

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

**S.A. No. 168 (ET) of 2016-17**

(Arising out of order of the learned DCST (Appeal), Koraput  
Range, Jeypore in Appeal No. AAE (KOR) 14/16-17,  
disposed of on dated 28.11.2016)

Present: **Shri A.K. Das, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri M. Harichandan, Accounts Member-I**

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

-Versus-

M/s. Laxmi Ganesh Cashew Industries,  
Jeypore, Dist. Koraput ... Respondent

For the Appellant : Sri D. Behura, S.C. (CT) &  
Sri S.K. Pradhan, Addl.SC (CT)  
For the Respondent : Sri K. Panigrahi, A/R

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Date of hearing: 18.02.2022 \*\*\* Date of order: 23.02.2022  
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**O R D E R**

This is an appeal u/s. 17 of the Odisha  
Entry Tax Act, 1999 (in short, 'OET Act') at the instance of  
the State challenging the order dated 28.11.2016 passed by  
the learned Deputy Commissioner of Sales Tax (Appeal),  
Koraput Range, Jeypore (hereinafter called as 'first appellate  
authority') in Appeal No. AAE (KOR) 14/16-17 thereby

deleting the tax demand of ₹13,56,647.00 raised by the Sales Tax Officer, Koraput Circle, Jeypore (in short, 'assessing authority') vide order dated 17.10.2015 for the tax period 01.04.2012 to 30.09.2014 u/s. 9C of the said Act.

2. The relevant facts leading to the filing of present second appeal are that the dealer-respondent carries on business in manufacturing of cashew kernel out of raw cashew nuts. On receipt of the Audit Visit Report (AVR) for the tax period 01.04.2012 to 30.09.2014, proceeding u/s. 9C of the OET Act was initiated by the assessing authority and notice was issued in Form E-32 to the dealer-assessee to produce the books of account and explain the allegations made in the AVR. It was alleged in the AVR that the dealer who purchases cashew nuts, which is a scheduled goods under entry No. 20 of Part-II of Entry Tax Schedule and manufactures cashew kernel (dry fruit), did not pay entry tax for the period in question. The assessing authority on examination of books of account found that the dealer purchased cashew nuts for ₹1,75,90,107.00 during the impugned period and effected sale of manufacturing cashew kernel within the State for ₹50,20,679.00 and to outside the State for ₹1,63,96,900.00. It holding the cashew nuts as

scheduled goods as per Sl. No. 20 of Part-II of Entry Tax Schedule assessed the entry tax @ 2% and raised tax demand of ₹13,56,647.00.

2(a). The dealer-respondent challenging such order of the assessing authority preferred appeal before the first appellate authority u/s. 16(1) of the OET Act, who set aside the order of the assessing authority and deleted the tax demand raised by it. The State being aggrieved with this order of the first appellate authority preferred the present second appeal.

3. The learned Standing Counsel (CT) representing the State vehemently urged that the learned first appellate authority on erroneous appreciation of the materials on record and under misconception of law, set aside the order of the assessing authority and deleted the tax demand raised by it. The cashew kernel manufactured by the dealer-respondent is nothing but dry fruit coming under Sl. No. 20 of Part-II of the Schedule and is exigible to entry tax. The finding of the first appellate authority that the cashew kernel manufactured by the dealer is not scheduled goods is contrary to the statute and against the well settled

principle of law. He submitted to set aside the impugned order and restore the order of the assessing authority.

4. Per contra, Sri K. Panigrahi, Authorized Representative of the dealer-respondent supporting the impugned order passed by the first appellate authority in terms of cross-objections filed by it vehemently urged that the cashew kernel manufactured by the dealer-respondent is not scheduled goods and is not exigible to entry tax has already been decided by this Tribunal in different cases. This issue is no more *res integra* for adjudication by this Tribunal. The appeal filed by the State being devoid of merit should be dismissed.

5. We have heard the rival submissions of the parties, gone through the grounds of appeal vis-a-vis the impugned order of the first appellate authority and the materials on record. The only issue that emerges for decision by this Tribunal is whether the cashew kernel manufactured by the dealer-respondent out of raw cashew nuts is scheduled goods as per entry No. 20 of Part-II of the Schedule or not? There is no dispute in the present case that the dealer-respondent deals with the business of manufacturing cashew kernel out of raw cashew nuts and

during the period in question, it purchased cashew nuts from the local area worth ₹1,75,90,107.00 and effected sale of manufactured cashew kernel within the State of Odisha for ₹50,20,679.00 and to outside the State for ₹1,63,96,900.00. Now, the question arises whether the cashew kernel manufactured and sold by the dealer-respondent is scheduled goods as per entry No.20 of Part-II of the Schedule or not. Entry No. 20 of Part-II of the Schedule includes dry fruits, jam, potato chips, packaged cashew nuts and pickles for the purpose of imposing entry tax. This entry does not specifically include cashew kernel. Similar issue was before this Tribunal in S.A. No. 156 (ET) of 2015-16 in case of State of Odisha Vs. M/s. Om Sri Laxmi Ganesh Casahew Industries, Jeypore and in S.A. No. 92 (ET) of 2017-18 in case of State of Odisha Vs. M/s. Sri Sai Balaji Cashew Industries, Jeypore, Koraput where in the former case the Full Bench of this Tribunal in para-5 of the order held that cashew kernel is not a scheduled goods in so far as Part-II of the Schedule under the OET Act is concerned and no entry tax can be levied and in the latter case also the Single Bench of this Tribunal relying on the decision of the Hon'ble High Court of Orissa in case of S. Sadasiva Rao Vs.

State of Orissa and others (O.J.C. Nos. 508-509 of 1977, decided on 17.07.1980) held that cashew nut is not dry fruit. Learned Standing Counsel (CT) in course of hearing of the second appeal did not dispute that the law laid down in the above judgments still hold good as has not been reversed or set aside by the higher forum. In view of such settled position of law, the contention raised by the learned Standing Counsel (CT) that the cashew kernel is scheduled goods as per entry No. 20 of Part-II of the Schedule is not sustainable in law. When a particular issue has been decided by this Tribunal rightly or wrongly, unless and until the same is set aside or reversed that is binding on the coordinate Bench of this Tribunal and the law of consistency demand that the law laid down in the earlier judgment should be given respect to and followed. In the present case, the first appellate authority taking note of the Judgment Hon'ble High Court and the order of this Tribunal in case of Gopal Krishna Cashew Industries in S.A. No. 7 (ET) of 2015-16 came to the categorically conclusion that levy of entry tax on purchase value of cashew nuts and sale value of cashew kernel as per entry No. 20 of Part-II of the Schedule along with penalty thereon is not legally sustainable. We do not

find any illegality in such observation of the learned first appellate authority. Learned Standing Counsel (CT) referring to the materials on record argued that the dealer had kept the cashew nuts in packaged condition for which it would come within the definition of 'scheduled goods' as per entry No. 20 of Part-II of the Schedule. On going through the record, we find that the dealer had purchased raw cashew of 856 packets each of 50 Kgs. From this, it cannot be said that the dealer dealt with packaged cashew nuts coming within the ambit of Sl. No. 20 of Part-II of the Schedule. The cashew nuts purchased from the local market and kept in gunny bags for the sake of convenience and transportation cannot be said as packaged cashew nuts as per entry No. 20 of Part-II of the Schedule. 50 Kgs. cashew nuts packet in a gunny bag for the purpose of transaction is not packaged cashew nuts as per entry No. 20 of Part-II of the Schedule, attracting entry tax as contended by the learned Standing Counsel (CT). Therefore, the contention raised by the learned Standing Counsel (CT) has no legs to stand and must fall to the ground. The first appellate authority has rightly set aside the order of the assessing authority deleting the tax demand raised by it. There is no illegality or

impropriety in the impugned order of the first appellate authority warranting interference of this Tribunal.

6. For the foregoing discussions, we are of the unanimous view that the raw cashew and cashew kernel prepared out of it is not scheduled goods as per entry No. 20 of Part-II of the Schedule attracting entry tax. Accordingly, the appeal filed by the State being devoid of any merit stands dismissed and consequently, the impugned order of the first appellate authority is confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-  
(A.K. Das)  
Chairman

Sd/-  
(A.K. Das)  
Chairman

I agree,

Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(M. Harichandan)  
Accounts Member-I