. Sri Sunil Mishra, learned Standing Counsel for the Commercial Tax & Goods and Services Tax Organisation supporting the Order-in-Second Appeal, submitted that no infirmity can be imputed against the Order so passed by the learned Odisha Sales Tax Tribunal. Since there was no enquiry conducted by the Appellate Authority, the objection raised in the Audit Visit Report has been confirmed in the Assessment, as such the impugned Order warrants no interference. The petitioner was rightly fastened with liability @13.5% as per Part-III of Schedule-B.

7. Sri Chitta Ranjan Das, learned counsel for the petitioner at this juncture brought to the notice of this Court that in obedience to the Order dated 10.01.2023, he filed Certificate issued by the manufacturer/supplier-M/s. BCH Electric Limited forming part of an Affidavit dated 26.06.2023 sworn to by Sri Arbinda Patra, Managing

Partner of M/s. Corporate Engineers and Associates, Authorised dealer of said Company. The learned counsel submitted that said Company having expertise in Switchgear and Low Voltage Panel manufacturing, certified that the commodities in question are made exclusively for Centrifugal, Monoblock and Submersible pump and pump sets for handling water. The veracity of such certificate having not been questioned by Sri Sunil Mishra, learned Standing Counsel for the Commercial Tax & Goods and Services Tax Organisation, the dispute set up by the Assessing Authority is to be resolved in favour of the Assessee-dealer.

7.1. Though this Court granted opportunity to Sri Sunil Mishra, learned Standing Counsel, for filing of objection, he did not wish to furnish objection to the aforesaid Affidavit dated 26.06.2023, but insisted for proceeding with the hearing of the matter basing on the material available on the record. Sri Sunil Mishra, learned Standing Counsel appearing for the opposite party fervently prayed for remitting the matter to the Assessing Authority for fresh adjudication on the issue raised in the present case inasmuch as none of the authorities below has examined the issue in its proper perspective. To a specific query, Sri Sunil Mishra submitted that no (further) material was placed before the learned Odisha Sales Tax Tribunal to substantiate the issue raised by the Revenue in the second appeal.

8. Having heard counsel for both the sides, this Court proceeds to dispose of the matter on merit basing on the material available on record.

ENTRIES IN THE SCHEDULE AND TAX RATES:

9. Entries in the Schedule appended to the OVAT Act, so far as relevant, runs thus:

Schedule-B		
Part-II		
Serial No.	Description of goods	Rate of tax
29.	Centrifugal, monoblock and submersible pumps and pump sets for handling water operated electrically or otherwise and parts and accessories thereof.	*5% * Substituted for "4%" with effect from 01.04.2012 *vide* Finance Department Notification No.12277-FIN-CT1-TAX-0025/2012 [SRO No.126/2012], dated 30.03.2012.
Part-III		
...	All other goods except those specified in Schedule C	13.5%

KNOWING ABOUT THE ITEM IN QUESTION, i.e., ATS:

10. As the learned Appellate Authority proceeded on the basis of the fact that neither the Sales Tax Officer (Audit) nor the Assessing Authority conducted enquiry with respect to the nature of business activities/commodities in question and the learned Odisha Sales Tax Tribunal also observed that the Appellate Authority could have made enquiries about the items dealt in, *i.e.,* ATS, this Court *vide* Order dated 10.01.2023 directed for placing on record expert opinion. In obedience thereto, the petitioner has furnished the following Certificate of the expert by way of Affidavit, which is quoted herein below:

"BCH ELECTRIC LIMITED

Date:23.05.2023
Ref No: CEA|ATS-232343

To

M/s CORPORATE ENGINEERS & Associates
(Authorized Dealer of BCH Electric Limited)
S-01, Swarnalata Apartment, NS Road,
Bomikhal, Bhubaneswar, Odisha.

Sub.: Your request for Clarification for Usages of BCH Make ATS Control panel.

Ref.: Invoice No 11-12/TI/29, Dated 02.04.2011

Dear Sir,

Introduction & Expertise

As we are ISO 9001:2015 & ISO 14001:2015 Company & well recognized, expertise on Switchgear & Low Voltage Panel manufacturer of

low voltage electrical and electronic controls for Pumping applications in India. The Company was established in 1965 as a joint venture between Cutler-Hammer, USA, and Indian partners. Since 1977, it is a wholly owned Indian company with global business connections.

Our proven range of Industrial Contactors, Overload Relays, Motor starters, ATS Control Panels & MCC has, over the years, become well accepted. All our products conform to the latest national and international standards, including labelling for most of them.

Content Clarification:

1. *The certain category of Control Panels (ATS) 150HP Pump Motor Starter & other specified control panel are made exclusive for Centrifugal, Monoblock, Submersible pump & pump sets for handling water operated electrically.*

2. *As these are specific purpose it can't be use in other electrical goods.*

This is for your information.

On and Behalf of,

BCH ELECTRIC LIMITED
Sd/-
(Authorised Signatories)

The above 150HP Control Panel (ATS) shall be used in Centrifugal / Monoblock/Submercible pump sets.

Sd/-

K.G. Choudhury

M-109062/8

Chartered Engineer (India)"

10.1. In a case of determination of classification of commodity, this Court has laid down modality in *State of Odisha Vrs. Rajkumar Agarwalla, ILR 1974 CUT 1367* as follows:

> *"Thus both the aforesaid categories come within the meaning of chuni as used in common parlance. It was the duty of the assessing authorities including the Tribunal to have called upon the dealer to give evidence as to the nature of the goods sold before holding that he was liable to sales tax. The assessing officer and the appellate authorities have merely indicated their subjective view without reference to objective factors which was absolutely necessary to determine the true character of the goods sold. Without materials on record it is not possible to say as to in which category the impugned goods sold would fall."*

10.2. Since it is borne on orders of the authorities including that of the learned Tribunal that no enquiry was conducted as regards nature of commodities, *i.e.,* ATS, this Court is inclined to take into consideration the expert opinion as submitted by the petitioner. As the learned Standing Counsel has not placed any other material to controvert the opinion of the expert furnished by way of Affidavit sworn to by the Managing Partner of petitioner-firm, the suggestion of Sri Sunil Mishra, learned Standing Counsel during the course of hearing for relegating the matter back for adjudication afresh is not accepted as doing so would serve no purpose at this distance of time and tantamount to giving scope for fishing and roving enquiry. It is fairly conceded by the learned Standing Counsel that before the learned

Tribunal no evidence was placed to substantiate the stand of the Revenue. Therefore, this Court, in absence of any material being placed by the State of Odisha to contradict the version of the petitioner that ATS is used as accessories for Centrifugal/Monoblock/Submersible pump sets, while in seisin of the matter under Section 80 of the OVAT Act to answer the question of law, does not deem it proper to remit the matter for fresh determination of nature of commodities.

10.3. Visiting webportal of Expert Engineers, manufacturers of Electrical Control Panel [www.expertengineers.co.in/blog/what-is-auto-transformer-starter] reveals that ATS is:

"Auto Transformer Starter (ATS) are starting devices, for large induction motors, using reduced voltage initially, where availability of current is limited and minimum starting torque is required.

The reduced voltage applied results in lower starting current and higher torque.

Auto-transformer Starter— How it Works:

The reduced voltage is applied to the star contactor while starting the motor. The motor accelerates for a preset time of 8 to 12 seconds, limiting input current the star contactor is opened and even lower current is applied momentarily by the auto transformer using the winding as inductors connected in series with motor. The time is short just enough to disconnect star contractor and engage main contactor to supply full voltage in order to achieve full

speed simultaneously opening the run contactor and disengage the auto transformer.

Application:

- *Pumps Submersible pumps*
- *Mixers*
- *HVAC*
- *Blowers/Fans*
- *Extruders & grinders*
- *Crushers*
- *Conveyors"*

10.4. It remained undisputed as adumbrated by the petitioner in the revision petition [paragraph 7.2] that the goods in question, *i.e.,* Motor Starters, Control Panels and ATS Control Panel are used as accessories to motor pumps to protect the lifespan and for effective use of the motor. During fluctuation of power supply, said ATS protects pump from being damaged. Therefore, ATS is accessory to pumps.

10.5. Thus, taking into account the expert opinion and description of ATS in the webportal, it can be construed that it is understood in common sense and trade parlance as Auto-Transformer Starter Control Panel which is used for effective functioning of pump and in connection with it.

ABSENCE OF DEFINITION OF "ACCESSORY" IN THE STATUTE:

11. It transpires from bare reading of Entry Serial No.29 of Part-II, Schedule-B that "accessories" of Centrifugal, Monoblock and Submersible pumps and pump sets for handling water operated electrically or otherwise are subject to levy of tax @ 4% [prior to 01.04.2012] and @5% [with effect from 01.04.2012].

11.1. In absence of meaning ascribed to "accessories" in the OVAT Act, dictionary meaning can be resorted to in order to understand the true scope of said term. In *State of Orissa Vrs. Titaghur Paper Mills Co. Ltd., (1985) 60 STC 213 (SC) = AIR 1985 SC 1293 = 1985 SCR (3) 26 = 1985 SCC Supl. 280 = 1985 SCALE (2) 410 = (1985) TaxLR 2948 (SC)* it has been laid down that the dictionary meaning of a word cannot be looked at where the word has been statutorily defined or judicially interpreted. But where there is no such definition or interpretation, the Courts may take aid of dictionaries to ascertain the meaning of a word in common parlance. In doing so the Court must bear in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word and the Court has, therefore, to select the particular meaning which is relevant to the context in which it has to interpret that word. Regard may also be had to *Purna Chandra Mohapatra Vrs. State of Odisha, 2022 (I) ILR-CUT 796.*

11.2. *Concise Oxford Dictionary, Ninth Edition,* defines "accessory" as a noun as 'an additional or extra thing, a

small attachment or fitting, a small item of dress', and as an adjective as 'additional, contributing in a minor way, dispensable'.

11.3. *Webster's Dictionary defines* it as a noun as 'a wing of secondary subordinate importance, an object or device not essential in itself but adding to the beauty, convenience or effectiveness of something else' and as adjective it has been defined as 'assisting as a subordinate, adding or contributing in consequential way, present in a minor amount and not essential as a constituent'.

11.4. "Accessory" is not a word of art. The word 'accessory' carries a wide meaning. It is the popular commercial view which has to be adopted. An accessory must be specially adopted for use in principal article, and not of general use. Where the term 'accessory' is not defined in the statute, the same being not a technical or a scientific term, the expression has to be construed as it is ordinarily understood. The expression 'accessory' can be assigned to the equipment which is used as addenda or adjunct, not essential but which adds to its efficiency. Reference may be made to *Sales Tax Commissioner Vrs. Lachman Singh, (1972) 30 STC 372 (All); TI Miller Limited Vrs. Union of India, 1987 (31) ELT 344 (Mad); Universal Radiators Vrs. State of Andhra Pradesh, (1989) 73 STC 120 (AP); Jay Industries Vrs. State of Gujarat, (1999) 116*

STC 261 (Guj); Union of India Vrs. Rishabydev Textiles, 2002 (141) ELT 352 (Raj).

11.5. Conspectus of *Mehra Bros. Vrs. Jt. CTO, (1991) 1 SCC 514 = (1991) 80 STC 233 (SC)*; *Pragati Silicons Pvt. Ltd. Vrs. CCE, (2007) 8 VST 705 (SC); Annapurna Carbon Industries Co. Vrs. State of AP, (1976) 2 SCC 273 = (1976) 37 STC 378 (SC);* and *Commissioner of Central Excise, Delhi Vrs. Insulation Electrical (P) Ltd., 2008 (224) ELT 512 (SC)* points out that the term 'accessories' is used in the Schedule to describe goods which may have been manufactured for use as an aid or addition.

11.6. *Vide K.V. Narasimulu Vrs. State of Andhra Pradesh, (1971) 27 STC 178 (AP),* the meaning of "accessory" in *Chamber's Twentieth Century Dictionary by Davidson* that "anything additional, secondary, or non-essential item of equipment" and *Murray's Dictionary* that "something contributing in a subordinate degree to a general result or effect" has been referred to.

11.7. In *Black's Law Dictionary, Fifth Edition,* 'accessory' has been defined as "anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it as an incident, or as subordinate to it, or which belongs to or with it ... Adjunct or accompaniment ... A thing of subordinate importance. Aiding or contributing in secondary way or assisting in or contributing to as a subordinate."

11.8. The correct test would be whether the article or articles in question would be an adjunct or an accompaniment or an addition for the convenient use of another part of the vehicle or adds to the beauty, elegance or comfort for the use of the motor vehicle or a supplementary or secondary to the main or primary importance. Whether an article or part is an accessory cannot be decided with reference to its necessity to its effective use of the vehicle as a whole. General adaptability may be relevant but may not by itself be conclusive. Take for instance a stereo or air-conditioner designed or manufactured for fitment in a motor car. It would not be absolutely necessary or generally adapted. But when they are fitted to the vehicle, undoubtedly it would add comfort or enjoyment in the use of the vehicle. Another test may be whether a particular article or articles or parts, can be said to be available for sale in an automobile market or shops or places of manufacture; if the dealer says it to be available certainly such an article or part would be manufactured or kept for sale only as an accessory for the use in the motor vehicle. Of course, this may not also be a conclusive test but it is given only by way of illustration. Undoubtedly, some of the parts like axle, steering, tyres, battery, *etc.* are absolutely necessary accessories for the effective use of the motor vehicle. If the test that each accessory must add to the convenience or effectiveness of the use of the car as a whole is given acceptance many a part in the motor car

by this process would fall outside the ambit of accessories to the motor car. It is laid down in *Deputy Commissioner of Agricultural Income-tax and Sales Tax Vrs. Union Carbide India Ltd., (1976) 38 STC 198 (Ker)* that a thing is a part of the other only if the other is incomplete without it. A thing is an accessory of the other only if the thing is not essential for the other but only adds to its convenience or effectiveness.

11.9. In *Annapurna Carbon Industries Co. Vrs. State of Andhra Pradesh, (1976) 2 SCC 273 = (1976) 37 STC 378 (SC)*, the Court while examining the question whether "Arc Carbon" is an accessory to cinema projectors or whether comes under "other cinematography equipments" under tariff Schedule to the Andhra Pradesh General Sales Tax Act, 1957, referred to following definition of "accessory" contained in *Webster's Third New International Dictionary*:

"an object or device that is not essential in itself but that adds to the beauty, convenience or effectiveness of something else". Other meanings given there are: 'supplementary or secondary to something of greater or primary importance'; 'additional', 'any of several mechanical devices' that assist in operating or controlling the tone resources of an organ'. 'Accessories' are not necessarily confined to particular machines for which they may serve as aids. The same item may be an accessory of more than one kind of instrument."

11.10. Adaptability and importance are also relevant tests. An accompaniment or a thing which is connected with

the principal thing can also be regarded as accessory, if it is made for the purpose of being used in that fashion and is adapted either specially or even generally for the principal article. If an article is important for the purpose of being used in or with the principal article and is specially adapted for that article and is of such a nature that it can be used for that purpose alone, then it can be said without any hesitation that it is an accessory of the principal article. But even if the article is such that it can be used as an accessory in more than one kind of principal articles, it can still be regarded as an accessory of each one of them depending upon its predominant or ordinary purpose That would be a case of general adaptability and, it would be very relevant though not conclusive by itself. It is necessary for a thing to be described as an accessory that it should really be accessory of a principal thing. It should not be of general use. If it is an article which can be used for various purposes, then it will be difficult to describe it as an accessory of a particular thing. [See, *Jay Industries Vrs. State of Gujarat, (1999) 116 STC 261 (Guj)*].

11.11. Though reference may be had to *State of Punjab Vrs. Nokia India Pvt. Ltd., (2014) 11 SCR 331 = (2015) 77 VST 427 (SC)* to understand the true import of the word "accessory", the Hon'ble Supreme Court in *Collector of Central Excise, Kanpur Vrs. Krishna Carbon Paper Co., 1988 (37) ELT 480 (SC) = AIR 1988 SC 2223 = 1988 SCR Supl. (3) 12 = (1989) 1 SCC 150* held as follows:

"9. It is well-settled, as mentioned before, that where no definition is provided in the statue itself, as in this case, for ascertaining the correct meaning of a fiscal entry reference to a dictionary is not always safe. The correct guide, it appears in such a case, is the context and the trade meaning. In this connection reference may be made to the observations of this Court in CST Vrs. S.N. Brothers, Kanpur, (1973) 3 SCC 496 = 1973 SCC (Tax) 254 = AIR 1973 SC 78.

10. The trade meaning is one which is prevalent in that particular trade where the goods is known or traded. If special type of goods is subject-matter of a fiscal entry then that entry must be understood in the context of that particular trade, bearing in mind that particular word. Where, however, there is no evidence either way then the definition given and the meaning following (sic flowing) from particular statute at particular time would be the decisive test.

11. In the famous Canadian case in King Vrs. Planters Nut and Chocolate Co. Ltd. [1951 CLR Ex 122] Cameron, J. observed that it is not botanist's conception as to what constitutes a fruit or vegetable ... but rather what would ordinarily in matters of commerce in Canada be included that should be the guide. Similarly, this Court has held in Union of India Vrs. Delhi Cloth and General Mills Co. Ltd. [AIR 1963 SC 791] at p. 794 para 12 that the view of the Indian Standards Institute as regards what is refined oil as known to the market in India must be preferred in the absence of any other reliable evidence. It must be emphasised in view of the arguments advanced in this case that the meaning should be as understood in the particular trade. In this case, we are construing not paper as such but a particular brand of paper with a meaning attributed

to it. Sub-item (2) of Item 17 as was the position in 1979 paper referred to all kinds of paper including paper or paper boards which have been subjected to various treatments such as coating, impregnating. So, therefore, if all kinds of paper including coated paper is the goods, we have to find out the meaning attributed to those goods in the trade of those kinds of paper where transactions of those goods take place.

12. *It is a well-settled principle of construction, as mentioned before, that where the word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the legislature. This principle is well settled by a long line of decisions of Canadian, American, Australian and Indian cases. Pollock, J. pointed out in Grenfell Vrs. IRC [(1876) 1 Ex D 242, 248 = 34 LT 426 = 24 WR 582] that if a statute contains language which is capable of being construed in a popular sense, such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning, of course, by the words "popular sense" that which people conversant with the subject-matter with which the statute is dealing would attribute to it. The ordinary words in everyday use are, therefore, to be construed according to their popular sense. The same view was reiterated by Story, J. in 200 Chests of Tea, (1824) 9 Wheaton US 435, 438 where he observed that the legislature does not suppose our merchants to be naturalists, or geologists, or botanists. See the observations of Bhagwati, J. as the learned Chief Justice then was, in Porritts &*

*Spencer (Asia) Ltd. Vrs. State of Haryana, (1979) 1 SCC 82 = 1979 SCC (Tax) 38. But there is a word of caution that has to be borne in mind in this connection, the words must be understood in popular sense, that is to say, these must be confined to the words used in a particular statute and then if in respect of that particular items, as artificial definition is given in the sense that a special meaning is attached to particular words in the statute then the ordinary sense or dictionary meaning would not be applicable but the meaning of that type of goods dealt with by that type of goods in that type of market, should be searched. ***"*

11.12. It is trite that where no definition is provided in the statute for ascertaining the correct meaning of a fiscal entry, the entry should be construed as understood in common parlance or trade or commercial parlance. Such words must be understood in their popular sense. The nomenclature given by the parties to the words or expression is not determinative or conclusive of the nature of the goods. Strict or technical meaning or dictionary meaning of the entry is not to be resorted to. Common sense rule of interpretation and the user test may be applied but the application of the principles will depend on the facts and circumstances of each case. No test or tests can be said to be applicable to all cases. There may be cases where the interpretation may be tested by applying more than one rule of interpretation. See, *Chittaranjan Saha Vrs. State of Tripura, (1990) 79 STC 37 (Gau).*

11.13. Regard may be had to *CCE Vrs. Fenoplast Pvt. Ltd., (1994) 72 ELT 513 (SC)*; and *CCE Vrs. Champdany Industries Ltd., (2010) 1 GSTR 52 (SC)*, wherein it has been observed that while interpreting statutes like the Excise Tax Acts or the Sales Tax Acts where the primary object is to raise revenue and for such purpose the various products and goods are classified, the common parlance test can be accepted, if any term or expression is not properly defined in the Act 'if any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted.' It has also been stated in *Indian Aluminium Cables Ltd. Vrs. Union of India, (1987) 64 STC 180 (SC)* that commercial parlance assumes importance when goods are marketable. There is no gainsaying that the commercial meaning has to be given to the expressions in tariff items and that where definition of a word is not given it must be construed in its popular sense. Refer, *Asian Paints India Limited Vrs. CCE, (1988) 35 ELT 3 (SC).*

11.14. It is also pertinent to bear in mind another test for the purpose of classification of commodity. The test commonly applied to ascertain whether a marketable product falls within a specific entry is: how is the product identified by the class or section of people dealing with or using the product? It is generally by its

functional character that the product is so identified. It is a matter of common experience that the identity of an article is associated with its primary function. It is only logical that it should be so. When a consumer buys an article, he buys it because it performs a specific function for him. There is a mental association in the mind of the consumer between the article and the need it supplies in his life. It is the functional character of the article which identifies it in his mind. See *Atul Glass Industries Pvt. Ltd. Vrs. CCE, (1986) 63 STC 322 (SC) = 1986 (25) ELT 473 (SC).*

11.15. It is well-recognized canon for identifying the commodity in taxation law to fall within the meaning of entry in Schedule of rates is trade parlance meaning or common sense approach attributed to such commodity. As has already been stated earlier, in order to identify the nature of the commodity in question, *i.e.,* ATS, this Court has visited webportal of manufacturers of ATS from which it could be known that said commodity is adjunct to main goods, *i.e.,* pumps and it aids in smooth functioning of Centrifugal, Monoblock and Submersible pump sets. Therefore, the test of understanding in trade parlance and/or popular parlance can safely be applied to the present context.

ANALYSIS AND DISCUSSIONS:

12. Considering the instant case etched on above tests and well-accepted tenets, ATS answers that it is accessory to

'Centrifugal, Monoblock and Submersible pumps and pump sets'. The document like expert opinion supported by Affidavit furnished by the petitioner remained undisputed by the opponent-State of Odisha. This Court is of the firm view that the contention of the petitioner deserves seal of approval.

12.1. In the present case, the authorities below never examined the pertinent issue as to the identity of the commodity— ATS with reference to Entry 29 of Part-II of Schedule-B. The Assessing Authority mechanically discarded the explanation rendered by the petitioner and shifted the *onus* on the dealer. In *Collector of Customs Vrs. Hindalco Industries Ltd., 2007 (217) ELT 343 (Cal)* it has been stated thus:

> *"10. The subject consignment admittedly falls within the category 2708. While making further classification under different sub-heading subject consignment could come within sub-heading 11 or 19 or 20. The respondent on the basis of the information received from their overseas seller imported the consignment under sub-heading 11. If the Customs Authority was not satisfied with such classification they must atleast prima facie show the reason for such dissatisfaction. Law permits the statutory authorities to question the conduct of a party within the framework of the said statute. Such statutory authority is also under obligation to satisfy itself that there are reasons for questioning such conduct. Before issuance of show cause notice the authority should have investigated into the matter and after prima facie satisfaction the authority should have*

issued the show cause notice. We have perused the show cause notice. From the tenor of the show cause notice it appears that the Customs Authority put the burden on the respondent that they would have to show that the subject consignment was not manufactured by cut back method to come out of the mischief of sub-heading 19. This is not the right approach.

12.2. For ascertaining the true nature of ATS, the petitioner has brought on record the expert opinion and this Court on visiting webportal of manufacturers of such commodities found that in trade parlance ATS is treated as accessories to 'Centrifugal, Monoblock and Submersible pumps and pump sets'. The explanation of the petitioner being in consonance with the well-settled tests and guidelines propounded by the Courts, the suggestion of Sri Sunil Mishra, learned Standing Counsel for the Commercial Tax & Goods and Service Tax Organisation for sending the matter back to the Assessing Authority for fresh adjudication by giving scope for enquiry/investigation is rejected. What is emanating from the Order-in-Second Appeal of the learned Sales Tax Tribunal is that no enquiry as to identity of commodity *vis-à-vis* entry in Serial No.29 of Part-II of Schedule-B was conducted by neither the Sales Tax Officer (Audit) nor the Assessing Authority. Legal position is well-established in *Hindustan Ferodo Ltd. Vrs. Collector of Central Excise, Bombay, 1997 (89) ELT 16 (SC),* ratio of which is this, that the *onus* of establishing that a product falls within a particular item is on the

Revenue. If the Revenue leads no evidence, then the *onus* is not discharged. It has been reiterated in *Hewlett-Packard India Sales Pvt. Ltd. (now HP India Sales Pvt. Ltd. Vrs. Commissioner of Customs (Import), Nhava Sheva, (2023) 1 SCR 1123* as follows:

> *"23. It goes without saying that since the customs authorities wanted to classify the goods differently, the burden of proof to showcase the same was on them, which they failed to discharge. [Dabur India Ltd. Vrs. CCE, Jamshedpur, (2005) 4 SCC 9]. Hence under the prevalent self-assessment procedure, the classification submitted by the Appellants must be accepted."*

12.3. As expert opinion is placed on record by Sri Chitta Ranjan Das, learned counsel for the petitioner-firm and the contents of such expert opinion has not been disputed by Sri Sunil Mishra, learned Standing Counsel for the Commercial Tax & Goods and Services Tax Organisation, this Court is of the considered view that the ATS is accessory of "Centrifugal, Monoblock and Submersible pump and pump set" as the same satisfies the common parlance test. In this regard the following observation made by the Hon'ble Supreme Court in *Puma Ayurvedic Herbal P. Ltd. Vrs. CCE, (2006) 6 RC 328 (SC) = (2006) 145 STC 200 (SC) = (2006) 3 SCC 266* is relevant:

> *"This opinion coming from a competent and authorised source, is of great relevance so far as the case in hand is concerned. Besides this the evidence produced by the*

appellant before the authorities in the shape of letters from consumers, from doctors and from Ayurvedic physicians satisfies the common parlance test.

On the other hand the revenue led no evidence of any sort to rebut the evidence led by the assessee. It is settled law that burden of showing correct classification lies on the revenue. The Revenue has done precious little in this case to discharge this burden."

12.4. Such being the position borne on record, on due consideration of the material available and the contentions of the advocate for the petitioner, this Court does not find force in the argument of Sri Sunil Mishra, learned Standing Counsel for the Commercial Tax & Goods and Services Tax Organisation, more so when the Revenue has not chosen to file any objection to the Expert Opinion supported by Affidavit sworn to by Managing Partner of the petitioner-firm. This Court, hence, feels it expedient to show indulgence in the Order-in-Second Appeal of the learned Odisha Sales Tax Tribunal in exercise of power of revision under Section 80 of the OVAT Act.

13. This Court may have regard to principle as set out by the Hon'ble Supreme Court in *Agarwal Oil Refinery Corporation Vrs. Commissioner of Trade Tax, (2011) 13 SCC 275,* wherein it has been observed that normally the High Court under revision does not interfere with findings of fact by the lower authority, unless the case involves any question of law. Traditionally, in exercise of revisional jurisdiction, High Court does not interfere

with finding of fact, unless the findings recorded by the lower authorities are perverse or based on an apparently erroneous principles which are contrary to law or where the finding of the lower authority was arrived at by a flagrant abuse of the judicial process or it brings about a gross failure of justice. In the instant case, the Odisha Sales Tax Tribunal candidly observed that the First Appellate Authority instead of conducting enquiry himself into "veracity of the items dealt" could not have proceeded to allow the appeal by recording that neither the Sales Tax Officer (Audit) nor did the Assessing Authority conduct enquiry in this regard. By observing thus, abruptly the Sales Tax Tribunal held "the findings given by Assessing Authority is sustained". Such a conclusion is not only perverse but also based on no evidence.

13.1. The learned Odisha Sales Tax Tribunal while upsetting the conclusion reached at by the Appellate Authority merely stated that said Authority could have conducted enquiry for himself even though it found that the Sales Tax Officer (Audit) or the Assessing Authority did not discharge their respective function. Being final fact-finding authority it has failed to keep in mind the ratio settled by this Court in *State of Odisha Vrs. Rajkumar Agarwalla, ILR 1974 CUT 1367.* At the cost of repetition it is recorded that the learned Standing Counsel fairly conceded that no material was placed by the Revenue in its second appeal before the learned Odisha Sales Tax

Tribunal in objection to what was observed by the Appellate Authority and it is also submitted that no contrary material is available neither on the Audit Record nor the Assessment Record to justify that ATS falls within the ambit of residuary entry as per Part-III of Schedule-B so as to levy value added tax @13.5%.

13.2. Though the learned Odisha Sales Tax Tribunal noticed that the Appellate Authority allowed the appeal of the petitioner-dealer on the ground that "the Fora below has not inquired into the veracity of the items dealt by the dealer", it has jumped to the following conclusion without assigning cogent reason:

*"*** It is pertinent to mention here that, the First Appellate Authority himself has not made any inquiry before arriving such a conclusion of taxing of aforesaid items at a lower rate. Therefore, the findings given by Assessing Authority is now sustained."*

13.3. In view of the consistent stand of the petitioner-firm before the authorities below that ATS is nothing but accessory to pumps and non-availability of any contrary evidence on record nor did the Revenue bring forth material to contradict such claim of the petitioner, taking into consideration the clinching expert opinion furnished by the petitioner, this Court finds that no reason has been assigned by the learned Odisha Sales Tax Tribunal to restore the observation of the Assessing Authority by reversing the conclusion of the Appellate Authority, as such it committed error in allowing the

second appeal preferred by the opposite party-Commissioner of Sales Tax. This Court refers to the following observation of the Hon'ble Supreme Court in the case of *Steel Authority of India Limited Vrs. Sales Tax Officer, (2008) 16 VST 181 (SC)* made in the context of failure of the Appellate Authority to ascribe reasons:

"12. A bare reading of the order shows complete non-application of mind. As rightly pointed out by learned counsel for the appellant, this is not the way a statutory appeal is to be disposed of. Various important questions of law were raised. Unfortunately, even they were not dealt by the first appellate authority.

13. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. [See Raj Kishore Jha Vrs. State of Bihar, (2003) 11 SCC 519].

14. Even in respect of administrative orders Lord Denning, M.R. in Breen Vrs. Amalgamated Engg. Union, (1971) 1 All ER 1148, observed:

"The giving of reasons is one of the fundamentals of good administration."

In Alexander Machinery (Dudley) Ltd. Vrs. Crabtree 1974 ICR 120 (NIRC) it was observed:

"Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its

silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

13.4. In *SAP Labs India Private Limited Vrs. Income Tax Officer, (2023) 4 SCR 430* it has been laid down that:

"Unless perversity in the findings of the Tribunal is pleaded and demonstrated, by placing material on record, no substantial question of law can arise and, therefore, there can be no interference by the High Court. To the extent there can be no dispute between the parties, in view of the settled legal proposition dealing with Sections 260A of the Act and Section 100 of the Code of Civil Procedure, 1908."

13.5. Where the fact finding authority has acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, the Court is entitled to interfere. See, *Lalchand Bhagat Ambica Ram Vrs. CIT, (1959) 37 ITR 288 (SC).*

13.6. With reference to *Omar Salay Mohamed Sait Vrs. CIT, (1959) 37 ITR 151 (SC)* the Hon'ble Andhra Pradesh High Court in *Spectra Shares & Scrips Pvt. Ltd. Vrs. CIT, (2013) 354 ITR 35 (AP)*, has been pleased to make the observation that Income-tax Appellate Tribunal is a fact finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it, the Court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence on record before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by the Court.

13.7. View so expressed being subscribed by this Court, it is, thus, to be observed that question of law, in the present case, does arise for consideration.

DECISION AND CONCLUSION:

14. The learned Odisha Sales Tax Tribunal without assigning cogent reason restored the view of Assessing Authority taken in the Assessment Order which was passed in absence of due enquiry as to the nature of the commodities. The consistent stand of the petitioner-firm dealing in pump sets, accessories and spare parts thereof, that ATS (Auto-Transformer Starter) Control Panel, Motor Starter Panel Board and other Control Panel, being accessories of Centrifugal, Monoblock and Submersible pumps and pump sets, is supported by expert opinion, which remained uncontroverted by the opponent. Said expert opinion answers the common parlance test.

14.1. By reversing the conclusion arrived at by the Appellate Authority, the learned Odisha Sales Tax Tribunal essentially held that the commodity in question, *i.e.*, ATS, falls within the scope of entry in Part-III of Schedule-B. Before holding the commodity to fall in residuary entry, the learned Tribunal as also the Assessing Authority failed to bear in mind the enunciation in the matters of *Bharat Forge & Press Industries P. Ltd. Vrs. CCE, AIR 1990 SC 616 = 1990 SCR (1) 60 = (1990) 1 SCC 532 = (1992) 84 STC 414 (SC);*

Indian Metals & Ferro Alloys Ltd. Vrs. CCE, (1991) Supp. 1 SCC 125; Speedway Rubber Co. Vrs. CCE, (2002) 5 SCC 527; Commissioner of Customs Vrs. Gujarat Perstorp Electronics Ltd., (2005) 5 RC 537 (SC); CCE Vrs. Maharshi Ayurveda Corporation, (2006) 6 RC 13 (SC); Hindustan Poles Corporation Vrs. CCE, (2006) 6 RC 403 (SC) = (2006) 145 STC 625 (SC), conspectus of which leads to show that only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the Department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item. The entry which provides the most specific description shall be preferred to entry providing a more general description. Priority has to be given to the main entry and not the residual entry. The residuary entry is meant only for those categories of goods which clearly fall outside the ambit of specified entries. In *Mega Enterprises Vrs. State of Madhya Pradesh, (2012) 53 VST 422 (MP)* referring to *Mauri Yeast India Pvt. Ltd. Vrs. State of UP, (2008) 14 VST 259 (SC)*, it is observed that in interpreting different entries, attempts should be made to find out as to whether the same answers the description of the contents of the basic entry. Only in the event if it is not possible to do so, recourse to the residuary entry should be made as a last resort. If there is a conflict between two entries, one

leading to an opinion that it comes within the purview of a specific entry and another the residuary entry, the former should be preferred.

14.2. It is significant to notice that the words "accessories thereof" are succeeded by the enumeration "Centrifugal, monoblock and submersible pumps and pump sets for handling water operated electrically or otherwise" in Entry Serial No.29 of Part-II of Schedule-B of OVAT Act. Where specific word is found place in an entry, the same prevails over the generic entry. This principle has been succinctly laid down in *Santhosh Maize & Industries Limited Vrs. The State of Tamil Nadu, 2023 LiveLaw (SC) 499*. In the said case, it has been observed by the Hon'ble Supreme Court of India as follows:

> *"24. Law is well settled that if in any statutory rule or statutory notification two expressions are used— one in general words and the other in special terms— under the rules of interpretation, it has to be understood that the special terms were not meant to be included in the general expression; alternatively, it can be said that where a statute contains both a general provision as well as a specific provision, the latter must prevail.*
>
> *25. What emerges from the above discussion is that Taxation Entry No.61 is relatable to 'starch' of any kind whereas Exemption Entry No.8 relates to products of 'millet'.*
>
> *26. Looking at the specific (Taxation Entry No.61) in contradistinction with the general (Exemption Entry No.8), there can be no manner of doubt that maize*

starch would be covered by the taxation entry and not by the exemption entry."

14.3. In view of the admitted position that the Revenue had no material on record to take a contrary view than what was claimed by the petitioner-assessee, the Order passed in Second Appeal by the learned Odisha Sales Tax Tribunal is against the principles propounded by the Supreme Court as well as High Court(s). The manner in which the learned Odisha Sales Tax Tribunal arrived at the conclusion as to classification of commodity is not in consonance with what was laid down in *State of Odisha Vrs. Rajkumar Agarwalla, ILR 1974 CUT 1367.*

14.4. Under the aforesaid premises, this Court has no hesitation to hold that the commodities, *i.e.,* 150 HP Fully Automatic ATS (Auto-Transformer Starter) Control Panel, Motor Starter Panel Board and other Control Panel is comprehended in the term "accessories" as per entry in Serial No.29 of Part-II of Schedule-B appended to the OVAT Act, which attracts rate of tax @ 4% for the tax periods prior to 01.04.2012 and @5% for the tax periods commencing from 01.04.2012 pertaining to the periods of assessment.

15. For the discussions made above and the reasons stated *supra*, the question of law as framed by this Court *vide* Order dated 12.03.2018 which fell for consideration is answered in the negative, *i.e.,* in favour of the petitioner-assessee and against the Revenue.

16. In the result, the Order dated 20.06.2017 passed by the Odisha Sales Tax Tribunal, Cuttack in S.A. No. 188 (VAT) of 2015-16 so far as it relates to issue of classification of ATS is set aside and the determination of tax liability by applying rate of tax @13.5% as specified in Part-III of Schedule-B is held to be erroneous. The Assessing Authority is, thus, requested to recompute the tax liability by applying rate of tax @4% for the tax periods from 01.04.2011 to 31.03.2012 and @5% for the tax periods from 01.04.2012 to 31.03.2013.

17. As a sequel to the above observation, the sales tax revision petition succeeds to the extent indicated above, but, in the circumstances, with no order as to costs.

(MURAHARI SRI RAMAN)
JUDGE

DR. B.R. SARANGI, J. I agree.

(DR. B.R. SARANGI)
JUDGE

Orissa High Court, Cuttack
The 11th July, 2023, Aks/MRS