

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

**Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 1st Judicial Member
&
Sri R.K. Pattnaik, Accounts Member-III**

S.A. No.163(C) of 2007-08

(From the order of the Id. ACST, Puri Range, Bhubaneswar,
in First Appeal Case No. AA-191 (CST)/PUII/06-07,
disposed of on 28.11.2007)

M/s. Shree Mahadevi Dal & Oil Mill,
R.C. Pur Bazar, Jatni-752050. ... Appellant

- V e r s u s -

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

S.A. No.164(C) of 2007-08

(From the order of the Id. ACST, Puri Range, Bhubaneswar,
in First Appeal Case No. AA-184 (CST)/PUII/06-07,
disposed of on 28.11.2007)

M/s. Madanlal Agarwalla,
At/P.O.- Jatni, Dist.- Khurda. ... Appellant

- V e r s u s -

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

S.A. No.165(C) of 2007-08

(From the order of the Id. ACST, Puri Range, Bhubaneswar,
in First Appeal Case No. AA-190 (CST)/PUII/06-07,
disposed of on 28.11.2007)

M/s. Shree Hanuman Dal Mill,
At/P.O.- Jatni, Dist.- Khurda. ... Appellant

- V e r s u s -

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

... Respondent

S.A. No.166(C) of 2007-08

(From the order of the Id. ACST, Puri Range, Bhubaneswar,
in First Appeal Case No. AA-188 (CST)/PUII/06-07,
disposed of on 28.11.2007)

M/s. Nangalia Oil Mill,
At/P.O.- Jatni, Dist.- Khurda.

... Appellant

- V e r s u s -

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

... Respondent

For the Quarter Ending: 30.06.2006

For the Appellant ... Mr. B.N. Joshi, Advocate
For the Respondent ... Mr. M.L. Agarwal, S.C.

Date of hearing: 01.10.2019 **** Date of order: 03.10.2019

ORDER

All these appeals above involve identical questions arised out of assessment u/s.12(4) of the Central Sales Tax (Odisha) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) though relating to four different dealers but for sake of convenience are taken up together and decided by this common order for sake of convenience and to avoid conflicting opinion, if any.

2. S.A. No.163(C) of 2007-08

M/s. Shree Mahadevi Dal & Oil Mill was assessed u/r.12(4) of the CST(O) Rules for the quarter ending 30.06.2006. The assessee is a SSI unit engaged in production of different commodities including dal. It has claimed concession in rate of CST in terms of

Finance Deptt. Notification issued u/s.8(5) of the CST Act on sale of dal as a manufacturer. The assessing authority relying on the provision u/s.15(d) of the CST Act held the goods like dal and pulses, same and one commodity. Accordingly, the dealer is not engaged in manufacturing process. Consequently, it has disallowed the claim of concession in rate of tax against declaration form 'C'. Besides, the assessing authority has also declined the concession in rate of tax, where the statutory declaration forms 'C' were not produced as per sec.8(2)(a) of the CST Act as against sale of other goods. In the result, there was demand of balance tax due of Rs.17,08,243.00 raised against the dealer.

In appeal, the first appellate authority, though upheld the findings of assessing authority relating to disallowance of concession in rate of tax for alleged manufacturing and sale of dal but as against the other CST sales in acceptance of declaration forms produced before him, the balance tax due became reduced to Rs.7,54,510.00.

S.A. No.164(C) of 2007-08

In a similar fashion denying the claim in rate of tax on alleged manufactured 'dal' which was prepared through processing of pulses and in the result the demand towards balance tax liability was raised at Rs.8,18,337.00.

In appeal, the first appellate authority though upheld the findings of assessing authority relating to disallowance of concession in rate of tax for alleged manufacturing and sale of dal but as against the other CST sales in acceptance of declaration forms produced before him, the balance tax due became reduced to Rs.6,15,721.00.

S.A. No.165(C) of 2007-08

In case of M/s. Shree Hanuman Dal & Mill there was demand of balance tax liability to the tune of Rs.31,84,467.00.

The first appellate authority on the other hand upheld the findings of assessing authority relating to disallowance of concession

in rate of tax for alleged manufacturing and sale of dal but as against the other CST sales in acceptance of declaration forms furnished before him, the balance tax due became reduced to Rs.13,20,454.00.

S.A. No.166(C) of 2007-08

In case of M/s. Nangalia Oil Mill there was demand of balance tax liability to the tune of Rs.18,54,884.00, whereas in appeal before the first appellate authority it became reduced to Rs.6,81,371.00 on acceptance of dealer's form only.

3. Being aggrieved by the concurrent finding of both the fora below, all the dealers mentioned above knocked the door of this Tribunal questioning the sustainability of the findings denying concession in rate of tax against CST sale.

4. Revenue has contested all these appeals without Cross Objection.

5. In all the appeals above, the only question before us is, if the conversion of pulses into dal involved any manufacturing activity or not?

Learned Counsel for the dealer, Mr. Joshi placed his reliance on the orders passed by this Tribunal on earlier occasion in S.A. No.111(C)/2012-13, S.A. No.112(C)/2012-13, S.A. No.120(C)/2012-13, S.A. No.90 (C)/2012-13.

In all these appeals this Tribunal has held that, the dealer is a manufacturer for the purpose of converting dal from pulses and as such is entitled to get benefit in rate of tax when involved in interstate sale of those manufactured goods.

6. Per contra, learned Standing Counsel Mr. Agarwal for the Revenue placed reliance on an order of this Tribunal in S.A. No.16(C) of 2014-15 dtd.04.07.2018 and in the matter of M/s. Rohini Industries Vrs. State of Orissa vide STREV No.96 of 2011. Learned Standing Counsel strenuously submitted that, clause (d) of Section 15

of the CST Act has come into force on 09.09.1976, the provisions reads as follows:-

“S.15. Restriction and conditions in regard to tax on sale or purchase of declared goods within a State.

xxx

xxx

xxx

(d) each of the pulses referred to in clause (via) of Section 14, whether whole or separated and whether with or without husk, shall be treated as a single commodity for the purpose of levy of tax under that law.”

Keeping view the aforesaid provision when the commodities is one either pulses or dal the conversion of dal from pulses cannot be stated to have undergone any manufacturing process. In the reported decision in Rohini Industries vrs. State of Orissa, order dtd.01.12.2011 of the Hon'ble High Court of Orissa. The relevant portion of the order of the Hon'ble High Court is as follows:-

“7. The exemption as claimed by the petitioner under the notification is not applicable to the fact situation for the reason that the Pulses which is said to have been purchased to procure Dal after removal of husk from the Pulse by undertaking the process work does not amount to manufacturing activities as Dal and pulses is a single commodity as stated in the aforesaid clause of the CST Act which is an amendment to Central Sales Tax Act by Act No.103 of 1976 and has come into force with effect from 9th September, 1976. Therefore, the reliance placed upon the decision of the Division Bench of this Court and Apex Court is misplaced and they do not lend any support to the case of the petitioner. The ratio and the law laid down in the aforesaid case is not applicable to the present fact situation as clause 9(d) of Section 15 of the Central Sales Tax Act has come into force on 9.9.1976. Therefore, the submission of the learned counsel for the petitioner cannot be accepted. The finding of fact is recorded by the Assessing Officer and the appellate authorities in their order with reference to the material fact and also keeping in view the clause (d) of Section 15 of the Central Sales Tax Act. The Asst. Commissioner of Sales Tax, Puri Range, Bhubaneswar has clearly stated in his order on manufacturer and is not entitled to avail the benefits under the notification referred to supra as the same does not apply to the fact situations for the reasons

that Dal and pulses is treated as single commodity for the purpose of levy of tax under law.

8. Therefore, we do not find any reason whatsoever to interfere with the order dated 11.2.2011 passed by the Orissa Sales Tax Tribunal as the first question of law does not arise in this petition. Therefore, we have answered the above question of law against the petitioner. The second question of law does not at all arise in view of our answer to the first question of law. Further, we are in agreement with the concurrent finding of fact by the Second Appellate Tribunal as the same is on proper appreciation of facts and provisions of the Act.

9. The contention urged by the learned counsel for the petitioner that Clause (d) of Section 15 of the Central Sales Tax Act has been enacted in terms of Article 286 of the Constitution of India and has no application to the present case is wholly misconceived. Such a submission cannot be accepted and accordingly the same is rejected.

10. The petition is devoid of any merit and the same is accordingly dismissed with cost of Rs.5000/-.”

7. The view of the Hon’ble Court above also fortified from the authorities like **Ram Chandra Badrinarayan v. State of Orissa (1974) 33 STC 83 (Ori.); Bijay & Co. v. State of Orissa (SJC No.157/1979 dtd.11.12.1986; Samaleswari Store v. State of Orissa (1988) 68 STC 228 (Ori.); State of Orissa v. Jagadamba Flour and Dal Mills (1988) 68 STC 234 (Ori.)**.

8. Keeping view the authoritative pronouncements above, when it applied to the case in hand, the irresistible conclusion is, the conversion of dal from pulses being not involved a manufacturing process, the dealer is not entitled to concession in rate of tax on CST transactions.

At this juncture, learned Counsel for the dealer Mr. Joshi argued that, the decision in M/s. Rohini Industries Vrs. State of Orissa (supra) by the Hon’ble Court is now under challenge before the Hon’ble Supreme Court in SLP(C) No.3086/2012 pending for disposal.

So, the matter may be remanded back to the assessing authority with a direction to keep the proceeding in abeyance till final decision in the appeal before the Hon'ble Supreme Court. The argument is not conceivable for the simple reason that, in absence of any order to that effect by the Hon'ble Supreme Court the precedent laid down by the Hon'ble High Court has got binding effect on this Tribunal.

Thus, from above it is held that, the concurrent finding of both the fora below calls for no interference. Hence, the impugned order is hereby confirmed.

All the appeals are accordingly dismissed on contest as of no merit.

Dictated & corrected by me,

Sd/-
(Subrata Mohanty)
1st Judicial Member

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I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III