BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A.No. 92(ET)/2017-18

(From the order of the ld.JCST, Koraput Range, Jeypore, in Appeal No. AAE(KOR)19/2016-17, dtd.28.06.2017, allowing the assessment order of the Assessing Authority)

Present: Sri S. Mohanty
2nd Judicial Member

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

-Versus-

M/s. Sri Sai Balaji Cashew Industries, Jeypore, Dist. Koraput. ... Respondent

For the Appellant : Mr. S.K. Pradhan, ASC (CT)
For the Respondent : Mr. N. Anand Rao, A/R

(Assessment period : 01.04.2008 to 22.05.2014)

Date of Hearing: 08.08.2018 Date of Order: 08.08.2018

ORDER

The moot question to be decided in this tax appeal is, whether the goods like 'cashewnut' falls under the category of Sl.No.20 of Schedule-II and amenable to Entry Tax?.

2. In a proceeding u/s.10 of the Odisha Entry Tax Act, 1999 (in short, OET Act), the Assessing Authority/Sales Tax Officer, Koraput Circle, Jeypore (in short, AA/STO) held the dealer liable to entry tax @2% against the purchase of cashewnut as raw materials and then in appeal preferred by the dealer, the learned First Appellate Authority/Joint Commissioner of Sales Tax, Koraput Range, Jeypore (in short, FAA/JCST) when deleted the tax

liability treating the 'cashewnut' as a non-schedule goods under the Act, Revenue being aggrieved preferred this appeal.

3. The dealer who was carrying on business in manufacturing of cashew kernel out of raw cashew nuts was subjected to re-assessment u/s.10 of the OET Act on the basis of fraud case report submitted by DCST, Vigilance Division, Jeypore. In consideration of the tax period from 01.04.2008 to 22.05.2014, the AA has arrived at a conclusion that, the total purchase of raw cashew nut during the assessment period by the dealer was determined at Rs.2,14,46,615/- and it was exigible to entry tax @2% as per Entry Sl.No.20 of Schedule-II. The entry tax payable by the dealer was calculated at Rs.4,28,932/-. After adjusting entry tax already paid in the meanwhile of Rs.34,789/-, the balance tax due was calculated on Rs.17,39,430/-. Besides the tax liability, penalty was imposed at Rs.7,88,286/-, thereby the total liability was calculated at Rs.11,82,429/-.

4. The assessment by the AA as above was questioned before the FAA, who in turn, treated the cashew nut dealt by the dealer as a non-schedule goods not exigible to entry tax and as a result, the tax due and penalty raised by the AA was deleted.

5. Being aggrieved with such deletion of tax due and penalty, State has preferred this appeal. It is contended that cashew nut should have been treated as a schedule goods as per Sl.No.20 of Schedule-II. Further, it has prayed for restoration of the order of STO levying tax and penalty.

Findings :

6. At the outset, it is pertinent to mention here that, the State has claimed to treat the goods like cashewnut as dry fruits

but surprisingly at the same time State has prayed for restoration of the order of AA whereby the AA has treated the cashewnut dealt by the dealer as packaged cashewnut. Thus, it is found that, the plea of the State is self-contradictory.

7. To appreciate the dispute in this appeal, let us examine the relevant entry in the entry tax act vide Sl.No.20 of Schedule-II which reads as follows :

> *""Dry fruits, jam, potato chips, packaged cashew nuts and pickles"*

Learned Addl. Standing Counsel Mr. Pradhan, relied on Hon'ble Andhra Pradesh High Court in ***Singh Trading Co. – Vrs. CTO, Srikakulam (1979) 45 STC-1 (AP HC)*** and the Hon'ble Tribunal of West Bengal in the case of ***SK Mechail & Others Vrs. State of West Bengal (1993) 90 STC page 472 (WB Tribunal)*** and argued that, both the authorities above have treated the cashewnut dealt by the dealer in that case as dry fruit. On the other hand, learned Counsel for the dealer placed reliance in the matter of ***S. Sadasiva Rao Vrs. State of Orissa and Other (OJC Nos.508 & 509 of 1977, decided on 17.07.1980)*** and in the matter of ***Hindustan Lever Limited Vrs. STO, Cuttack-I East Circle*** in ***W.P.(C) No.11400/2005 dtd.21.01.2010*** and the decision of this Tribunal in S.A.No.7(ET)/2015-16 in S.A.No.183(ET)/2016-17. In all these decisions, the Hon'ble Court and this Tribunal has held that, cashewnut is not a schedule goods as per Entry Sl.No.20 and is not exigible to entry tax.

8. If we go by the Entry Sl.No.20 mentioned above, it is found that, the dry fruits and packaged cashew nut are entered in the same list but both are treated as separate goods. So once there

is an entry of goods like cashewnuts then in no case it can be interpreted as dry fruits. If there was no such entry for cashewnut, in that event, the term dry fruits could interpreted in the way submitted by ld. Addl. Standing Counsel. In Hindustan Lever Limited (supra) his Lordship has held as follows :

> "Section 2(m) of the Orissa Entry Tax Act, 1999 deals with "Scheduled goods" which means the goods specified in the Schedule to this Act. So, neither this Court nor the Assessing Authority and much less the Asst. Commissioner of Commercial Taxes (Law), who has filed the counter affidavit before this Court can subtract/add anything to the Schedule and give a new meaning to the same".

Once the legislature has incorporated cashewnut in a particular form in the Entry list i.e. "Packaged cashew nut" in that case other form of cashewnuts can not be included in this term or any other term under the same entry. The Hon'ble Court in S. Sadasiva Rao (supra) has observed that, cashew nut or kernel is not a dry fruit. Further it is found that, this Tribunal on earlier occasion has decided similar matter in favour of the dealer placing reliance on the ratio laid down by the Hon'ble Court in S. Sadasiva Rao (supra) case. In consequence thereof, it is hard to accept the argument advanced by the learned Addl. Standing Counsel that, cashewnut dealt by the dealer should be treated as dry fruit since law does not enpower the taxing authority to interpret the entries when the meanings are plain and unambiguous. Reading of the impugned order reveals that, the FAA has correctly appreciated the provisions under law and the entry list. Resultantly, it is held that, the impugned order calls for no interference. Accordingly, it is ordered.

The appeal by the State stands dismissed on contest as of no merit.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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