

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

**S.A No. 149(ET)/2009-10**

(From the order of the Id.Addl. CST (Revenue), in First Appeal Case No. AA-241/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, 2<sup>nd</sup> Judicial Member,  
&  
Sri Ranjit Kumar Rout, Accounts Member-II

M/s. Noble Pharmacare Limited,  
BH-II-2357, 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**

Against the concurrent finding of both the fora below, the assessee-dealer has preferred this appeal challenging the sustainability of the impugned order passed by the learned First Appellate Authority/Addl. Commissioner of Sales Tax, (Revenue) in First Appeal Case No.AA-241/ACST (Assessment) BH-II/2005-06.

2. The assessee-dealer was subjected to regular assessment u/s.7 of the Odisha Entry Tax Act, 1999 (in short, OET Act) for the period of assessment 2001-02 relating to the appellant-dealer. In ultimate conclusion, the Assessing Authority, Puri Range, Bhubaneswar (in short, AA) determined the GTO, TTO and tax

liability under Entry Tax Act, which was calculated to Rs.2,32,613.81. The dealer was found to have not paid any tax, as such the entire amount was raised as demand against the dealer.

3. Being aggrieved, the dealer carried the matter before the FAA, in turn, the FAA also did not interfere with the order of AA and confirmed the demand. The dealer had taken a plea to get benefit of sick unit as per Sec.26(1) of the Sick Industrial Companies (Special Provision) Act, 1985. It was not considered in favour of the dealer by the fora below, thereby the dealer being aggrieved has filed this second appeal challenging the impugned order on the contentions like, the FAA has committed wrong by not awaiting the dealer's fate under the Board for Industrial and Financial Reconstruction (BIFR) as a sick unit and the learned fora below also erred in law by raising tax on the dealer.

4. The appeal is heard without cross objection from the side of the Revenue. But the Revenue has supported the impugned order in the argument.

5. Before delving into the merit of the appeal, it is pertinent to mention here that, the learned Counsel for the dealer has fairly submitted that, the benefit under the BIFR has already settled in the meanwhile. No documentary evidence is produced before this Tribunal for adjudication of the issue raised by the dealer. In absence of any document and in absence of any cogent evidence if the dealer has availed any benefit under Sick Industrial Act mentioned above, we are constrained to arrive at a conclusion that the tax liability of the dealer as determined by the AA, which is confirmed by the FAA in the impugned order calls for no interference.

Be that as it may, it is held that, the impugned order suffers from no illegality. However, it is made clear that, the benefit, if any, availed by the dealer as a sick unit will be no way affected by the order of this appeal. Accordingly, it is ordered.

The appeal is dismissed as of no merit as per the observation above.

Dictated & corrected by me,

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

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

I agree,

Sd/-  
(Suchismita Misra)  
Chairman

I agree,

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