BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No. 62/2001-02

(Arising out of the order of the learned ACST, Sambalpur Range, Sambalpur in first appeal Case No. AA-103 (SAII) of 99-2000 disposed of on 22.02.2001.)

Present :- Shri A.K. Das, Chairman **Smt. Sweta Mishra, 2nd Judicial Member** **& Shri S. Mishra, Accounts Member-II.**

M/s. Kansal Food Products
Bargarh. ..... Appellant.

-Vrs.-

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

For the Appellant: : Mr. B.N. Agarwal, Advocate.
For the Respondent: : Mr. D. Behura, S.C.(C.T.)
: Mr. S.K. Pradhan, ASC (C.T.).

Date of Hearing : 11.08.2021 *** **Date of Order :01.09.2021**

O R D E R

This present appeal has been filed by the dealer against the impugned order of learned Assistant Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter referred to as ld. FAA) passed on 22.02.2001 in Appeal Case No. AA-103 (SAII) of 99-2000 who partly allowed the appeal reducing the demand to Rs.1,21,894.00 from Rs.1,61,894.00 raised by the Learned Sales Tax Officer, Sambalpur-II Circle, Bargarh, Ward-A (hereinafter referred to as LAO) framed Under Section12(4) of the Odisha Sales Tax Act, relating to the period 1998-99.

Being aggrieved by the impugned order of the ld. FAA, the dealer-appellant has preferred second appeal before this Tribunal so as to obtain relief of tax as per his grounds of appeal.

2. The facts as revealed from the case record are that the dealer-assessee named and styled as M/s. Kansal Food Products, Bargarh is running a rice mill, who purchases paddy mostly from cultivators and converts the same into rice and sells rice and other bi-products in intra-state, inter-state and in course of export.

a. At assessment stage, the dealer filed a revised return along with a petition claiming exemption of purchase tax on paddy purchased value Rs.59,54,545.00 for export sale of rice U/s.5(3) of CST Act read with Section 15(ca) of CST Act' 1956. On examination, LAO found that the dealer has sold Q. 9099.00 of rice amounting to Rs.77,63,770.00 to the exporter against form 'H' who had, in turn, exported the same outside India. It was not in dispute that the said exporter had made purchase of rice from the appellant for complying with certain agreement/orders made with the foreign buyer(s). Quoting Section 5(3) with Section 15(ca) of CST Act and relying upon the case laws reported in (1996) 103 STC 182; (1989) 73 STC 135; (1999) 115 STC 99 and (1998) 113 STC 102, the LAO held that the claim of exemption of payment of purchase tax on the said quantity of paddy is not legally tenable and subjected the turnover to tax at appropriate rate.

b. Further, the LAO, after examining books of account, rejected the calculation of the appellant based on actuals on purchase tax paid on paddy, thereby reducing the claim of the appellant of such tax of Rs.18,44,324.39 to Rs.18,22,564.65.

c. Moreover, the LAO treated a shortage of Q. 11.50 of paddy detected by the officers of Vigilance Wing, Sambalpur on 25.08.1998 to be the result of clandestine milling of paddy and consequent out of account sale of rice and bi-products obtained from it for Rs.5313.00. Accordingly, he rejected the books of account being not reflecting a true and correct picture of his business and enhanced the GTO returned by Rs.10,00,000.00 and assessed him to the best of his judgment. All these resulted in a tax demand of Rs.1,61,894.00.

Being aggrieved by above order, the dealer preferred first appeal.

3. At this stage, the dealer vehemently argued towards tax exemption on paddy U/s. 15(ca) of CST Act out of which rice has been sold to the exporter. He further argued that the shortage of Q. 11.50 of paddy occurred due to driage, evaporation of moisture contents etc. which was very much within the permissible limit of shortage fixed by Govt. of Odisha in Civil Supplies Deptt. He further submitted that the claim of purchase tax on purchase of paddy is based on actuals and the LAO has erred to reduce such claim without any reasoned order. On tax exemption on paddy purchases, the Ld. FAA observed that there are three transactions involved in export sale of rice; 1) between cultivator and appellant towards paddy purchase; 2) between appellant and

Indian exporter towards sale of equivalent rice obtained from paddy; 3) between Indian exporter and the foreign buyer. Accordingly, it does not fulfill the conditions of section 5(3) of CST Act as the first transaction doesn't come under the ambit and scope of that section. On a coherent reading of Sec. 5(3) with Sec. 15(ca) of the Act, he observed that paddy has not been exported on which exemption has been claimed nor does paddy comes as the agreed commodity for export. Two commodities i.e. paddy and rice are treated as a single commodity as per sec.15(ca) of CST Act with a limited purpose under section 5(3) of the Act but two transactions are never treated as a single transaction. First, second and third transactions are there and they have not been treated jointly and combinedly as one transaction. Accordingly, FAA upheld and sustained the findings of LAO on this score.

On impugned shortage of Q. 11.50 of paddy, FAA observed that for the relevant year, the LAO has accepted a total shortage of 878.50 Qntl. of paddy due to natural phenomena like driage etc. as claimed by the appellant. So, the fact being that the shortage of Q. 11.50 of paddy detected by Vigilance Wing on the date of inspection was within the total shortage claimed and accepted by the LAO. Hence, he dropped the allegation, deleting the enhancement of Rs.10,00,000.00 from the GTO (D) by LAO.

On claim of the appellant that the LAO has erred in reducing the calculation of P.T. paid based on actual price of paddy and resorting to average price of paddy, the Ld. FAA observed that the appellant has

urged for adjustment of P.T. paid on paddy found short along with the equivalent paddy of rice found short when the shortages are much below the admissible limits. However, the Ld. FAA rejected such claim as the appellant failed to maintain any a/c showing the quantum of shortage that occurred at regular intervals during the year and further, he is required to pay P.T. on the quantity of paddy he purchases and there is no law in his favour to claim tax exemption on the quantity that is lost naturally due to driage etc. in course of its shortage.

All these resulted in a reduction of tax demand to Rs.1,12,894.00.

4. Being further aggrieved by the impugned order of the ld. FAA, the dealer-appellant has preferred second appeal before the Tribunal so as to obtain relief of tax on the following grounds as per the memorandum of appeal:-

a. The LAO and the Ld. FAA, both on hypothetical ground, illegally imposed tax on paddy, purchased in course of export, which is against the principle law and as per settled judgments of Full Bench of the Tribunal in case of M/s. Shree Mahalaxmi Rice Industries Pvt. Ltd. Vrs. State of Odisha in S.A. No.846 of 2002-03; S.A. No.869 of 2006-07 in case of M/s. B.B. Udyog and S.A. No.871 of 2006-07 in case of M/s. B.K. Food Products Pvt. Ltd. whose ratio are squarely applicable to his case and accordingly the principle of consistency is to be followed.

b. Both the fora below have erred in reducing the purchase tax claimed by Rs.21,759.74 without any reasonable ground.

Addressing the issue at (b) above, we observe that both the fora below have allowed shortage occurred in paddy in their respective orders due to driage etc. Once the shortage is allowed, the tax involved therein is to be allowed legally as the appellant has paid purchase tax in course of purchase of paddy. Accordingly, the short adjustment of purchase tax of Rs.21,759.74 by both the fora below is allowed to the appellant, re-determining his purchase tax paid at Rs.18,44,324.39 instead of Rs.18,22,564.65 allowed by forums below.

On issue at (a) above, the ld. Counsel for the dealer-appellant submitted that purchase of paddy by the appellant-dealer became purchase in course of export under section 5(3) of CST Act by virtue of legal fiction in section 15(ca) of the Act and therefore, the impugned levy is illegal and liable to be deleted.

5. Per contra, ld. Counsel on behalf of Revenue contended that the dealer has supplied to the exporter rice by milling paddy which was ultimately exported out of the country. Citing various case laws, he contended that the purchase of paddy by the appellant for converting into rice for sale in course of export does not fall U/s.5(3) of the CST Act and hence, taxable.

6. It would be prudent to quote the relevant sections of the Act in order to properly adjudicate the above issue.

Section 5(3) of the CST Act provides:

Quote: *"Notwithstanding anything contained in sub-section (1), the last sale of purchase of any goods preceding the sale or purchase*

occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export." unquote.

Section 15(ca) os CST Act provides:

Quote: *"where a tax on sale or purchase of paddy referred to in sub-clause (i) of clause (i) of Section 14 is leviable under that law and the rice procured out of such paddy is exported out of India, then, for the purposes of sub-section (3) of Section 5, the paddy and rice shall be treated as a single commodity;" unquote.*

On a conjoint reading of both the above sections, it is revealed that paddy and rice are treated as one and single commodity as per Section 15(ca) of the Act and appellant has purchased paddy for conversion of the same to rice for sale in course of export U/s.5(3) of the Act. Moreover, it is observed that the above issue has already been settled by the Full Bench of this Tribunal in three different cases whose ratio is fully applicable to the instant case. For the sake of clarity, the relevant portions of the order passed by Full Bench of this Tribunal on 28.12.2018 in S.A. No.871 of 2006-07 in case of M/s. B.K. Food Products (p) Ltd. is reproduced below:-

"……. It is forcefully submitted by Shri Mohanty, the learned Counsel on behalf of dealer that the appellant is a rice miller. To fulfil to make compliance of the contractual obligations as to sale of rice in

course of export under Section 5(3) of the CST Act, the appellant dealer procured paddy and converted it to rice and sold in course of export and the exporter was situated outside the State of Odisha and the transaction was made in terms of Section 5(3) read with Section 5(4) of the CST Act where 'H' form, bill of lading, copy of the agreement were produced which were verified and found to be true and accordingly, order of assessment under the provisions of the CST Act read with CST(O) Rules has been passed. It is out of place to submit here that the word, to comply with the agreement or order mean all transactions which are in extricable linked with the agreement or order occasioning the export under Section 5(3). It is contended by the learned counsel on behalf of the dealer appellant that Section 15(ca) of the CST Act provides that where a tax to be imposed. On sale or purchase of paddy referred to in sub-clause (i) of clause (i) of Section 14 provides for certain goods to be of special importance in inter-state trade and commerce where paddy and rice are found place. Section 15 provides for restrictions and conditions in regard to tax on sale or purchase of declared goods within a state. Section 5 determining as to when a sale or purchase takes place in the course of export. It determines constitutional inhibition of Article 286(1)(b), namely, that no law of a state shall impose tax on sale or purchase which takes place in the course of import or goods into or export of goods out of India. "Last Purchase" in Section 5(3) connotes purchase which occasion export and in the instant case, since paddy and rice are declared to be one

commodity as per Section 15(ca) of the CST Act, the purchase made within the State occasioned export, and accordingly, no state tax is leviable on such purchases. The learned Counsel Shri Mohanty on behalf of the dealer strongly argued that the both the lower fora below have levied purchase tax solely basing upon a decision of the Hon'ble Supreme Court in the case of Moonga Rice Mill Vrs. State of Haryana reported in (2004) 135 STC 594 (SC). He has further submitted that the said decision is not applicable to the facts and circumstances of the case in hand in as much in that case, the Moonga rice mill was a miller within the State which buys paddy and procure rice within the state and sells it to the exporter within the State and as such, it was decided as a local sale which does not fall under Section 5(3) and was a sale for export and not a sale which occasions exports and accordingly, it was held that purchase of paddy by Moong was not exempted from levy of tax. Therefore, the principles laid down in Moonga rice mill is clearly distinguishable and has no application and as such, both the forums committed illegalities in levying purchase tax by taking assistance from the ratio of monga rice mill. The learned counsel on behalf of dealer argued that purchase of paddy by Veerumal moonga and sons did not fall within the ambit of Section 5(3) read with Section 15(ca) of CST Act and in that case there was no sale or purchase of paddy occasioning export and accordingly, the said case has no relevance inasmuch in the case of the present appellant the transaction involving purchase of paddy did fall within the scope and sphere of Section 5(3) read with

Section 15(ca) of the CST Act and here, there was purchase of paddy occasioning export and therefore the written submission submitted by revenue which is totally irrelevant and not applicable to the present facts and circumstances of the case. As regards to the decisions reported in 103 STC 182 in the case of Jaylaxmi industries Vrs. Dy. Commissioner in the case of Commissioner of Sales Tax Vrs. Leather facts co. reported in 66 STC 91 and in the case of Bhgwan Rice Mill and Oil Industries Vrs. Addl. Commissioner reported in 113 STC 102, the learned Counsel Shri Mohanty submitted that the factual situation in the said case is totally different from the present case and those cases did not fall under Section 5(3) of the CST Act but in the present case, the forums below have accepted the transactions covered under Section 5(3) of the CST Act and have passed assessment order accordingly. He has further contended that the decisions cited by revenue are totally misleading, mis-conceived, biased and an empty aim to get rid of the appellants legitimate claim of exemption. The decisions relied upon by the revenue in its belated cross objection in the nomenclature of written submissions are all factually distinguishable and diametrically those decisions have no application to the facts and circumstances of the case. We, therefore, find enough force in the submission of Shri Mohanty that since paddy and rice are declared to be one commodity as per Section 15(ca) of the CST Act, the purchase made within the State occasioned export and accordingly, no state tax is leviable on such purchases."

As per above judgment, the appellant should have been entitled for purchase tax exemption on paddy of which rice obtained and sold in course of export. However, at this juncture, the ld. Counsel for Revenue, referring to a judgment of Hon'ble Supreme Court urged for further examination of this case. The Constitution Bench of the Hon'ble Supreme Court of India in case of Instalment Supply Pvt. Ltd. Vrs. Union of India, (1961) 12 STC 489 (SC) rendered the dictum that:

"It is well settled that in matters of taxation there is no question of res judicata because each year's assessment is final only for that year and does not govern later years, because it determines only the tax for a particular period."

Whereas, the ld. Counsel for the appellant argued for sticking to the "principle of consistency" as per earlier judgments of Full Bench of this Tribunal in three different cases noted supra.

It is now apt to quote the relevant portion of judgment of Full Bench of this Tribunal in S.A. No.35(C)/2001-02 delivered on 03.08.2019 in case of M/s. OCL India Ltd. Vrs. State on the apparent controversy:

".....One cannot brush aside the "principle of Consistency", which requires that when the facts and circumstances continue to remain the same, then there should not be any variation in the treatment from earlier year. In Commissioner of Income Tax V. M/s. Quest Investment Advisors Pvt. Ltd. under Income Tax Appeal No.280 of 2016 – High Court of Bombay dealt with "Res Judicata" and "Principle of

Consistency" and held: (i) "Principle of res judicata" does not apply in matters pertaining to tax for different assessment years. (ii) The duty of the Revenue is to adhere to a consistent practice which has been accepted and followed. (iii) "Principle of Consistency" can be changed only if there is a change in law or facts not otherwise."

It is apt to mention here that, in Bharat Sanchar Nigam Ltd. (supra) the Hon'ble Court has held as follows.

"res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar Courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The Courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why Courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam. However, these are fetters only on a coordinate bench which, failing the possibility of availing of either of these gateways, may yet differ with the

view expressed and refer the matter to a bench of superior strength or in some cases to a bench of superior jurisdiction."

Thus, for the authoritative pronouncements above, when the rule of consistency applied to the case in hand, it can be said that the Tribunal is under obligation to maintain uniformity. Resultantly, it is held that, the ultimate findings of the FAA in the impugned order is to be quashed in the light of above findings and observations.

7. Accordingly, it is ordered.

The appeal filed by the dealer-appellant is allowed in full and the order passed by the FAA is quashed.

Dictated & corrected by me,

Sd/-
(S. Mishra)
Accounts Member-II

Sd/-
(S. Mishra)
Accounts Member-II

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(Sweta Mishra)
2nd Judicial Member