BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No. 69(C) 2016-17

(Arising out of order of the learned Addl.CCT, (Appeal), South Zone,
Berhampur in Sales Tax Appeal No. AA (CST)34/2015-16
disposed of on dated 26.10.2016)

Present: Shri R.K. Pattanaik, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member, and
Shri R.K.Pattnaik, Accounts Member-III

M/s. Kalinga Biotech,
, At-Narasingh Prasad, Ramachandi,
Dist. Khordha ... Appellant

-Versus-

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

For the Appellant : Sri D.K.Joshi, Advocate
For the Respondent : Sri S.K.Pradhan, Additional Standing Counsel (CT)

Date of hearing: 03.11.2020 ***** Date of order: 07.01.2021

O R D E R

Instant appeal under Rule 22 of the Central Sales Tax (Orissa) Rules, 1957 (in short, 'the Rules') read with Section 78 of the Odisha Value Added Tax Act, 2004(in short, 'the OVAT Act') is at the behest of the dealer assessee questioning the legality and judicial propriety of the impugned order dated 26.10.2016 promulgated in Appeal Case No. AA(CST)34/2015-16 by the learned Additional Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short 'FAA'), who allowed the claim in part and reduced the assessment vis-a-vis

provisional assessment dated 27.07.2015 passed under Rule 12 of the Rules by the learned Deputy Commissioner of Sales Tax, Jatni Circle, Jatni (in short, 'AA') on the grounds inter alia that it is palpably wrong, erroneous and unsustainable as to the applicability of rate of tax and imposition of interest which therefore deserves to be interfered with in order to do the substantial justice.

2. In fact, as per Rule 12 of the Rules, provisional assessment was initiated by the AA against the dealer assessee for the impugned period 2011-13 and extra demand of tax of ₹13,62,735/- was raised payable as per the terms and conditions of the demand notice by an order dated 27.07.2015 which was assailed before the FAA apart from other but principally on the ground that the product 'Chitin' ought to have been taxed @5% instead of 13.5%. However, the FAA after considering the contentions of the dealer assessee, arrived at a decision that as no specific entry of 'Chitin' finds place in the OVAT Act, it has to be treated as an unspecified goods taxable @13.5% according to Part-III, Schedule-B thereof. Being aggrieved of, the dealer assessee approached the Tribunal contending that the order of assessment is against law, weight of evidence and probabilities of the case; the determination of GTO and TTO for the tax period as extremely on the higher side; the principle of natural justice while commencing the provisional assessment not to have been duly followed; the conditions of Rule 12 of the Rules for having not been fulfilled, the provisional assessment to be invalid; calculation of tax @13.5% besides interest over and in respect of the sale of 'Chitin' during the alleged period from 01.06.2011 to 31.03.2013 as illegal, while highlighting the

nature of the product and its multiple use. It is claimed that the item 'Chitin' is a natural carbohydrate polymer with multiple commercial utility as an aquatic feed and supplement, organic manure, bio-fertilizer, plant growth promoter etc. the fact which was not duly taken cognizance of by the authorities below which further resulted in applying tax @13.5% as an unspecified goods, whereas, it could easily be classified as a goods either exempted from tax for being an aquatic feed or organic manure as per Schedule-A or as a bio-fertilizer/plant growth promoter or as a component in chemical fertilizer, pesticides etc. taxable @5% under Part-II, Schedule-B of the OVAT Act. With the above grounds, the dealer assessee advanced an argument that the product 'Chitin' either is to be treated as an exempted goods or at the best, a goods taxable @5% but not as an unspecified goods. The aforesaid aspect of the matter is to be gone into by the Tribunal having regard to the materials on record and whether, the authorities below did commit any serious wrong or error in applying tax @13.5% in respect of the goods sold inter-State by the dealer assessee? In so far as the contention of the respondent is concerned, by raising a cross-objection, it has justified the impugned order dated 26.10.2016 by taking a stand that the product 'Chitin' is not a specified goods either exempted or taxable @5%, rather to be an unspecified goods taxable @13.5% in view of Part-III, Schedule B of the OVAT Act.

3. Aside other grounds, the learned Counsel for the dealer assessee primarily confined argument only to the classification of the product and the rate of tax and asserted that the product 'Chitin' is a natural polymer which is mainly

manufactured from shrimp and crab shells; major shell components being Chitin, proteins, lipids, pigments etc. and in order to extract purified Chitin, it is required to be separated from other components by way of demineralisation, deproteinisation and elimination of lipids and decolourisation. It is also contended that 'Chitin' is mainly used as a raw material in production of Glucosamine Hydrochloride, Chitosan etc. As per the learned Counsel for the dealer assessee, 'Chitin' has wide application in various fields and study and research ample suggest that it is an effective organic fertilizer; and aquatic feed and supplement besides a bio-fertilizer, plant growth promoter/regulator and for that matter, it either has to fall under Entry Nos.3 and 26 (as an aquatic feed and supplement as well as an organic manure) which are exempted goods under Schedule-A or Entry Nos.20 and 30 (as a bio-fertilizer, plant growth promoter/regulator etc. and chemical fertilizer, pesticides and other items) vide Part-II Schedule-B of the OVAT Act being taxable @5%. In support of the aforesaid claim, the learned Counsel for the dealer assessee has cited on record the research papers on 'Effect of Feeding Chitin on Poultry', 'Shrimp Extract from Prawn Waste', 'Biological Method of Chitin Extraction from Shrimp Waste as Eco-friendly low Cost Technology and its Advantage Application' and 'Effect of Marine Waste on Seed Germination' which are sincerely read and critically examined by the Tribunal. That apart the decision of the Hon'ble Andhra Pradesh High Court in the case of State of A.P. Vrs. Quality Feeds (Private) Ltd: (1999) 115 STC 160 and of the Hon'ble Madras High Court in Prakash Foods and Feed Mills (P) Ltd. Vrs. Commercial Tax Officer, Chennai: (2019) 23 VST 455

(Madras) contending that the authorities below considering the peculiarity of the case should have taxed the product 'Chitin' at least @5%. In Prakash Foods case ibid, the Hon'ble Madras High Court held and observed that levy of tax at a lesser rate which is allowed by virtue of a notification of the State should prevail upon in view of Section-8 (3) of the CST Act. The learned Additional Standing Counsel for the respondent, on the other hand, urged that considering the multiple use and utility of the product 'Chitin', rightly the authorities below applied tax @13.5% which is meant for unspecified goods as per Part-III Schedule-B of the OVAT Act. That apart, an advance ruling of the Tribunal dated 31.01.2017 is referred to, wherein, the product 'Chitin' has been treated as an unspecified goods but not either as an exempted goods or a goods taxable @5%, as is currently claimed by the dealer assessee.

4. From the materials on record, it is made to understand that the product 'Chitin' which is manufactured by the dealer assessee is having multiple use the fact which is not denied or disputed by the respondent State. In fact, the research and study papers so shared by the learned counsel for the dealer assessee conspicuously suggest that the product 'Chitin' is used for several purposes as a fertilizer, in food processing, pharmaceuticals etc. It is also suggested that the said product carries medicinal values. It would not be proper to straightaway dismantle an otherwise acceptable claim of the dealer assessee regarding the multiple purpose utility of the product 'Chitin'. Rather, considering the materials so produced by the dealer assessee, it is clearly made to realise that

the product 'Chitin' is used as an aquatic feed and supplement as well as a bio-fertilizer besides plant growth promoter/regulator. But, the fact of the matter is, it is not specifically mentioned in any of the Schedules of the OVAT Act. The dealer assessee admittedly availed concessional rate of tax by furnishing 'C' forms. It does mean that the dealer assessee paid tax on the product at a concessional rate by not claiming the product 'Chitin' as exempted goods for being an aquatic feed and supplement, or organic manure, as is presently alleged. It is not clearly evident from the record, if at all the product 'Chitin' to be predominantly an aquatic feed and supplement or organic manure or bio-fertilizer, as the case may be. If it is an exempted goods as per Schedule-A of the OVAT Act, then why not the dealer assessee claimed for exemption but instead paid tax at concessional rate in terms of Section 8(3) of the CST Act. The dealer assessee does not appear to have laid any foundation to substantiate such a claim that the product 'Chitin' is basically a kind of goods which is either aquatic feed or organic manure apart from its various uses. Again no argument was built upon contending that the product 'Chitin' is fundamentally and predominantly a bio-fertilizer or a plant growth promoter with other multiple use and utility. It hardly stands to any reason to contend that such a product with multiple uses can safely be treated as exempted goods and simultaneously, goods taxable @5% under Part-II Schedule-B of the OVAT Act. It cannot as well be comprehended that the rate of tax on the said product is determinable vis-a-vis the nature of sale whether as an aquatic feed or an organic manure or bio-fertilizer etc. In the considered view of the Tribunal, in absence of a

specific mention of a goods in any of the Schedules of the OVAT Act which furthermore is used for variety of purposes, it would not in any manner be justified to classify it by referring to some other goods specified therein. Any such attempt might result in a situation where one could claim goods as exempted from tax and also taxable at a lesser rate despite the fact that it is unspecified and taxable at a higher rate. Had it been a case that the product was either mentioned as differently classified goods having regard to its specific use and utility carrying distinct rates of tax, or treated predominantly as one or other kinds of goods clearly identifiable, under such circumstances, the Tribunal would not have had any difficulty at all. Suppose, for instance, the product 'Chitin' is stated to be predominantly either an aquatic feed and supplement or organic manure or bio-fertilizer, it would have been taxed accordingly; and in the other case, for being mentioned with its distinct use either as an exempted goods or taxed at a certain rate lesser or more, again it would have been quite possible to identify and apply the taxes without much difficulty. But, as earlier mentioned, the product 'Chitin' does not carry any such classification either specific or depending on its predominant use so as to treat it either as an exempted goods or a goods taxable @5%. Indeed, there is a risk involved to brand the product 'Chitin' in a particular class and category in absence of clear and substantive material and morefully when, it has multiple purpose and utility. There is no evidence on the record to prove and establish the fact that the product 'Chitin' predominantly to be organic manure, or bio-fertilizer with other attributes. It is also not fully established that the dealer assessee was exclusively

involved in the manufacture of any such product which is either classifiable as exempted goods or goods taxable @5%. The record does not reveal that the dealer assessee did ever produce any such material with the aforesaid claim before the authorities below. In so far as the authorities of the Hon'ble A.P. High Court in Quality Feeds (P) Ltd. case supra is concerned, it is clearly distinguishable, as in that case, fish/prawn feed was classified like a 'poultry feed' and 'cattle feed' which was supported by a certificate issued by the Department of Poultry Sciences, University of Agricultural Sciences, Bangalore. A fish/ prawn feed is a kind of goods not dissimilar from poultry feed and cattle feed and that apart, it does not apparently have multiple purpose and utility but as to the case in hand, it is distinctly different to the extent that the product is not known to be predominantly used as one of the goods which is presently alleged rather having various uses and in such view of the matter, it would not at all be appropriate to classify the product 'Chitin' as an exempted goods or goods under Part-II Schedule-B of the OVAT Act. In such an event, the only option which is left open for the Tribunal to hold that it is unspecified goods. The said conclusion also gets support from the advance ruling dated 31.01.2017 of the Tribunal the fact which is not disputed by the learned counsel for the dealer assessee. Of course, an advance ruling does not have a precedential value but binds the parties to it but it may certainly be referred to have consistent view on a subject matter. With all the analysis, as above and particularly, for having no clear stand of the dealer assessee as to if the product 'Chitin' is predominantly an exempted goods or goods of the kind mentioned in

Part-II Schedule-B of the OVAT Act and keeping in view the fact that its use is for various purposes like medical, industrial etc. the Tribunal arrives at a logical conclusion that it had to be classified as unspecified goods taxable @13.5% as per Part-III Schedule-B of the OVAT Act which the authorities below have concluded so. In other words, the Tribunal does not find any compelling reason to hold otherwise and not to take a view consistent with the advance ruling dated 31.01.2017.

5. Hence, it is ordered.

6. In the result, the appeal stands dismissed. As a necessary corollary, the impugned order dated 26.10.2016 promulgated in Appeal No. AA (CST)34/2015-16 is hereby affirmed. The cross-objection is accordingly disposed of.

Dictated & Corrected by me

(R.K. Pattanaik)
Chairman

(R.K. Pattanaik)
Chairman

I agree,

(A.K.Dalbehera)
1st Judicial Member

I agree,

(R.K.Pattnaik)
Accounts Member-III