

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 678 of 2008-09

&

S.A. No. 206 of 2009-10

(Arising out of order of the learned ACST (Appeal), Puri Range,
Bhubaneswar in First Appeal No. AA – 345/BH-II/06-07,
disposed of on 12.09.2008)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri M. Harichandan, Accounts Member-I

S.A. No. 678 of 2008-09

M/s. Teekay Marine (P) Ltd.,
560, Sahid Nagar, Bhubaneswar-7 ... Appellant

-Versus-

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

S.A. No. 206 of 2009-10

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

-Versus-

M/s. Teekay Marine (P) Ltd.,
560, Sahid Nagar, Bhubaneswar-7 ... Respondent

For the Dealer : Sri B.P. Mohanty, Advocate &
Sri S.P. Bhuyan, Advocate
For the State : Sri M.L. Agarwal, S.C. (CT)

Date of hearing : 03.11.2022 *** Date of order : 19.11.2022

O R D E R

Both the Dealer and State file appeals involving common questions of fact and law. So, they are heard analogously and disposed of by this composite order for the sake of convenience.

S.A. No. 678 of 2008-09 :

2. The Dealer assails the order dated 12.09.2008 of the Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A No. AA – 345/BH-II/06-07 reducing the assessment order of the Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, 'Assessing Authority').

S.A. No. 206 of 2009-10 :

3. The State also challenges the aforesaid order dated 12.09.2008 of the First Appellate Authority reducing the assessment order of the Assessing Authority.

4. Briefly stated, the facts of the cases are that –

M/s. Teekay Marine (P) Ltd. is a Private Limited Company and carries on business in processing and sales of marine products like prawn, fish and shrimps. The assessment period relates to 2003-04.

The Assessing Authority on due consideration of the materials available on record held that the Dealer was liable to pay tax on the entire sale of DEPBs since the sales of DEPBs were completed in the State of Odisha. Further, he enhanced the turnover by ₹12,00,000.00 towards purchase suppression basing on the Fraud Case Report of the IST, Manguli Checkgate. He also reduced the processing loss of fish, prawn and shrimps to 15% against the claim of 21.19% considering the nature of goods and processing thereof. Consequently, he raised the tax demand of ₹17,49,237.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority deleted the enhancement, allowed the claim of processing loss at 21.19% and upheld levy of OST on 2 nos. of DEPB being sold inside the State of Odisha thereby accepting the sale proceeds of 11 nos. of DEPBs under the CST Act, which resulted in reducing the tax demand to ₹1,36,562.00.00 in appeal.

Being aggrieved with the order of the First Appellate Authority, both the Dealer and State prefer these appeals. Hence, these appeals.

Both parties file no cross-objection.

5. The learned Counsel for the Dealer submits that the finding of the First Appellate Authority is inconsistent regarding non-production of documents in respect of sale in Andhra Pradesh. He further submits that the finding regarding sale of two nos. of DEPBs is not sustainable as it is contrary to the fact available on record. He further asserts that the finding of the First Appellate Authority regarding deputation of a person to State of Andhra Pradesh to ascertain sale of DEPBs is not sustainable as the goods are sold in the open markets. So, he submits that the order of the First Appellate Authority is contrary to the provisions of law and fact regarding levying tax under the OST Act, but he supports the rest of the finding of the First Appellate Authority, which has been challenged by the State.

6. Per contra, supporting the finding of levy of OST regarding sale of two nos. of DEPBs, the learned Standing Counsel (CT) for the State vehemently objects the contention of the Dealer and challenges the finding the First Appellate Authority on account of allowing sale of 11 nos. DEPBs in course of inter-State sale. He further challenges the finding of deletion of enhancement on the ground that the same is contrary to the proposition of law and fact. He further submits that the First Appellate Authority should have examined the nature of export, contract of exports with foreign buyers

and other documents regarding export of goods. He also submits that the First Appellate Authority should have examined the documents regarding day-to-day stock account for processing loss. He further submits that the First Appellate Authority went wrong in deletion of enhancement, which is contrary to the fact and law and the same warrants interference in appeal.

7. On hearing the rival submissions in both the appeals and on scrutiny of the materials available on record, we find that the First Appellate Authority observed that the claim of processing loss of the Dealer at 21.19% is justifiable in terms of the Circular of MPEDA. The Profit & Loss Account shows that the exports of the Dealer were in various types and the restriction of the claim of processing to 15% by the Assessing Authority was based on presumption. Learned Standing Counsel (CT) for the State could not furnish any cogent ground or valid materials to dispel the finding.

7.1. Coming to the dispute regarding levy of OST in respect of two nos. of DEPBs, the First Appellate Authority specifically recorded a finding that the Dealer could be able to furnish 'C' form in 10 cases and has paid CST in one case out of 13 nos. of DEPBs, but the Dealer fails to produce any document on 2 nos. of DEPBs. The learned Counsel for the Dealer fails to furnish any document before this forum and fails to place any cogent material to dislodge the said finding. The learned Standing Counsel (CT) for the State also fails to furnish valid and cogent materials to interfere with the finding of the First Appellate Authority on this score.

7.2. Next dispute regarding deletion of enhancement, the First Appellate Authority categorically recorded a finding that the Assessing Authority had found that the shrimps included ice also, but the weight of ice and crates were not taken into consideration while arriving at the excess stock found. The order of the First Appellate Authority further shows that the vehicle was loaded with shrimps and since the goods were coming from Balasore to Bhubaneswar, more ice were used as preservative. He further

recorded a finding that the weight of the vehicle was only deducted from the weighment of the loaded vehicle without deducting ice and crates, which is erroneous. There is also no rebuttal material from the side of the State to take a contrary view of the First Appellate Authority on this score.

8. On the foregoing discussions, we do not find any illegality or impropriety in the impugned order of the First Appellate Authority to call for any interference in appeal. Hence, it is ordered.

9. Resultantly, both the appeals fail and the impugned order of the First Appellate Authority is hereby confirmed.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

**Sd/-
(G.C. Behera)
Chairman**

I agree,

**Sd/-
(S.K. Rout)
2nd Judicial Member**

I agree,

**Sd/-
(M. Harichandan)
Accounts Member-I**