**(2017) 12 GAU CK 0077**

**In the Gauhati High Court**

**Case No :** 9 of 2016

Sonitpur Solvex Ltd. A company — APPELLANT

Vs

The State of Assam & Ors. — RESPONDENT

**Date of Decision :** 19-12-2017

**Acts Referred:**

<a href=921>Assam Value Added Tax Act, 2003</a>, <a href=921-10>Section 10</a>, <a href=921-9>Section 9</a>

**Citation :** (2017) 12 GAU CK 0077

**Hon'ble Judges :** Ajit Singh, Manojit Bhuyan

**Bench :** DIVISION BENCH

**Advocate :** ML Gope, N Hawelia, D Saikia, B Choudhury

## Judgement

1. These five revision petition nos.9, 10, 11, 12 and 13, all of 2016, are being disposed of by this common order, because they arise out of one common order of the Board of Revenue and involve the same issue.

2. The petitioner is a registered dealer under the Assam Value Added Tax Act, 2003 (for short "Act, 2003"). It manufacturers Rice Bran Oil from Rice Bran. And after extraction of oil, the Rice Bran is sold as De-Oiled Rice Bran, which is, essentially, used as cattle feed. For that matter, even Rice Bran is also used as cattle feed. The petitioner, in its returns for the assessment years 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013, claimed exemption from tax in respect of De-Oiled Rice Bran under Entry 3 of the First Schedule. But the Assistant Commissioner of Taxes did not agree with the petitioner and held that De-Oiled Rice Bran is very much covered under Entry-34 of Part-A of the Second Schedule and hence, it is taxable @ 4%. Aggrieved, the petitioner unsuccessfully challenged the said finding of the Assistant Commissioner of Taxes in appeals and revisions before the Deputy Commissioner of Taxes, Commissioner of Taxes and finally before the Assam Board of Revenue. Undeterred, the petitioner has filed the present bunch of five revisions, which relate to aforesaid five assessment years.

 

3. Sub-section 1 of Section 9 of the Act, 2003 provides that sale of goods listed in the First Schedule shall be exempted from tax subject to conditions and exceptions, if any, set out therein. Entry-3 in the list of exempted goods of the First Schedule reads as under:-

FIRST SCHEDULE List of exempted goods

[See Section 9]

Serial No.

Description of goods  Conditions and Exceptions

3.

Aquatic feed, poultry feed and cattle feed including grass, hay and straw, husk and bran of cereals and pulses, supplements, concentrates and additives of such feed and de-oiled cakes, but excluding-(i) other oil cakes and (ii) rice bran

4. And Sub-section 1 of Section 10 of the Act, 2003 provides that every dealer, who is liable to pay tax for any year under Section 7, shall pay output tax on his taxable turnover for such year in respect of goods specified in the Second, Third and Fifth Schedule. Entry-34 in the list of goods taxable in Part -A of the Second Schedule reads as under:-

SECOND SCHEDULE List of goods taxable at

*[5%] [See Section 10(1)(a)]

Serial No. Description of goods Conditions and Exceptions

34. Rice Bran

5. A conjoint reading of Entry-3 of the First Schedule and Entry-34 of the Second Schedule makes it clear that Rice Bran is excluded from the list of exempted goods and has been included in the list of goods taxable. The question therefore is whether Rice Bran and De-Oiled Rice Bran are one and the same or different products. If both are one and the same product, then De-Oiled Rice Bran shall be a taxable good. In Oil Seeds, Oil Trade and Industry''s Association vs. State of Karnataka, (1998) 111 STC 234 (kar), the Karnataka High Court after examining various reports by giving cogent reasons has already held that Rice Bran and De-Oiled Rice Bran are one and the same product. The decision of the Karnataka High Court is directly on the point. Not only this, the decision of Karnataka High Court has also been approved and followed by the Calcutta High Court in Sethia Oils Limited vs. Assistant Commissioner, Commercial Taxes, Postabazar Charge, [2004] 137 STC 41 (Cal). The Calcutta High Court has even held that since there is no change in the composition of Rice Bran and De-Oiled Rice Bran, both the products are same and that De-Oiled Rice Bran is Rice Bran and nothing else. After perusing the decisions, we also find ourselves in complete agreement with the conclusion of both Karnataka and Calcutta High Courts that Rice Bran and De-Oiled Rice Bran are one and same product.

 

6. The learned counsel for the petitioner has relied upon a Division Bench decision dated 6.10.2010 of the Karnataka High Court rendered in S.T.A. No.702/2010, M/s Raichur Solvents Ltd. Vs. The Commissioner of Commercial Taxes, Karnataka, wherein it is held that De-Oiled Rice Bran is also included in the list of exempted goods i.e. First Schedule of Karnataka Sales Tax Act, 1957. In that case, the issue was whether De-Oiled Rice Bran falls under First Schedule, which contains the list of exempted goods. In Entry 5 of the First Schedule, mostly products of animal feed including De-Oiled Cake and feed supplements are mentioned. No cattle feed is shown to be excluded from this Entry. And since De-Oiled Rice Bran is used as cattle feed in the form of cake, the Division Bench comparing it with De-Oiled Cake, has held the same to be also in the list of exempted goods. But the Division Bench has nowhere held that De-Oiled Rice Bran and Rice Bran, which is also essentially used as cattle feed, are different products. Unlike Entry 5 of the First Schedule of Karnataka Sales Tax Act, 1957, the Assam State Legislature, in the Act of 2003, has consciously excluded Rice Bran from similar Entry 3 of the list of exempted goods i.e. First Schedule and included it in the list of goods taxable i.e. Second Schedule. Meaning thereby, the State Legislature has made product ''Rice Bran'' in any form taxable. The Division Bench decision of the Karnataka High Court is, therefore, distinguishable and does not help the petitioner.

7. The revisions thus fail and are dismissed with cost of Rs.2000/- (Rupees Two Thousand) each which shall be payable to the Department within two months from today failing which the amount shall be recovered from the petitioner as arrears of land revenue.