BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 246 (ET) of 2008-09

(Arising out of order of the learned DCST, Ganjam Range, Berhampur in Appeal No. AAE- 107/2007-08, disposed of on 27.09.2008)

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

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

-Versus-

M/s. Laxmi Cashew Industry, At- Bramhanapalli, PO- Chatrapur, Dist. Ganjam ... Respondent

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

Date of hearing: 08.09.2026 *** Date of order : 06.10.2026

O R D E R

Challenging the legality and propriety of order dated 27.09.2008 passed by the Deputy Commissioner of Sales Tax, Ganjam Range, Berhampur (hereinafter referred to as 'First Appellate Authority') in Appeal No. AAE- 107/2007-08, this appeal has been filed by the State.

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

M/s. Laxmi Cashew Industry (hereinafter referred to as 'Dealer') purchases raw cashew nut and after processing sells cashew kernel. Basing on the Audit Visit Report (AVR), the Sales Tax Officer, Ganjam II Circle, Berhampur, (in short, 'Assessing Authority') initiated the assessment proceeding u/s. 7(4) of the Odisha Entry Tax

Act, 1999 (for brevity, 'OET Act') for the year 2005-06 and held the Dealer liable to pay ET @ 2% on ₹1,31,360.00 towards sale of cashew kernel, accordingly, computed the ET liability of ₹7,882.00 including 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 deleted the penalty imposed, but levied interest, which resulted in reduction of demand to ₹3,941.00 and allowed the appeal in part, 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 disposed of *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 penalty by levying interest is erroneous on the ground that basing on the AVR, the Assessing Authority determined the ET liability of the Dealer including penalty, which is mandatory. He further submitted that mere misquotation of provision does not vitiate the order, accordingly, prayed for restoring the assessment order.

6. On perusal of record, it transpires that the Assessing Authority completed the assessment basing on the AVR, wherein it was suggested that the Dealer was liable to pay ET @ 2% on sale of cashew kernel worth ₹1,31,360.00, accordingly, determined the ET liability including penalty on the Dealer for the period under assessment. In appeal, the First Appellate Authority, as it appears, considering the provision u/s. 7(5) of the OET Act levied interest by deleting the penalty, which is under challenge by the State.

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 v. The Commissioner of Commercial Taxes, Odisha & Others*** (**STREV No. 96 of 2017**, decided on 15.12.2022) 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 orders of the fora below making the Dealer liable to pay ET on the turnover of cashew kernel for the period under assessment suffer from infirmity and liable to be set aside in the ends of justice. Hence, the appeal fails.

7. In the result, the appeal filed by the State stands dismissed and the impugned orders of the First Appellate Authority as well as Assessing Authority are hereby set aside. Entry tax paid thereon, if any, shall be refunded to the Dealer as per law. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-	**Sd/-**
(G. Sharma)	**(G. Sharma)**
Chairman	**Chairman**