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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 125 of 2016

M/s Om Food Product, Through Its proprietor Shri Rajendra Prasad Agrawal, aged about 60 years, Resident of Pattalgaon, Distt. Juspur, Civil and Revenue District Juspur (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh, through Principal Secretary, Department of Finance and Planning Department (Commercial Tax Department), Mahanadi Bhawan, Naya Raipur, Distt. Raipur (C.G.)

2. The Commissioner, Commercial Tax Department, Government of Chhattisgarh, Vanijaya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh.

3. The Divisional Deputy Commissiner, Commercial Tax Department, Division No. 2, Vanijaya Kar Bhawan, Bilaspur, Chhattisgarh.

4. Commercial Tax Officer, Circle II Raigarh, Distt. Raigarh (C.G.)

---- Respondents

Writ Petition (T) No. 127 of 2016

M/s Swastik Bakers (Traders) Through its Proprietor Shri Mukesh Kumar Agrawal, aged about 40 years, Resident of Pattalgaon, Distt. Juspur, Civil and Revenue District Juspur (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh, through Principal Secretary, Department of Finance and Planning Department (Commercial Tax Department), Mahanadi Bhawan, Naya Raipur, Distt. Raipur (C.G.)

2. The Commissioner, Commercial Tax Department, Government of Chhattisgarh, Vanijaya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh.

3. The Divisional Deputy Commissiner, Commercial Tax Department, Division No. 2, Vanijaya Kar Bhawan, Bilaspur, Chhattisgarh.

4. Commercial Tax Officer, Circle II Raigarh, Distt. Raigarh (C.G.)

---- Respondents

For Petitioner : Shri Sanjay Agrawal, Advocate.
For State : Shri Gary Mukhopadhyaya, Dy. Govt. Adocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/06/2018

(1) Since common question of law and fact is involved in both the writ petitions, they are heard together and are being disposed of by this common order.

(2) The petitioners were assessed for the purpose of Value Added Tax on 12.08.2010. Thereafter, the reassessment was made under Section 22(1) of the Chhattisgarh Value Added Tax Act, 2005 (henceforth "VAT Act, 2005") and imposed VAT tax @ 12.05% upon the petitioner on the sale of toast/rusk, which the petitioner challenged by way of revision before the Commissioner, which was dismissed by the Divisional Deputy Commissioner by order dated 26.11.2015/3.12.2015, against which instant writ petitions have been filed questioning the same.

(3) Learned counsel appearing for the petitioner would submit that the case of the petition is squarely covered with the decision rendered by coordinate bench of this Court in the matter of **Kesharwani Enterprises, Bilaspur Vs. State of Chhattisgarh and others**[1] and, therefore, the writ petition is allowed and the order of re-assessment be set aside in terms of above referred case i.e. **Kesharwani Enterprises, Bilaspur** (supra).

(4) Per contra, counsel for the State would oppose the writ petition.

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(5) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(6) In case of **Kesharwani Enterprises, Bilaspur** (supra), this Court has posed the following for consideration, which states as under:-

> "2. The core issue in all these five writ petition is, "whether the Rusk/Toast would fall under Entry 7, i.e., bread, under Schedule-1 of the Chhattisgarh Value Added Tax Act, 2005 or it would fall under the residuary entry under Part IV of Schedule-II of the said Act as claimed by the Respondents."

(7) After considering the decision on the point, this Court in the matter of **Kesharwani Enterprises, Bilaspur** (supra) has held that "Rust and Toast" would fall within Entry-7 of Schedule-1 of the VAT Tax Act, 2005 and it cannot be considered to be one which would come under the residuary entry. Paragraphs 33 & 34 of the Report states as under:-

> "33.Given the aforesaid decisions by the various High Courts as well as by the Hon'ble Supreme Court when we compare the principles laid down in the aforesaid judgments and compare them with the definition of "Bread" and definition of "Toast and Rusk" and further also taking into consideration the ingredients required for the preparation of the two products, this Court has no hesitation in reaching to the conclusion that there is substantially no change in the basic physical properties used for manufacturing of Bread as well as Toast and Rusk. It is only the manufacturing process and that too restricted to the time required for baking of the two products everything else is the same.
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> 34. Under the factual circumstances, this Court is also of the opinion that the term 'Bread' under Schedule-1, Entry-7 has to be construed as

> a generic entry made and it has to be given the widest interpretation that could be given, subject to the condition that the ingredients being substantially the same. Thus, this Court holds that Rusk and Toast also would fall within Entry-7 of Schedule-1 of the VAT Act, 2005 and it cannot be considered to be one which would come under the residuary entry."

(8) Following the decision rendered by the coordinate bench of this Court in the matter of **Kesharwani Enterprises, Bilaspur (supra)**, it is held that toast/rusk would fall within Entry-7 of Schedule-1 of the VAT Act, 2005 and it cannot be considered under residuary entry.

(9) In view of the above, impugned orders of reassessment are hereby set aside. Consequently, the revisional order dated 26-11-2015/0312.2015 are also quashed in both the writ petitions.

(10) The writ petitions are allowed the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-