

**BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL:  
CUTTACK.**

**S.A. No. 138 (ET) of 2012-13**

(Arising out of the order of the learned JCST, Puri Range,  
Puri, in First Appeal Case No. AA/45/ET/JATNI/2011-12,  
disposed of on dtd.31.08.2012)

**P r e s e n t :** Shri A.K. Panda,  
1<sup>st</sup> Judicial Member

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

**- V e r s u s -**

M/s. Rohini Industries,  
Ramachandrapur Bazar, Jatni. ... Respondent

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

-----  
Date of hearing: 02.02.2018                      \*\*\*\*                      Date of order: 09.07.2018  
-----

**ORDER**

This appeal is directed against the order dtd.31.08.2012 passed by the learned Joint Commissioner of Sales Tax, Puri Range, Puri (hereinafter referred to as, the learned JCST) in First Appeal Case No. AA/45/ET/JATNI/2011-12, wherein and whereby he has allowed the first appeal by reducing the balance tax demand and penalty to nil from Rs.25,801.00 raised by the learned Sales Tax Officer, Jatni Circle, Jatni (hereinafter referred to as, the learned STO) in an assessment u/s.9C of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) in respect of the respondent-dealer for the assessment period from 01.04.2005 to 31.08.2007.

2. The respondent-dealer M/s. Rohini Industries, Jatni bearing TIN-21291105057 is a processor of dal from pulses and is also a seller of dal, maize and cattle feed. Basing upon an Audit Visit Report (in short, the AVR), the learned STO initiated a proceeding u/s.9C of the OET Act against the respondent-dealer for its assessment for the assessment period from

01.04.2005 to 31.08.2007 and issued a notice to appear and to produce the books of account and in response to the notice, the proprietor of the respondent-dealer firm appeared and produced the books of account which were duly been examined in the light of the allegation leveled in the AVR. Though there is an allegation of non-payment of Entry Tax on total sale of cattle feed amounting to Rs.7,00,456.65, Rs.8,63,865.75 and Rs.5,19,342.75 shown in three different periods respectively, the proprietor of the respondent-dealer firm took the plea that, some of the sale has been made inside the local area and is not exigible to Entry Tax and as such, being convinced, the learned STO accepted his contention and excluded the sale made inside the local area from the total sale as shown in the books of account and accordingly determined the TTO at Rs.8,80,047.60 and levied tax thereon @ 1% in view of the entry in Sl. No.66 of Part-I of the schedule of the OET Act and finally the order of the learned STO resulted in a balance tax demand and penalty amounting to Rs.25,801.00, to be paid by the respondent-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the respondent-dealer preferred an appeal before the learned JCST bearing First Appeal Case No. AA/45/ET/JATNI/2011-12. On hearing and on consideration of the materials on record, the learned JCST did not accept the finding and order of the learned STO and arrived at a different conclusion that, 'chuni' as sold by the respondent-dealer is not a finished product, rather a by-product and as such is not exigible to Entry Tax and accordingly he allowed the appeal by setting aside the order of the learned STO. Thus, being aggrieved with the order of the learned JCST, the Revenue as appellant has preferred this second appeal.

4. Cross objection has been filed by the respondent-dealer supporting the order of the learned JCST.

5. Heard both the sides. The learned Standing Counsel appearing for the appellant-Revenue submitted that, 'chuni' as sold by the respondent-dealer, being a cattle feed is a finished product and is exigible to Entry Tax in view of the entry in Sl. No.66 of Part-I of the schedule of the OET Act and the respondent-dealer being a manufacturer is liable to collect and to pay the same in accordance with the provisions of law. But, without considering

the matter in its proper perspective, the learned JCST has held 'chuni' to be a by-product and not a finished product of the respondent-dealer and has also arrived at an erroneous conclusion that, the same is not exigible to Entry Tax. Therefore, as the finding and order passed by the learned JCST suffers from serious infirmity, the same is liable to be cured by this Hon'ble forum and the appeal preferred by the appellant-Revenue is liable to be allowed. In support of his contention, he relied upon in the case of **State of Orissa v. Madanlal Agarwalla** vide **S.A. No.65 (ET), 66 (ET), 67 (ET), 72 (ET), 79 (ET) of 2009-10** and **272 (ET) of 2008-09** pronounced by a Single Bench of this Tribunal. On the other hand, the learned Counsel appearing for the respondent-dealer supported the finding and order arrived at by the learned JCST and urged for dismissal of the appeal. In support of his contention, he relied upon in the own case of the respondent-dealer for the assessment period from 01.09.2007 to 30.09.2010 i.e. **State of Orissa v. M/s. Rohini Industries** vide **S.A. No.141 (ET) of 2013-14** pronounced by a Single Bench and in the case of **State of Orissa v. M/s. Maa Bhuasuni Roller Flour Mill** vide **S.A. No.283 (E) of 2008-09** pronounced by a Division Bench of this Tribunal.

6. Perused the orders of both the learned forums below and the other materials on record. Undisputedly, the respondent-dealer is a manufacturer and seller of dal and has also sold certain amount of 'chuni', husk of pulses during the assessment period in question. It is not also in dispute that, if 'chuni' will be held to be schedule goods under the OET Act, the respondent-dealer is to be held liable to collect and pay Entry Tax in view of the provision mentioned in Sec.26 of the OET Act. Thus, the only dispute which needs adjudication in this appeal is to whether 'chuni' as sold by the respondent-dealer can be held to be cattle feed within the meaning of Sl. No.66 of Part-I of the schedule of the OET Act for levy of Entry Tax.

7. In the case of **State of Orissa v. Madanlal Agarwalla** (supra), a Single Bench of this Tribunal after an elaborate discussion has held 'chuni' to be a cattle feed coming under the purview of Sl. No.66 of Part-I of the schedule. On the other hand, in the own case of the respondent-dealer for the assessment period from 01.09.2007 to 30.09.2010, a Single Bench of this Tribunal has taken the view that, 'chuni' can never be considered to be

a cattle feed coming under the purview of Sl. No.66 of Part-I of the schedule rather, the same is one of the ingredient of the cattle feed and the same being a by-product is not exigible to Entry Tax. The same view has also been expressed by a Division Bench of this Tribunal in the case of **State of Orissa v. M/s. Mass Bhuasuni Roller Flour Mill** vide **S.A. No.283 (E) of 2008-09**. On further perusal of the decisions of this Tribunal in **S.A. No.275 (E)** and **276 (E) of 2008-09** and several other cases, it is seen that, since long this Tribunal is taking a consistent view that 'chuni' being an ingredient of the cattle feed can never be considered to be cattle feed alone coming under the purview of Sl. No.66 of Part-I of the schedule and being a by-product and not being a finished product, the same is not exigible to Entry Tax. Further, during course of hearing, the learned Standing Counsel appearing for the appellant-Revenue failed to place any material to show that, the appellant-Revenue has proceeded further before the higher forums against the finding and order arrived at by this Tribunal in the own case of the respondent-dealer for the assessment period from 01.09.2007 to 30.09.2010. As this Tribunal is taking a consistent view since long that 'chuni' alone can never be considered to be cattle feed and is not exigible to Entry Tax, it is not desirable for this forum at present to take a different view from the consistent view taken earlier without any change in circumstance and without any convincing material further.

8. As the question involved in this appeal has already been settled earlier by this Tribunal in a catena of decisions, it can clearly be said that, the finding and order arrived at by the learned JCST suffers from no infirmity and as such the same needs no interference of this forum.

9. In the result, the appeal is dismissed being devoid of merit. The cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-  
(A.K. Panda)  
1st Judicial Member

Sd/-n  
(A.K. Panda)  
1st Judicial Member