

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

Present: **Smt. Suchismita Misra**, Chairman,  
**Shri A.K. Dalbehera**, 1<sup>st</sup> Judicial Member,  
&  
**Shri R.K. Pattnaik**, Accounts Member-III.

**S.A.No.2403 of 2002-03**

(Arising out of the order of the learned ACST, Cuttack I Range,  
Cuttack, in Sales Tax Appeal Case No. AA-446/CUIE/2001-2002,  
disposed of on dtd.28.10.2002)

M/s. Binayak Roller Flour Mill,  
Nayabazar, Cuttack. ... Appellant

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

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

For the Appellant : N o n e  
For the Revenue : Mr. M.S. Raman, A.S.C.

-----  
Date of hearing: 17.02.2020      \*\*\*\*      Date of order: 20.02.2020  
-----

**ORDER**

This appeal is directed against the order dtd.28.10.2002 passed by the learned Asst. Commissioner of Sales Tax, Cuttack I Range, Cuttack (hereinafter referred to as, the learned ACST) in Sales Tax Appeal Case No. AA-446/CUIE/2001-2002, wherein he confirmed the order of the learned Sales Tax Officer, Cuttack I East Circle, Cuttack, (hereinafter referred to as, the learned STO) 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 2000-01.

2. The brief facts of the case are that, the appellant-dealer was a manufacturer of atta, maida, suji and also bi-products such as bran and refractions and also effected sale of such goods. In response to notice, the authorized representative of the appellant-dealer appeared in assessment and produced the books of account. On verification the learned STO found that the dealer had effected sale of Q. 2107.90 of bran amounting to Rs.11,64,132.00 inside the State. Since bran is exigible to tax @ 4% w.e.f. 08.02.1999, learned STO taxed on the said amount of Rs.11,64,132.00 @ 4% by disallowing the claim of tax-free sale. The appellant-dealer had also effected sale of refraction and paid tax @ 4%. The learned STO assessed tax @ 12% treating the sale as unclassified goods. Accordingly, the GTO was determined at Rs.1,11,33,765.00 and TTO at Rs.1,07,50,525.89. Since the turnover of the dealer exceeded rupees one crore, surcharge @ 15% on the total tax due was calculated at Rs.64,585.05. Total tax and surcharge came to Rs.4,95,152.28. The dealer having already paid Rs.4,40,725.00, he was required to pay the balance amount of Rs.54,427.00.00.

3. Being aggrieved by the order of the learned STO, the appellant-dealer preferred an appeal before the learned ACST who just confirmed the order of the learned STO. Being aggrieved by the order of the learned ACST, the appellant-dealer preferred this second appeal.

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

5. When the matter was taken up for hearing, none appeared on behalf of the appellant-dealer and as such it was heard exparte and is disposed of on merit. The learned Addl. Standing Counsel appearing for the respondent-Revenue by way of written submission submitted that, the learned ACST has considered the

matter properly and passed the order and as such the order passed by the learned ACST suffers from no infirmity. The appeal preferred by the appellant-dealer is liable to be dismissed as submitted by the learned Addl. Standing Counsel.

6. Perused the orders of both the learned fora below, grounds of appeal filed by the appellant-dealer, written note of submission filed by the respondent-Revenue and the other materials on record. From the materials available on record, it is found that, the appellant-dealer claimed that bran is nothing but wheat husk and the same is tax free as per Sl. No.30-D of the rate chart. But as per entry in Sl. No.15 bran is taxable @ 4%. The main issue in this case is whether wheat bran is taxable @ 4% as per Entry 15 of the list of goods or exempted from payment of sales tax as per Entry 2 of tax free list i.e. list of goods declared exempted from levy of tax. All types of brans are taxable @ 4% w.e.f. 09.02.1999. Taxing statute has to be strictly construed. Nothing is to be added and the plain and unambiguous meaning of the language has to be given effect as held by the Hon'ble Apex Court in the case of Baidyanath Ayurved Bhawan v. Excise Commissioner as reported in AIR 1971 SC 378. Again specific entry prevails over a general entry i.e. specific entry should override the general entry. Since the appellant-dealer has claimed that it has sold 'bran', it obviously goes out of the purview of Entry 30D of the tax free list, but falls within the scope of Entry 15 of taxable list. Hence the appellant-dealer is liable to be levied with tax @ 4% as per Entry 15 of the taxable list. The same view has been rightly taken by both the fora below. However, there was miscalculation by the learned STO which has been rectified by the learned ACST by reducing the demand from Rs.54,427.00 to Rs.53,799.00. So, we do not find any infirmity in the order of the learned ACST.

7. In the net result, the appeal is dismissed and the impugned order is hereby confirmed.

Dictated & corrected by me,

Sd/-  
(A.K. Dalbehera)  
1<sup>st</sup> Judicial Member

Sd/-  
(A.K. Dalbehera)  
1<sup>st</sup> Judicial Member

I agree,

Sd/-  
(Suchismita Misra)  
Chairman

I agree,

Sd/-  
(R.K. Pattnaik)  
Accounts Member-III