

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK

S.A No. 283-285/2009-10

(From the order of the Id.Addl. CST (Revenue), in First Appeal Case No. AA-172 & 174/ACST (Assessment) BH-II/2004-05 AA-239/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 learned First Appellate Authority/Addl. Commissioner of Sales Tax (Revenue) in First Appeal Case No. AA-172 & 174/ACST (Assessment) BH-II/2004-05 AA-239/ACST (Assessment) BH-II/2005-06.

2. The facts in brief giving rise to these appeals are : The instant dealer was subjected to assessment u/s.12(4) of the Odisha

Sales Tax Act, 1947 (in short, OST Act) for the assessment period 1999-2000, 2000-01 and 2001-02. Basing on fraud case report, the Assessing Authority, in course of regular assessment determined the tax liability of the dealer. The claim of the dealer before the AA to avail exemption under IPR, 89 was also declined by the authority in view of the withdrawal of the benefit by the appropriate Government vide Notification No.33562-CTA-71/99/F dtd.30.07.1999, which came into effect from 01.08.1999. The assessee-dealer challenged the demand raised in regular assessment for the aforesaid three assessment periods in three separate appeals before the FAA, who in turn, confirmed the order of AA with the findings that, denial of exemption under IPR, 89 as per the Government notification is just and proper. As against that, the dealer has preferred these appeals challenging the sustainability of the order of the FAA raising disputed question i.e. Whether the fora below is wrong in not allowing the exemption claimed as per IPR, 89 for the assessment periods in question.

3. At the outset, it is pertinent to mention here that, in course of the argument, learned Counsel for the dealer Mr. A.K. Panda fairly conceded before the Tribunal that, the principal became well settled in view of the ratio laid down by the Hon'ble High Court in **Shree Jagannath Packers Vrs. State of Orissa & Others – Vrs. State of Orissa and Others, (2005) 141 STC 26 (Orissa)**, which was later confirmed by the Apex Court of the land in **Shree Jagannath Packers Vrs. State of Orissa & Others – Vrs. State of Orissa and Others, (2003) 10 SCC 26, Page-423** with the authoritative pronouncement that, the withdrawal of the notification by the appropriate authority is valid and binding on the dealer availing the benefit under IPR scheme and the dealer is only entitled to such exemption only up to 31.07.1999. In such view of the fact and

admission of the dealer, there is no merit in the appeal to be determined in favour of the appellant-dealer. However, in his argument, learned Counsel for the dealer also submitted that, the dealer has paid the tax as determined and demanded by the fora below in the meanwhile. So, the matter may be remitted back to the AA to ascertain the fact of payment made by the dealer. There is no reason and occasion before this Tribunal to remand the matter for AA only to verify, if the dealer has cleared the tax due or not ? As mentioned above, the impugned orders when suffers from no illegality and, in consequence thereof, are confirmed, then it is the bounden duty of the taxing authority to see the demand of tax raised by the concurrent finding of fora below has been realized or not. Accordingly, it is ordered.

All the three appeals by the dealer are dismissed as of no merit. The AA is to verify if the tax due is already paid, unless the demand be raised accordingly.

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