

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.

Present: **Smt. Suchismita Misra**, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member,
&
Shri R.K. Pattnaik, Accounts Member-III.

S.A.No.1327 of 2006-07

(Arising out of the order of the learned ACST (Appeal), Puri Range,
Bhubaneswar, in 1st Appeal Case No.AA 247/BH I/05-06,
disposed of on dtd.18.08.2006)

M/s. Sun Biotechnology Ltd.,
Industrial Estate, Mancheswar,
Bhubaneswar. ... Appellant

- V e r s u s -

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

For the Appellant : N o n e
For the Revenue : Mr. M.L. Agarwal, S.C.

Date of hearing: 04.02.2020 **** Date of order: 28.02.2020

ORDER

This appeal is directed against the order dtd.18.08.2006 passed by the learned Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter referred to as, the learned ACST) in 1st Appeal Case No.AA 247/BH I/05-06, wherein he confirmed the tax demand of Rs.6,60,000.00 made by the learned Taxing Authority, Bhubaneswar I Circle, Bhubaneswar (hereinafter referred to as, the LAO) in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947

(hereinafter referred to as, OST Act) in respect of the appellant-dealer for the assessment year 2003-04.

2. The brief facts of the case are that, appellant-company is an exporter of fish and shrimps to meet the orders received from different foreign buyers who has its registered office located at Kolkata and processing unit at Mancheswar Industrial Estate, Bhubaneswar. In response to notice for the aforesaid assessment year, the appellant-dealer appeared through its authorized representative and produced the books of account. The appellant-dealer maintains the accounts of purchase, production, sales supported with the waybill account. On examination of books of account, it was found that the dealer had effected purchases of 18,17,595.94 kg. of shrimps for Rs.40,50,19,128.37 and 5619.40 kg. of fish for Rs.11,18,058.67. The above purchase of raw shrimps and fish includes purchase of 10622.60 kg. of shrimps for Rs.42,13,089.00 from outside the State. The appellant-dealer had declared its opening and closing stock of raw shrimps and fish to be at nil. In course of inspection by the A.C.T.O., Investigation Unit, Balasore it was found that the dealer had effected sale of 5000 kg of rejected prawn in the local market, for which the allegation of sale suppression of 5000 kg of raw prawn was established. The appellant-dealer had shown purchase vouchers starting price from Rs.70.00 onwards but the LAO had determined the price at Rs.150.00 to the best of his judgment. Therefore, the LAO determined the GTO at Rs.40,94,24,098.04, out of which Rs.40,19,24,098.04 was exempted u/s.5(3) of the CST Act and calculated the TTO at Rs.75,00,000.00. Purchase tax @ 8% on the taxable turnover was calculated at Rs.6,00,000.00 and surcharge @ 10% was calculated at Rs.60,000.00. Thus, the total tax and surcharge came to Rs.6,60,000.00 which the dealer was required to pay.

3. Being aggrieved by the order of the LAO, the appellant-dealer preferred an appeal before the learned ACST who just confirmed the order of the LAO. Being further aggrieved by the order of the learned ACST, the appellant-dealer preferred this second appeal.

4. No cross objection has been filed by the respondent-Revenue.

5. When the matter was taken up for hearing, none appeared on behalf of the appellant-dealer and as such it was heard *exparte* and is disposed of on merit.

6. Perused the orders of both the learned fora below, grounds of appeal filed by the appellant-dealer and the other materials on record. On verification of the orders of both fora below it is found that in response to notice, the appellant-dealer had appeared and produced the relevant books of account and documents. The LAO completed the assessment to the best of judgment raising a demand of Rs.6,60,000.00. On the other hand, the learned ACST as an appellate forum confirmed the order of the LAO. Pursuant to the notice the appellant-dealer had produced the relevant books of account and documents and the LAO basing on the report of the investigation unit completed the assessment on best of judgment raising a demand of Rs.6,60,000.00. The contention of the appellant-dealer about the transportation of rejected materials supplied by a person namely Hemanta Panda has been properly dealt with. Again the determination of purchase price per kg. @ Rs.150.00 for rejected materials is genuine. The enhancement of turnover to the tune of Rs.7,50,000.00 on the alleged suppression is genuine. The LAO has given proper reasoning as to why the books of account maintained by the appellant-dealer could not be accepted as true and genuine. There was a fraud case report against the appellant-dealer submitted by the ACTO, Investigation Unit, Balasore. The team of officials of the said investigation wing recovered certain documents including original

copy of the gate-pass bearing No.271 dtd.14.09.2003 showing transaction of 5000 kg. of rejected raw materials i.e. rejected prawn. The appellant-dealer on confrontation could not give any satisfactory reason to that effect. The transaction has not been reflected in the books of account. The goods of inferior quality were issued to Sri Hemanta Panda from the factory premises for sale in the local market. The learned ACST has rightly held that the appellant-dealer had actually effected sale of 5000 kg. of rejected prawn in the local market on 14.09.2003 being transported through Sri Hemanta Panda. In fact, the sale suppression of 5000 kg. of raw rejected black tiger prawn is well established. The grounds taken in the appeal are baseless and not convincing. Hence the impugned order does not suffer from any infirmity.

7. In the result, the appeal is dismissed and the impugned order is hereby confirmed.

Dictated & corrected by me,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

Sd/-
(A.K. Dalbehera)
1st Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III