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IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.53 of 2013

M/s. Ajay Kumar Rahul Kumar .... ***Petitioner***

Mr. M. Lal Agarwalla, Advocate

-versus-

State of Odisha .... ***Opposite Parties***

Mr. Sunil Mishra, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
20.07.2022

Order No.

Dr. S. Muralidhar, CJ.

07. 1. While admitting this revision petition, at the instance of the Assessee, the following questions were framed by this Court for consideration:

> "(i) Whether on the facts and in the circumstances of the case, the Tribunal is justified and right in holding that the "potato chips" sold by the petitioner is liable to taxed @ 12% by applying the residuary entry leaving the specific entry?
>
> (ii) Whether on the facts and in the circumstances of the case, "potato chips" sold by the petitioner is liable to be taxed under-
>
> (a) Seri No-180 being 'vegetables sold in sealed containers' or
>
> (b) Serial No.35 as 'cooked food and other food articles'
>
> Or

(c) falls within the fold of residuary entry of Serial No.189 as "all other goods" of the taxable rate schedule?"

2. The Petitioner assessee is a distributor who purchases potato chips against the declaration form from M/s. Frito-lay India, Cuttack and then and then sells it to retailers. The product in question is 'Lay's Chips'. The contention advanced by the Assessee, which has not been accepted by the Tribunal, is that 'Lay's Chips' sold by the Petitioner is classifiable as 'food articles' in terms of Entry -35 of List-C of rate chart appended to the Orissa Sales Tax Act, 1947 ('OST Act') and amenable to 8% sales tax. Entry-35 read as under:

> "Cooked food and other food articles and Beverages sold along with food in hotels, restaurant and eating hall."

3. Mr. M. Lal Agarwalla ,learned counsel for the Petitioner submits that the above entry has to be read in a disjointed manner and if so read the expression 'other food articles', has to be read not in conjunction with 'cooked food' or with 'beverages' which may be sold along with food in hotels, restaurants and eating halls.

4. The Court is unable to agree with the above contention. the entire entry has to be read as a whole and when so read it is plain that it deals with what is in fact sold in hotels, restaurants and eating halls along with cooked food. It is nobody's case that the 'Lay's Chips' are only sold along with cooked food in hotels, restaurants and eating halls. Admittedly it is sold as a separate

product which is usually purchased across the counter in retail stores. Consequently, the Court is not persuaded that the Tribunal has erred in holding the above Lay's Chips does not to fall under Entry 35 but under the residuary Entry 189 titled 'all other foods'.

5. Consequently, the questions framed are answered in favour of the Department against the Assessee.

6. The revision petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

TUDU