

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

**S.A. No. 21 (ET) of 2016-17**

(Arising out of order of the learned DCST (Appeal), Koraput  
Range, Jeypore in Appeal No. AAE (KOR) 05/15-16,  
disposed of on dated 22.02.2016)

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

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

-Versus-

M/s. Lingaraj Cashew Processing Industry,  
Kotpad, Dist. Koraput ... Respondent

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

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Date of hearing: 03.03.2022 \*\*\* Date of order: 23.03.2022  
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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 22.02.2016 passed by  
the learned Deputy Commissioner of Sales Tax (Appeal),  
Koraput Range, Jeypore (hereinafter called as 'first appellate  
authority') in Appeal No. AAE (KOR) 05/15-16 thereby

deleting the tax demand of ₹11,48,580.00 raised by the Sales Tax Officer, Koraput Circle, Jeypore (in short, 'assessing authority') vide order dated 22.05.2015 for the tax period 01.04.2012 to 17.01.2014 u/s. 10 of the said Act.

2. The facts of the case in nutshell are that the dealer-respondent carries on business in manufacturing of cashew kernel out of raw cashew nuts. Basing on a Tax Evasion Report (TER) of the DCST, Vigilance, proceeding u/s. 10 of the OET Act was initiated by the assessing authority and notice was issued to the dealer assessee. Since the dealer-assessee did not appear and produce the books of account despite notice and several intimations issued to it, the assessing authority completed the assessment exparte for the material period considering the facts and figures reported in the TER by the Vigilance. It was alleged in the TER that although the dealer purchased cashew nuts in packaging form both from local area during the year 2013-14 and outside the local area during the year 2012-13 besides unaccounted for cashew kernel converted to cashew nuts for total amount of ₹1,91,42,989.00, it did not pay due entry tax on the same. Accordingly, the assessing authority determined the GTO as well as the TTO

at ₹1,91,42,989.00 and levied entry tax @ 2% on it, which was calculated at ₹3,82,860.00. Penalty of ₹7,65,720.00 was also imposed u/s. 10(2) of the OET Act and consequently, demand of ₹11,48,580.00 was raised on the dealer-assessee.

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 vide impugned order dated 22.02.2016 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. It is statutory mandate that when the cashew nuts are received in packaged condition in jute twine bags, the same are liable to be taxed as per Sl. No. 20 of Part-II Schedule under the OET Act. The finding of the first appellate authority is contrary to the law settled by the Hon'ble Apex Court in case of Mc Dowell & Co. Ltd. Vs. STO

that statutory provision should be construed strictly. He submitted to set aside the impugned appeal order and restore the order of the assessing authority.

4. Per contra, Sri Ananda Rao, Authorized Representative of the dealer-respondent supporting the impugned order passed by the first appellate authority in terms of cross-objection filed by it vehemently urged that the cashew nuts purchased by the dealer-respondent is not scheduled goods and is not exigible to entry tax as has been decided by this Tribunal in different cases. This issue is no more *res integra* for further adjudication by this Tribunal. Further, it is contended on behalf of the dealer-assessee by filing additional grounds of appeal in course of hearing that the arguments advanced in the appeal preferred under the OVAT Act regarding reopening of assessment be considered in the instant appeal under the OET Act and the appeal filed by the State being devoid of any merit 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 issue that emerges for decision by this Tribunal is whether the cashew nuts purchased by the

dealer-respondent in packaging form 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 as per TER submitted by the DCST, Vigilance, during the period in question, it purchased raw cashew nuts from the local area and by way of import. Now, the question arises whether the cashew nuts purchased by the dealer-respondent in packaged form and cashew kernel prepared out of it are 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 Cashew 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 co-ordinate Bench of this Tribunal and the principle of consistency demands that the law laid down in the earlier judgment should be given respect to and followed. In the present case, the first appellate authority opined that the reporting officer or the assessing authority has not established the fact that the dealer-assessee has purchased packaged cashew nuts and merely basing on the word

'packaging' as defined in Wikipedia, the assessing authority has levied tax on the purchase value of cashew nuts on presumption that the dealer purchased cashew nuts packaged in jute twine bags, which is not fair and 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 purchased 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 imported cashew nuts of 54,110 kgs. during the year 2012-13 and also purchased 29,580 kgs. from local during the year 2013-14 besides unaccounted for cashew kernel converted to cashew nuts for total amount of ₹1,91,42,989.00. 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 by the dealer-assessee in packaged form, i.e. in jute twine 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. Packaging

cashew nuts in a jute twine bags for the purpose of taxation 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. Further this Tribunal in Full Bench in case of State of Odisha Vs. M/s. Laxmi Ganesh Cashew Industries, Koraput (S.A. No. 168 (ET) of 2016-17 decided on 23.02.2022) has negated the contention of the revenue that cashew kernel is taxable under entry No. 20 of Part-II of the Schedule. 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. Coming to the next assertion of the dealer-assessee challenging the reopening of assessment as unlawful as per additional grounds of appeal filed, we are of the view that this issue raised in the appeal filed by the dealer-assessee under the OVAT Act has already been adjudicated by this Tribunal in S.A. No. 407 (VAT) of 2015-

16 and in view of the finding rendered therein the contention raised by the Authorised Representative of the dealer assessee that reopening of assessment U/S 43 of the OVAT Act in the absence assessment U/S. 39 of said Act is bad in law must fall to ground. So far as the present appeal under the OET Act is concerned, the same arose out of the proceeding initiated under provision of Sec. 10 of the OET Act which is quite different from the proceeding U/S. 43 of the OVAT Act. The provision contained U/S. 10 of the OET Act says that the assessing authority on the basis of information in his possession may serve a notice on the dealer in such form and in such manner as may be prescribed and after making such enquiry as he considers necessary and after giving the dealer a reasonable opportunity of being heard, proceed to assess the dealer accordingly. Here in this case, the assessing authority basing on TER submitted by the DCST, Vigilance, initiated reassessment proceeding against the dealer-assessee U/S. 10 of the OET Act, which cannot be called in question on the basis of the judgment in the case of M/s. Keshab Automobiles Vs. State of Orissa (STREV No. 64 of 2016 decided on 01.12.2021 on which the dealer-assessee placed

reliance which has no application to the facts and circumstances of the present case. Therefore, the contention advanced by the authorised representative of the dealer- assessee on this score merits no consideration

7. For the reasons discussed above, we are of the unanimous view that the cashew nuts purchased in packaging form 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/-  
(S. Mishra)  
Accounts Member-II