BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No.53 (ET) of 2015-16

(Arising out of order of the learned JCST, Koraput Range, Jeypore in Appeal No. AAE (NGP)- 18/14-15, disposed of on 29.04.2015)

Present: **Shri G. Sharma, Chairman**

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

-Versus-

M/s. Tasty Cashew Industry, At- Dumuripadar, PO- Semla, Dist. Nabarangpur ... Respondent

For the Appellant : Sri N.K. Rout, Addl. S.C. (CT)
For the Respondent : N o n e

Date of hearing: 22.09.2026 *** Date of order : 14.10.2026

O R D E R

Challenging the legality and propriety of order dated 29.04.2015 passed by the Joint Commissioner of Sales Tax, Koraput Range, Jeypore (hereinafter referred to as 'First Appellate Authority') in Appeal No. AAE (NGP)- 18/14-15, this appeal has been filed by the State.

2. The brief facts relevant for disposal of this appeal run thus–

M/s. Tasty Cashew Industry (hereinafter referred to as 'Dealer') carries on business in procuring of raw cashew nuts and after processing sells cashew kernel, cashew husk, rotten cashew etc. inside the State. Basing on the Tax Evasion Report (TER), the Sales Tax Officer, Nabarangpur Circle, Nabarangpur, (in short, 'Assessing

Authority') initiated the assessment proceeding u/s. 10 of the Odisha Entry Tax Act, 1999 (for brevity, 'OET Act') for the period 01.04.2012 to 31.03.2014. The Assessing Authority did not accept the TER alleging purchase suppression, but observed that the Dealer was a manufacturer of cashew kernel, which is 'dry fruit' and scheduled goods as per Sl. No. 20 of Part II of the Schedule under the OET Act, and held that the Dealer was liable to pay ET as per provision of Section 26(1) of the OET Act r/w. Rule 19(1) of the OET Rules, accordingly, determined the GTO and TTO at ₹28,92,500.00, thereby raised the demand of ₹1,73,550.00 towards tax and penalty for the period under assessment. Being aggrieved with the order of assessment, the Dealer preferred first appeal before the learned First Appellate Authority. The First Appellate Authority allowed the appeal by reducing the demand to 'nil', hence this appeal.

3. The Dealer filed cross-objection.

4. None appeared on the behalf of the Dealer despite service of notice. Learned Addl. Standing Counsel (CT) for the State was present. Hence, the matter is taken up for disposal *ex parte* on merits basing on the materials on record.

5. The learned Addl. Standing Counsel (CT) appearing for the State submitted that the order of the First Appellate Authority in deleting demand raised by the Assessing Authority is unjust and improper on the ground that in common commercial sense cashew nut or cashew kernel is considered as fruit, which includes all parts including pulp, nut seed, peel etc. He submitted that popular meaning and commercial sense meaning should prevail over scientific or technical meaning in view of the decision of the Hon'ble Apex Court in the case of ***Commissioner of Sales Tax v. Jaswant Singh & Charan Singh***, accordingly, prayed to quash the impugned order by restoring the order of assessment.

6. On the contrary, the Dealer filed written note of submission by post supporting the impugned order as lawful citing catena of decisions including the decision of the Hon'ble High Court of Orissa in the case of ***M/s. Maa Khadi Cashew Industries v. The Commissioner of Commercial Taxes, Odisha & Others*** (**STREV No. 96 of 2017**, decided on 15.12.2022).

7. On perusal of record, it transpires that the Assessing Authority completed the assessment holding that the Dealer was liable to pay ET @ 2% on sale of cashew kernel worth ₹28,92,500.00, which is a 'dry fruit' as per Entry 20 of Part II of the Schedule under the OET Act, accordingly, determined the ET liability including penalty on the Dealer for the period under assessment. In appeal, the First Appellate Authority deleted the entire demand observing that cashew nut or cashew kernel is not a fruit, dried or otherwise.

Admittedly, in the present case the Dealer used to purchase raw cashew nut and after processing sold cashew kernel for the period under assessment. Entry No. 20 of Part-II of the Schedule under the OET Act describes dry fruits, jam, potato chips, packaged cashewnuts and pickles as scheduled goods exigible to ET @ 2%. In the context of levy of ET on cashew kernel, the Hon'ble High Court of Orissa in the case of ***M/s. Maa Khadi Cashew Industries*** cited supra, as relied on by the Dealer, have been pleased to observe as under :-

> *"9. Apart from the fact that cashew kernel is not the same as cashew nut, it is plain that the entry itself only talks of 'packaged cashew nut' and not cashew nut per se. These are distinct and different products as understood in the trade. Consequently, this Court is unable to concur with the view expressed by the Tribunal that cashew kernel or plain cashew nut would come within the purview of Entry-20 of Part II of the Schedule to the OET Act."*

Having regard to the above backdrop of the matter as well as settled law of the Hon'ble Court, this forum is of the humble opinion that there remains no iota of doubt that cashew kernel or cashew nut is

not exigible to ET as per Entry No. 20 of Part II of the Scheduled and thus, the impugned order of the First Appellate Authority holding the Dealer not liable to pay ET on the turnover of cashew kernel for the period under assessment does not suffer from infirmity so as to call for any interference in appeal. Hence, the appeal fails.

8. In the result, the appeal filed by the State stands dismissed and the impugned order of the First Appellate Authority deleting the demand raised in assessment is hereby confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman