

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 138 (ET) of 2015-16

(Arising out of order of the learned Addl. CST (Appeal), South Zone,
Berhampur in First Appeal No. AA (ET) 14/2012-13,
disposed of on 30.04.2015)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri B. Bhoi, Accounts Member-II

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack

... Appellant

-Versus-

M/s. Jagannath Rice Mill,
Old Station Road, Bhubaneswar

... Respondent

For the Appellant : Sri D. Behura, S.C. (CT)
For the Respondent : Sri B.N. Joshi, Advocate

Date of hearing : 04.01.2023 *** Date of order : 01.02.2023

ORDER

State assails the order dated 30.04.2015 of the Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (hereinafter called as 'First Appellate Authority') in F A No. AA (ET) 14/2012-13 reducing the assessment order of the Dy. Commissioner of Sales Tax Bhubaneswar I Circle, Bhubaneswar (in short, 'Assessing Authority').

2. The facts of the case, in short, are that –

M/s. Jagannath Rice Mill is engaged in manufacture of wheat products like atta, maida and suji by purchasing wheat as raw material and sold the goods both inside and outside the State. The assessment period relates to 01.07.2009 to 31.03.2011. The Assessing Authority raised tax

demand of ₹44,01,267.00 u/s. 9C of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') basing on the Audit Visit Report (AVR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹9,838.00. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

3. The Dealer files cross-objection supporting the order of the First Appellate Authority to be just and proper in the facts and circumstances of the case.

4. The learned Standing Counsel (CT) for the State submits that the First Appellate Authority deleted the ET demand especially when the finding of this Tribunal was subjudiced before the Hon'ble Court. So, he submits that the same is not sustainable in the eye of law and requires interference in appeal.

5. Per contra, learned Counsel for the Dealer submits that the Hon'ble Court have already disposed of ***STREV No. 31 of 2011 and STREV Nos. 19 to 24, 36, 37, 40 & 41 of 2013*** which were arising out of the orders of this Tribunal with a finding that chuni is a by-product of Dal and the same will not come within the meaning of cattle feed and, therefore, the same is not amenable to ET. So, he submits that the First Appellate Authority commits no wrong, which calls for any interference in appeal. He relies on the order of the Hon'ble Court passed in ***STREV No. 31 of 2011 and STREV Nos. 19 to 24, 36, 37, 40 & 41 of 2013*** passed on dated 02.08.2022.

6. Having heard the rival submissions of the parties and on going through the orders of both the Assessing Authority and the First Appellate Authority vis-a-vis the materials on record, it reveals that the Assessing Authority recorded a finding that chokad in its capacity is fit to be consumed

by cow and same is always sold for that purpose only. He disallowed the claim of the Dealer on the ground that the Dealer could not prove the purchase of de-oiled rice. The Assessing Authority further found that the Dealer had paid ET against the inter-State purchase of ₹42,05,425.00 on bill value without addition of freight and incidental expenses of 5% of bill value. He computed the said charges and the same comes to a sum of ₹2,10,271.25. So, he raised total ET demand of ₹44,01,267.00 which included two times penalty.

The First Appellate Authority confirmed the finding of the Assessing Authority regarding addition of 5% towards freight and incidental expenses, but deleted the tax demand against rice bran de-oiled and chuni/chokad on the ground that the same is not subject to levy of ET. The First Appellate Authority reduced the tax demand to ₹3,279.17 and levied two times penalty of ₹6,558.34, which came to ₹9,838.00.

7. The State had challenged the finding of the First Appellate Authority on the ground that the finding of this Tribunal is under challenge before the Hon'ble Court, which is subjudiced and the First Appellate Authority went wrong in deleting the same.

The record transpires that the Hon'ble Court have been pleased to observe that chuni is not amenable to entry tax as it is a by-product of Dal and the same will not come within the meaning of cattle feed. Having observed so, the Hon'ble Court were pleased to dismiss all the revisions, i.e. ***STREV Nos. 31 of 2011, 19 to 24, 36, 37, 40 & 41 of 2013*** in a common order passed on dated 02.08.2022 in the case of State of Odisha v. ***M/s. Geetashree Industries and others.***

8. So, in view of such decision of the Hon'ble Court in the case of ***M/s. Geetashree Industries and others*** cited supra, chuni is a by-product of Dal and the same is not exigible to ET and the First Appellate Authority

rightly deleted the ET demand on that score and as such, the same requires no interference in appeal. Hence, it is ordered.

9. In the result, the appeal stands dismissed being devoid of any merit and the impugned order of the First Appellate Authority is hereby confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

**Sd/-
(G.C. Behera)
Chairman**

I agree,

**Sd/-
(S.K. Rout)
2nd Judicial Member**

I agree,

**Sd/-
(B. Bhoi)
Accounts Member-II**