IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.119 of 2013

M/s. Shree Hanuman Rice Mill .... ***Petitioner***
Mr.M. Agarwalla, Advocate

-versus-

State of Odisha .... ***Opp. Party***
Mr. Sunil Mishra, Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

ORDER

Order No. **13.07.2022**

06. 1. This is an Assessee's revision petition against an order dated 6th July, 2013 passed by the Orissa Sales Tax Tribunal (Tribunal) in S.A. No.58(C) of 2011-12 for the period 1.7.2006 to 31.12.2007. While admitting this revision petition on 27th November, 2015, the following questions are framed for consideration.

> "(i) Whether on the facts and in the circumstances of the case the petitioner being a SSI unit is liable to be taxed @ 2% vide Notification No.14700-CTA-37/2001(pt.)-F. (SRO No.160/2001) dated 31.3.2001 read with Notification No.26867-CTA-87/2005-F. (SRO No.334/2006) dated 16.6.2006 for goods manufactured and sold directly in course of inter-State trade and commerce derived out of custom milling?
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> (ii) Whether on the facts and in the circumstances of the case the Tribunal is legally justified to hold that the rice bran and broken rice derived out of custom milling paddy cannot to be treated as goods manufactured by the SSI unit of the petitioner?"

2. Admittedly, the Assessee is a rice milling unit which procures paddy and makes rice from milling paddy. As a by-product this process also generates for the Assessee rice bran and broken rice. Being an SSI unit admittedly the Assessee has the benefit of Notification dated 31st March, 2001 of the Finance Department of Government of Odisha, where, *inter alia,* goods manufactured by SSI units in Orissa when sold directly or marketed by the Orissa Small Industries Corporation after purchasing the same from such SSI units were exigible to a concessional rate of sales tax @ 1% subject to production of declaration in form 'C' when sold in the course of inter-state trade and commerce. By a subsequent Notification dated 16th June, 2006, this was revised to 2%.

3. It is not in dispute that the Assessee has sold the broken rice and bran to customers by way of inter-State sale and is claiming concessional rate of sales tax @ 2%. While the ACST in appeal allowed the plea of the Petitioner, the Tribunal appears to have reversed the order of the ACST on the following reasoning:

> "We have heard both the parties and the points of arguments advanced before this forum. Gone through the orders of assessment as well as the order of the learned first appellate authority and the materials on record. For the Revenue Sri S.S. Roy, learned DCCT (Appeal) and Sri M.L. Agarwal, the learned counsel for the dealer respondent were present. The point of dispute posed before this forum which is to be decided is that "Whether the rice bran and broken rice received out of custom milling, when sold in the course of inter-state trade and commerce is to be taxed at a concessional rate of 2% or to be taxed appropriately?" Both the forums below have observed that the disputed goods i.e. rice bran and

> broken rice have been received by the dealer-respondent from the custom milling. Though both the orders of forum below have not indicated anything regarding the receipt of rice bran and broken rice out of custom milling on payment of monetary consideration, yet is an understanding between both the customer and the miller that in spite of payment of commission, the miller will retain the by-product such as rice bran and broken rice, which goes without saying that the above goods were also received against monetary consideration. Now the question arises whether such goods received by the dealer from the custom milling can be treated as goods manufactured by SSI Units i.e. by the unit of the dealer-respondent which is also a SSI Unit. In deciding the above dispute, we are of the opinion that, since the disputed goods were obtained out of custom milling and also on payment of consideration, the same cannot be treated as manufactured goods of the dealer's unit, hence liable to be taxed appropriately, when sold in the course of inter-state trade and commerce against 'C' form."

4. Having heard learned counsel for the parties, this Court is of the view that the above observations proceed on a surmise that there was an understanding between the customer and the miller (i.e. the Assessee) that the miller would retain the by-product such as rice bran and broken rice. The observation that "it goes without saying that the above goods were also received against monetary consideration" defies logic since what was purchased by the Assessee was paddy and not rice bran or broken rice. These were by-products as a result of milling of the paddy by the Assessee. There is no question therefore of rice bran and broken rice being purchased by the Assessee for "monetary

consideration". It is plain from the processes deployed i.e. custom milling that the by-products viz., rice bran and broken rice resulting therefrom are goods manufactured by the Assessee and then sold in course of inter-State trade and commerce. Consequently, the Court is of the view that the Assessee is entitled to avail of the benefit of concessional rate of sales tax @ 2% on such inter-State sales of rice bran and broken rice in terms of the aforementioned Notification dated 31st March, 2001 as further modified on 16th June 2006.

5. Consequently, the questions framed are answered in favour of the Assessee and against the Department. The impugned order of the Tribunal and the corresponding order of the STO are hereby set aside. The order of the ACST is restored to file.

6. The revision petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

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