

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

**S.A. No. 18 (C) of 2009-10**

(Arising out of order of the learned JCST, Puri Range,  
Puri in First Appeal Case No. AA- 127/ PUCI/2008-09,  
disposed of on dated 30.04.2009)

Present: **Shri A.K. Das, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri S.M. Dash, Accounts Member-III**

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

-Versus-

M/s. Accelerated Freeze Drying Co. Ltd.,  
Atharnalapatna, Puri ... Respondent

For the Appellant : Sri D. Behura, S.C. (CT) &  
Sri S.K. Pradhan, Addl.SC (CT)  
For the Respondent : N o n e

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Date of hearing: 20.12.2021 \*\*\* Date of order: 21.12.2021  
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**O R D E R**

The State has preferred this appeal assailing  
the order dated 30.04.2009 passed by the learned Joint  
Commissioner of Sales Tax, Puri Range, Puri (hereinafter  
called as 'first appellate authority') in Appeal Case No. AA-  
127/PUCI/2008-09 thereby setting aside the order of  
assessment dated 31.03.2008 passed by the Sales Tax  
Officer, Puri Circle, Puri (in short, 'assessing authority')

raising tax demand of ₹27,82,116.00 for the assessment year 2004-05 u/r. 12(4) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') and allowing the entire sales as exempted being export sale.

2. The relevant facts, in brief, are that the dealer is a registered dealer under the jurisdiction of Puri Circle, who deals in marine products. The dealer filed returns showing turnover of ₹2,52,91,961.00 during the year 2004-05 which he claimed as exempted sales in course of export. The assessing authority in order to assess the dealer for the aforesaid period, issued statutory notice u/r. 12(5) of the CST (O) Rules. In pursuance of such notice, the dealer neither appeared nor produce the books of account in order to substantiate his claim that the entire turnover was exempted sales in course of export for which the assessing authority determined the GTO and NTO at ₹2,52,91,961.00 and raised tax demand of ₹27,82,116.00.

2(a) The dealer challenging the said findings of the assessing authority filed appeal before the first appellate authority, who set aside the order of assessment exempting the dealer from paying tax on the GTO returned at ₹2,52,91,961.00. The State being aggrieved with such order

of the first appellate authority preferred the present second appeal.

3. When the appeal was called on for hearing, none appeared on behalf of the dealer-respondent despite due service of notice. So, this Tribunal was left with no other option except proceeding *exparte* against the dealer-assessee in the presence of the learned Standing Counsel (CT) representing the State.

4. We have heard learned Standing Counsel (CT) for the State in absence of the dealer-respondent, gone through the orders of the fora below, grounds of appeal *vis-a-vis* the materials on record. On perusal of the order of the first appellate authority, we find that the first appellate authority basing on the books of account and other relevant documents such as purchase order of foreign buyer, bill of lading and bank statement, categorically opined that the dealer-assessee exported 16,320 Kgs. of dried shrimps to outside the country and accordingly, held the dealer eligible to get exemption u/s. 5(1) of the CST Act. In course of hearing of the appeal, the State did not dispute production of the relevant documents as reflected in the order of the first appellate authority by the dealer-respondent to substantiate his claim that all the sales were export sales for

which the GTO returned at ₹2,52,91,961.00 was exempted from being taxed under the central sales tax Act. So, in view of this, we are of the unanimous view that the first appellate authority did not commit any illegality in setting aside the order of the assessing authority and holding the GTO returned as exempted being export sale. The assessing authority taxed the dealer-respondent only because of non-production of relevant documents before him, which were produced by him before the first appellate authority. There is no illegality or impropriety in the order of the first appellate authority in passing the impugned order.

5. In view of the foregoing discussions, the second appeal preferred by the State being devoid of any merit stands dismissed and the impugned order of the first appellate authority is hereby confirmed.

Dictated & Corrected by me

Sd/-  
(A.K. Das)  
Chairman

Sd/-  
(A.K. Das)  
Chairman

I agree,

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

I agree,

Sd/-  
(S.M. Dash)  
Accounts Member-III