



with the contentions like, cashew kernel is a kind of dry fruit falls under the category of goods as per entry Sl. No.20 of Part-II of the Schedule which contains dry fruits, jam, potato chips, packaged cashew nuts and pickle w.e.f. 24.07.2000. The cashew nut and cashew kernel are not different commodities. So, the order of the first appellate authority declaring the cashew kernel not covered under the Entry Tax net is wrong and need to be set aside.

3. The appeal is heard with Cross Objection from the side of the dealer contending inter alia, in it, that this Tribunal on earlier occasion has decided the identical questions ended in favour of the dealer. So, the order of first appellate authority is just and proper.

4. Gone through the order of assessing authority. It is found that, the learned assessing authority on the basis of Audit Visit Report (in short, the AVR) assessed the dealer u/s.9C of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) covering tax period from 01.04.2012 to 31.03.2014. It has treated cashew kernel as dry fruit i.e. in accordance to the decision rendered by Sales Tax Tribunal, West Bengal in one of its in *S.K. Mekail and Others v. State of West Bengal (1993) 90 STC P. 472 & 473*. Resultantly, the balance tax due and penalty was calculated in total at Rs.45,427.00. In appeal, the first appellate authority reversed the findings of assessing authority relying on the decisions of this Tribunal passed on earlier occasion in S.A. No.6(ET) of 2015-16 and the decision of the Hon'ble Court in the case of *M/s. S. Sadasiva Rao v. State of Orissa and Others* in O.J.C. Nos. 508 & 509 of 1977 and *M/s. Hindustan Lever Limited* vide W.P.(C) No.11400 of 2005, disposed of on 21.01.2010. It has held that, cashew kernel is not covered under entry Sl. No.20 of Part-II of the Schedule, hence it is not taxable under OET Act.

5. Learned Counsel for the dealer tried to give much stress on the earlier decision of the Tribunal and on the decision of Hon'ble

Court relied by the first appellate authority. Per contra, learned Standing Counsel for the Revenue strenuously argued that, cashew kernel and cashew nut both are same. Cashew nut is covered under Sl. No.20, so the cashew kernel dealt by the dealer is being the same goods is exigible to Entry Tax. The entry Sl. No.20 reads as follows:

**“20.** Dry fruits, jam, potato chips, packaged cashew nuts and pickles.”

Though cashew nuts and cashew kernel in regular course of life are treated as same but in business and trade practice both are not same and one goods. Cashew kernel is produced from cashew nuts. So, cashew nut though holds inside the cashew kernel but cashew nut and cashew kernel cannot be treated as same goods. Cashew nut is not a dry fruit, it has been decided time to time by the Hon'ble Court. When cashew nut itself is a specific entry under the Sl. No.20 of Part-II, then this question that, it is a dry fruit or not is redundant and immaterial. It is only to be seen that, whether the entry cashew nut covers cashew kernel. Here, we can refer to the decision of the Hon'ble Supreme Court in Vijayalaxmi Cashew Company and Others v. Dy. Commercial Tax Officer (1996) 100 STC 571 (SC) dtd.15.12.1995, wherein it is held that cashew nut kernels are not the same goods as raw cashew nuts. Hence, avoiding further discussion on this question, it is held that, cashew kernel and cashew nut are not same for the purpose of tax liability. Coming to the entry Sl. No.20 as it revealed, the entry contains cashew nut but not cashew kernel. Needless to state that, it is the settled principle laid down by the Hon'ble Court, if a goods is not covered under any of the entry in schedule under the Entry Tax Act, the authority cannot interpret the goods fitted to any of the entry and levied tax on it. The goods under the entry should be strictly in accordance to the entry itself, unless no tax liability under the OET Act.

6. From the discussion hereinabove, it only can be said that, the impugned orders suffers from no illegality or irregularity, hence calls for no interference, therefore, it is confirmed hereby.

Accordingly, it is ordered.

The appeal stands dismissed on contest as of no merit.

Dictated & corrected by me,

Sd/-  
(S. Mohanty)  
1st Judicial Member

Sd/-  
(S. Mohanty)  
1<sup>st</sup> Judicial Member