IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.25 of 2013

M/s. Sun Pharmaceuticals Industries Ltd. .... ***Petitioner***

Mr. T.K. Satapathy, Advocate

-versus-

State of Odisha .... ***Opposite Party***

Mr. S.K. Pradhan, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
06.07.2022

Order No.

03. 1. The present revision petition by the Assessee is directed against judgment dated 7th September, 2012 passed by the Odisha Sales Tax Tribunal, Cuttack dismissing the Second Appeal No.298 of 2009-10 filed by the Petitioner for the period 2003-04.

2. Admit. The following questions are framed for consideration:

> "B. Whether in the facts and circumstances of the case the Tribunal was justified in holding that trade discount was not a permissible deduction from the turnover and is includible in the sale price?
>
> C. Whether in the facts and circumstances of the case the Tribunal was justified in holding that First Tax paid goods shall be taxed at more than one point in the same series of sale?

3. The background facts are that the Petitioner is carrying on the business of selling of medicines inside the State of Odisha. It states that it receives goods from its Head Office and different branches

on stock transfer and also purchases of goods inside the State of Odisha. It pays tax thereon as first point tax paid goods under Rule 93-G of the Orissa Sales Tax Rules.

4. The Petitioner appointed M/s Aditya Medi Sales Private Limited (AMSPL) as its sole distributor to sell the Petitioner's products inside the State of Odisha. In terms of the Petitioner's agreement with AMSPL the latter would sell the goods as per the catalogue of price of the Petitioner and the Petitioner will be allowed trade discount by issuing credit note on product wise sales so that AMSPL would meet with their expenses and earn some profit. A copy of the agreement which was produced before the tax authorities has been enclosed with the present petition.

5. One question that arose was whether the trade discount is allowable as a deduction from the taxable turnover? It is pointed out that in the earlier returns filed by the Petitioner deduction of trade discount from the gross turnover was claimed and was allowed by the STO. However, the Tribunal has the impugned order concluded that the Petitioner did not disclose the trade discount in the monthly returns and therefore, disallowed it. It was contended on behalf of the Petitioner that even if the trade discount was not specifically mentioned in the definition of 'sale price' it would still be allowable as a deduction. Reliance was placed on the decisions in ***Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Ernakulam v. Motor Industries Company (1983) 53 STC 48 (SC)*** and the decision of this Court in ***Orient Paper Mills Ltd. v. State of Orissa 35 STC 84 (Ori)***.

6. This Court notes that in an order dated 14th August, 2019 in WP (C) Nos.1566 and 1567 of 2006 [***CEAT Ltd. V. Commissioner of Sales Tax***], a Division Bench of this Court addressed this very issue and allowed an identical plea that trade discount would be deductible from the gross taxable turnover by referring to several decisions including the one delivered by the Andhra Pradesh High Court in ***Cynamid India Limited v. Commissioner of Sales Taxes; 128 VST 289***. It was further held that as long as revised returns were filed, the claim could not be rejected on the ground that the deduction was not disclosed in the original return. This proposition is not disputed by learned counsel for the Department.

7. As regards the second question, viz., insisting on the Petitioner paying sale tax on subsequent sales after having paid sales tax at the first point, counsel for the Petitioner relies on the assessment orders passed in the Petitioner's own case for the subsequent period 2004-05 as well as the earlier period 2001-02 and 2002-03 as well as the corresponding appellate orders where it has been held that the Petitioner would not be liable to pay sales tax on the subsequent sales even if the sale price is higher than the purchase price at the first point of sale.

8. For all of the aforementioned reasons, the questions framed are answered in the negative i.e. in favour of the Petitioner Assessee and against the Department. The impugned order of the Tribunal to the above extent is accordingly set aside.

9. The revision petition is disposed of.

10. An urgent certified copy of this order be issued as per Rules.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

TUDU