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

***S.A. No. 431 of 2009-10***

(Arising out of the order of the learned ACST, Sambalpur Range, Sambalpur, in First Appeal Case No. AA-303 (SA-II) of 2005-2006, disposed of on dtd.14.06.2006)

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

M/s. Kansal Food Products,
At/P.O./Dist.- Bargarh. ... Appellant

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

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

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

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Date of hearing: 14.05.2018 **** Date of order: 31.10.2018

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***O R D E R***

This appeal is directed against the order dtd.14.06.2006 passed by the learned Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter referred to as, the learned ACST) in First Appeal Case No. AA-303 (SA-II) of 2005-2006, wherein and whereby he has dismissed the first appeal by confirming the order of the learned Sales Tax Officer, Sambalpur II Circle, Bargarh (hereinafter referred to as, the learned STO) passed in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947(hereinafter referred to as, the OST Act) in respect of the appellant-dealer for the assessment year 2004-05 raising a balance tax demand of Rs.1,06,093.00.

2. The appellant-dealer being a rice miller engaged in procurement of paddy and conversion of the same into rice, broken rice and bran and also engaged in selling of those products. In an assessment of the apelalnt-

dealer u/s.12(4) of the OST Act for the assessment year 2004-05, the learned STO examined the books of account in detail and found out that, in that year, the appellant-dealer has purchased paddy worth Rs.7,85,20,007.50 and is liable to pay purchase tax @ 4% amounting to Rs.31,40,800.30. Similarly, the appellant-dealer has also sold rice amounting to Rs.7,18,45,622.71, wherein the due sales tax comes to Rs.28,73,824.91 against which it has claimed adjustment of tax amounting to Rs.25,98,053.91 being the purchase tax paid on equivalent quantity of paddy out of which rice has been obtained and sold. But, on further examination of the books of account, the learned STO found out that, though the appellant-dealer has claimed adjustment of Rs.1,87,529.04 being the purchase tax worked out on purchase of paddy out of which rice has been obtained and sold, it has effected sale of rice of Q.5737.00 for an amount of Rs.42,94,338.10 in free trade on which tax amounting to Rs.1,71,773.52 has been collected and as such the appellant-dealer has claimed more adjustment of purchase tax than what has been collected by way of sales tax in respect of the rice sold in the open market. Therefore, considering the provision of sec.15(C) of the Central Sales Tax Act (hereinafter referred to as, the CST Act) and relying upon in the case of **Dhanalaxmi Rice Mill Contractor Company v. State of Andhra Pradesh (1988) 68 STC 46** of the Hon'ble Andhra Pradesh High Court, the learned STO allowed adjustment of purchase tax amounting to Rs.1,71,773.52 and finally the order of the learned STO resulted in a balance tax demand of Rs.1,06,093.00, to be paid by the appellant-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the appellant-dealer preferred an appeal before the learned ACST bearing First Appeal Case No. AA-303 (SA-II) of 2005-2006. On hearing and on consideration of the materials available on record, the learned ACST found no merit in the contention of the appellant-dealer and accordingly dismissed the appeal by confirming the order of the learned STO. Thus, again being aggrieved with the order of the learned ACST, the appellant-dealer has preferred this second appeal.

4. No cross objection has been filed by the respondent-Revenue.

5. Heard both the sides. The learned Counsel appearing for the appellant-dealer submitted that, the learned forums below have not considered the matter in its proper perspective and have refused to allow the legitimate right of the appellant-dealer and as such the order passed by both the learned forums below being improper and unjustified, the same is liable to be set aside and the appeal preferred by the appellant-dealer is liable to be allowed. In support of his contention, he relied upon in a decision rendered by a Division Bench of this Tribunal in **M/s. Orissa Food Products vrs. State of Orissa, represented by the Commissioner of Sales Tax (O), Cuttack; S.A. No.923 of 2005-06**. On the other hand, the learned Standing Counsel appearing on behalf of the respondent-Revenue supported the order of the learned forums below and urged for dismissal of the appeal. In support of his contention, he has also relied upon in a number of decisions.

6. Perused the orders of both the learned forums below and the other materials on record. The dispute relates to the adjustment of purchase tax amounting to Rs.15,755.52 as claimed by the appellant-dealer. For proper appreciation of the matter, the relevant provision of law as mentioned in sec.15(C) of the CST Act and the rate of tax as mentioned in the OST Act are quoted below:-

> "15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State:- (a) xxx
> xxx xxx xxx
>
> (b) xxx xxx xxx
> (c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (i) of clause (i) of Section 14, the tax leviable on **rice produced out of such paddy** shall be reduced by the amount of tax levied **on such paddy.**"

OST Rate of Tax

| Sl. No. | Description of goods | Rate of Tax |
|---|---|---|
| 86. | Rice including broken rice | 4%* |

- Provided that when purchase tax has been levied on the paddy which has been converted to rice sales tax payable on such rice shall be reduced by the amount of purchase tax paid on the paddy.

7. As per the provisions of law, the tax charged on the paddy is to be reduced from the tax of rice obtained from such paddy. If the taxable amount of sale of rice is more than the purchase value then the differential amount of tax is payable on sale of rice. Similarly, if the sale price of rice is less than that of paddy, the sales tax on rice will be nil and the purchase tax paid on the paddy will only be leviable in that event. In other words, the tax on purchase or sale price which is more has to be charged and has to be collected. Further, "such paddy" means the quality or grade of the paddy out of which the rice has been obtained. If fine rice is obtained from fine paddy which costs more and if coarse rice is obtained from coarse paddy, the adjustment shall be made accordingly depending upon the grade and quality of the goods. Both the qualities cannot be interlinked and intermingled. Total adjustment of tax paid on paddy from the rice sold in a year cannot be allowed because of the condition and stipulation prescribed in the provision of law.

8. In the case of **Dhanlaxmi Rice Mill Contractor Company v. State of A.P. (1988) 68 STC 46 (AP),** relied upon by both the learned forums below, the Hon'ble Andhra Pradesh High Court has held that:

"7. Paddy and rice are different goods for the purpose of both the enactments. The State Act taxes them separately; if a dealer purchases paddy, he has to pay the tax on purchase point; if he converts the paddy into rice and sells the rice, such rice is again taxable at the point of sale. However, section 15(c) of the Central Act and explanation III to the Third Schedule to the State Act step in and provide a relief – a concession. They say, where paddy has suffered tax, such tax shall be reduced from out of the tax payable on the sale of rice derived from such paddy. The underlying idea is that only 4 per cent of tax shall be levied on these two goods put together. The Parliament and the legislature use the word "reduced" in the above provisions on the assumption that the price of rice would always be more than the price of the corresponding paddy which, normally speaking, is a self-evident fact. No doubt, because of the lower levy price (notified price) paid for the levy-rice by the State Government, the price of rice has fallen below the price of the corresponding paddy; but that does not mean that the tax on the difference amount shall be refunded to the millers. If such refund is allowed, the result would be that the paddy is taxed at a rate lesser than 4 per cent. Mr. Dasaratharama Reddi's argument is that since the petitioners have paid tax at 4 per cent on rice, the provisions are satisfied. We do not think so. What the provisions intend is that tax should be paid on the higher price, and since normally the price of rice is higher, they wanted to maintain that tax and refund the tax paid on paddy, the price whereof

will be lower. We are also of the opinion that the expression "reduced" cannot be read as "reimbursed". "Reduced" means a smaller amount being reduced from out of a larger amount. A larger amount cannot be reduced from a smaller amount. Therefore, what should happen in these cases is that no tax will be payable on rice at all, and the tax paid on paddy will be maintained and retained by the State. No question of refund would arise in such a situation. This is the conclusion arrived at by the Tribunal, and we agree with it.

9. The contention of the learned counsel is that the Bench has read, understood and interpreted the expression "reduced" as "reimbursed", and that the same should be followed here. It is not possible to agree. In that case the court enunciated three propositions, none of which are relevant here, nor have they been relied upon. The whole contention is that since the Bench understood the word "reduced" as "reimbursed", a direction for reimbursement should follow in these cases as well. As rightly pointed out by the Tribunal, the judgment of a court should not be read as a statute. The above direction has to be understood in the context of the facts of that case. Indeed, the learned Judge who delivered the judgment on behalf of the Bench, took care to use both the expressions, viz., "reduced" and "reimbursed", though he put the expression "reduced" in brackets. That was not a case where a situation like the present one had arisen, nor was there any direction to refund the tax. The word "reimbursed" was used as synonymous with "reduced". The said expression cannot be read as, nor can it be given the extended meaning of "refunded"."

9. Though, the appellant-dealer has relied upon in the case of **M/s. Orissa Food Products vrs. State of Orissa (supra)**, it appears that, the same has been decided in a different context and is not relevant to the facts and circumstances of the present case. Therefore, this cited case law is of no help to the appellant-dealer. On the other hand, on consideration of the entire materials on record and the principle of law as discussed above, it can clearly be said that, the learned forums below have considered the matter in its proper perspective and have passed a reasoned order and it being proper and justified in the facts and circumstances of the case, the same needs no interference of this forum.

10. In the result, the appeal is dismissed being devoid of merit.

Dictated & corrected by me,

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

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