

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK

S.A No. 26(C) – 28(C)/2009-10

(From the order of the ld.Addl. CST (Revenue), in First Appeal Case No. AA-173 & 175/ACST (Assessment) BH-II/2004-05 and AA-240/ACST (Assessment) BH-II/2005-06, dtd.28.07.2009 confirming the assessment order of the Assessing Authority)

Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 2nd Judicial Member,
&
Sri Ranjit Kumar Rout, Accounts Member-II

M/s. Noble Pharmacare Limited,
At- A/24, Chandaka Industrial Estate,
Bhubaneswar. ... Appellant

-Versus-

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack. ... Respondent

For the Appellant : Mr. A.K. Panda, Advocate

For the Respondent : Mr. M.S. Raman, Addl.Standing Counsel (C.T.)

Date of Hearing: 14.01.2019 *** Date of Order: 14.01.2019

ORDER

These three appeals above involve common question of law and facts, hence taken up together and decided by this common order.

All the appeals are preferred against the common orders of the First Appellate Authority/Addl. CST (Revenue) (in short, FAA/Addl.CST) in First Appeal Case No. AA-173 & 175/ACST (Assessment) BH-II/2004-05 and AA-240/ACST (Assessment) BH-II/2005-06, whereby the ld.FAA has confirmed the order of assessment, raising demand of tax of Rs.13,36,823/- on the grounds that both the fora forums below have not provided ample opportunity

to produce declaration form to avail concession in rate of tax and have levied tax in spite of the fact that, the dealer's application for exemption of tax was prejudice before the BIFR.

2. Learned Assessing Authority/Asst. Commissioner of Sales Tax (Assessment) Puri Range, Bhubaneswar (in short, AA/ACST) assessed the dealer unit for the quarter ending 6/2002 (year 2001-2002). In the assessment, the AA declined the prayer of the dealer to wait till his application before the competent authority for benefit of sick unit as per Sec.26(1) of the Sick Industrial Companies (Special Provision) Act, 1985 was pending for consideration. In the ultimate analysis, the GTO/TTO determined at Rs.1,16,24,546/- @12.5% calculated to Rs.13,94,945.52. In a similar fashion the first appellate authority has also decided the appeal before him preferred by the dealer, thereby the tax due as calculated by assessing authority remained undisturbed.

3. Felt aggrieved, the dealer had knocked the door of the FAA, who in turn, also did not interfere with the order of AA and tax due as calculated thereafter. Being unsuccessful before both the forums below, the dealer has preferred this appeal challenging the sustainability of the order of the FAA in this appeal on two issues mentioned above.

4. In the beginning of the argument, learned Counsel for the dealer, Mr. A.K. Panda has submitted that, the dealer does not want to press issue relating to exemption in tax as sick unit since it has already decided by the competent authority. However, Mr. Panda submitted that, the dealer wants to produce some declaration Form 'C' in support of his claim which is concession in rate of tax. The dealer produced 4 Nos. of 'C' Form and 3 Nos. of 'H' Form in support of his claim which is concession in the rate of tax with a prayer to accept the same as additional evidence, is allowed in course of

hearing. In the case in hand the sole contention of the dealer is, he could not produce the declaration forms along with return or thereafter and opportunity was not provided to him to procure and furnish the forms. This forum being the highest fact finding forum is competent to consider and accept the declaration forms. Learned Addl. Standing Counsel Mr. Raman appearing for the Revenue conceded the above view but argued for scrutinizing of the genuineness of the forms. In such view of the fact, it is held that this is a fit case where the matter should be remanded back to the Assessing Authority to accept the declaration forms and in the event the forms are found genuine and not tainted with fraud or misrepresentation then the assessing authority is required to accept the forms and to recomputed the tax liability by giving necessary concession. In the wake of above, it is ordered.

5. All the three appeals by the dealer are allowed on contest. The impugned order under challenge is set aside. The case is remanded to the Assessing Authority for assessment afresh in the light of the observation made above. The whole exercise must be completed within three months from the receipt of this order whereas the dealer is directed to appear before Assessing Authority without waiting for the notice to take further direction in the matter.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member-II

Sd/-
(S. Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(Ranjit Kumar Rout)
Accounts Member-II