IN THE HIGH COURT OF ORISSA AT CUTTACK
STREV No. 14 of 2011

State of Odisha, represented by the Commissioner of Sales Tax	....	***Petitioner***

Mr. S.S. Padhy, Addl. Standing Counsel

-versus-

M/s. Sri Balajee Agro Foods Private Limited	...	***Opposite Party***

Mr. M. Agrawal, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
29.06.2022

Order No.

05. 1. While admitting the present revision on 2nd January, 2013 the following question of law was framed by this Court for consideration:

> "Whether in view of Entry No.149 of List-'C' of Rate Chart of Orissa Sales Tax, the Tribunal is justified to hold that a dealer is entitled to avail set off of the tax paid on purchase of paddy for the entire financial year against the sales tax due on sale of rice for that financial year since a financial year is taken as a unit for the purpose of determining the tax liability of the dealer ?"

2. The background facts have been set out in the impugned order dated 21st August, 2010 of the Orissa Sales Tax Tribunal, Cuttack (Tribunal) which allowed the appeal of the Assessee being S.A. No.1952 of 2005-06 against an order dated 5th October, 2005 of the Assistant Commissioner of Sales Tax (ACST), Sambalpur Range, Sambalpur modifying the assessment order passed by the Sales Tax Officer (STO).

3. The Assessee was a rice miller carrying on business of purchasing paddy and converting it into rice, broken rice, rice bran and selling it. The Assessee was registered under the Orissa Sales Tax Act, 1947 (OST Act). While examining the return, the Sales Tax Officer (STO) examined the books of accounts and registers and found that the Assessee had in his gross turnover included the purchase turnover of paddy. The Assessee claimed to have purchased paddy from the registered dealers inside the State and to have already paid purchase tax thereon. The books of accounts and registers also showed the exact quantities of the paddy purchased which had been converted into rice and then sold.

4. The STO found that the Assessee had claimed adjustment of Rs.36,46,623.21 for the purchase tax paid on equal on paddy out of which rice was made and sold. The STO found that the Assessee had sold rice for Rs.1,84,12,101.17 on free trade on which sales tax of Rs.7,32,883.83 was collected. The Assessee claimed adjustment of Rs.9,10,287.20 towards purchase tax paid for the said rice. This figure being higher than the sales tax payable, the STO disallowed the claim and held that the Assessee is not entitled to reimbursement of the purchase tax which was more than the sales tax due in respect of the rice sold in the free trade. Therefore, the STO adjusted the purchase tax on paddy sold in the open market and raised the sales tax demand of Rs.1,77,402/-.

5. In the appeal filed by the Assessee, the ACST reduced the sales tax payable by the Assessee to Rs.1,66,235/-.

6. In the impugned order, while allowing the appeal of the Assessee, the Tribunal has reasoned that the excess purchase tax paid on paddy by the Assessee in respect of paddy out of which rice was sold, under levy rice was more than the sales tax due for the sale of the same. Due

to such computation, the Assessee was deprived of getting some portion of the purchase paddy to adjust against the sales tax liability. The Tribunal further pointed out that although under Entry 149 of List-C of the Orissa Sales Tax rate chart, the purchase tax paid is to be reduced from sales tax of the rice procured from the said paddy, it was impracticable for a dealer "to keep account as to which rice is procured from which he purchases paddy". It was also not practical to expect the dealer to maintain accounts "for each grain of paddy which is converted into each grain of rice". Accordingly, the Tribunal adopted the financial year as a unit of measurement of the tax liability of a dealer. It was accordingly held that the dealer should be allowed to avail set off of the purchase tax paid on paddy for the entire financial year against the sales tax due for that year.

7. Having heard learned counsel for the parties, the Court does not find any reason to differ from the approach of the Tribunal. Indeed, it is impractical to expect the dealer to know exactly which quantity of rice emerged from the corresponding quantity of paddy purchased by the dealer. He cannot be expected to keep accounts on that basis. Having adopted the financial year as a unit for the computation of tax liability, allowing the set off of the purchase tax for the entire financial year cannot be said to be erroneous. The question framed is therefore, answered in favour of the Assessee and against the Department.

8. The revision petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.