

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

**A.R.A.No.2 of 2011-12**

Present Shri G.C.Patnaik, Shri S.K. Paty, & Shri P.C.Mishra,  
2<sup>nd</sup> Judicial Member. 1<sup>st</sup> Judicial Member. Accounts Member-II.

M/s. Padmabati Agencies,  
Banmali Sahoo Lane, Malgodown,  
Cuttack.

... Appellant.

-Versus-

State of Orissa, represented by the  
Commissioner of Sales Tax(O),Cuttack.

... Respondent.

For the Appellant :

... Mr. R.K.Chhapolia, Advocate.

For the Respondent:

... Mr. R.K. Rout, S.R-I.

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Date of hearing: 08.02.2012 \*\*\* Date of order: 09.02.2012  
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**ORDER**

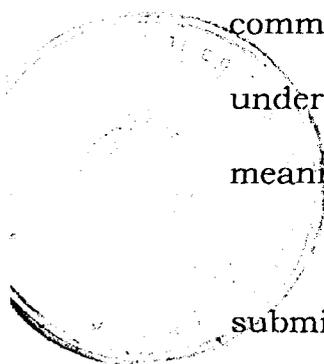
This order arises out of the petition preferred by the appellant M/s. Padmabati Agencies of Banamali Sahoo Lane, Malgodown Cuttack a TIN holder u/s. 78 A of the O.V.A.T. Act read with Rule 117 A of the O.V.A.T. Rules by making a prayer before this forum to give advance ruling with regard to levy of tax on the product called ANMOL DAIRY CREAMER SPRAY DRIED.

On the other hand, the Revenue has also filed the counter and contended that the product of the appellant in the name and style of ANMOL DAIRY CREAMER SPRAY DRIED is unscheduled goods for which it is leviable to 13.5% of tax.

2. At the time of hearing the learned counsel of the applicant submitted before this forum that the ANMOL DAIRY CREAMER SPRAY DRIED is a

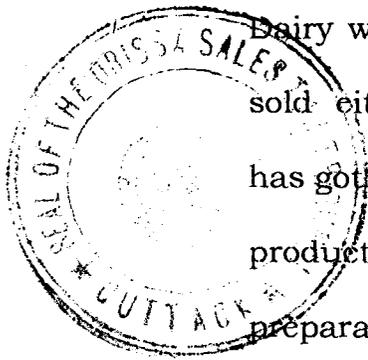


skimmed milk powder and as per serial No.103 of Part II of Schedule B of the O.V.A.T. Act it is exigible to 4% tax and he has also filed the empty packets containing the details. The said DAIRY CREAMER which is in a dried form of milk is marketed by the manufacturer for preparation of Tea and Coffee. The Schedule of the O.V.A.T. Act has exempted the fresh milk from levy of tax but as per Serial No.103 of the Rate Chart, all skimmed milk is taxable@ 4%. Further, the appellant submitted before this forum that at what rate the dealer has to collect the tax which is to be paid to the State Exchequer. The appellant has filed a series of findings of different Hon'ble Courts about the interpretation of the rule and as the word in the Schedule is not defined properly, therefore, it is to be construed in popular sense according to the common commercial understanding of the term. So, the entry should be understood in its commercial understanding in preference to technical meaning.



On the other hand, the Revenue has filed the counter and inter-alia submitted before this forum that the CODEX STANDARD FOR MILK POWDERS AND CREAM POWDER has clearly defined what is skimmed milk powder and has filed the Annexure-I of the same and also filed the order of the Office of the Commissioner of Taxes, Assam Guwahati wherein the same type of dispute was decided. The Revenue also cited a reported judgment of the Hon'ble Apex Court between Union of India And Another v. Food Specialities Ltd. reported in (1998) 9 SCC 423. According to the Revenue the product like ANMOL DAIRY CREAMER SPRAY DRIED is not a skimmed milk powder and it is an unspecified item for which it is leviable to 13.5% of tax.

3. After hearing the rival contentions as raised from both sides, we have to go by the terms mentioned in the Schedule of the O.V.A.T. Act. The Serial No.16 of Schedule A says about the exempted goods i.e. "Fresh Milk and pasteurized milk but not including UHT Milk, condensed Milk and flavoured Milk". Further Serial No.103 of Schedule B of Part-II has the mention of skimmed Milk powder, khoya,/khoa, condensed milk, flavoured milk and UHT milk which are exigible to tax @ 4%. Besides this, the other products which are not specified in the Schedule are exigible to 13.5% of tax. It is an admitted fact that from the milk powders different types of sweetmeats are prepared and in some items the fat is removed. In the present ruling it is to be decided by this forum regarding the trade name of the milk powder "ANMOL" which is marketed by the company as skimmed milk. The said product is sold by the stationery shops to the general public. The other products such as Amulspray, Dairy whitener, Nestle Everyday, Sagar, Nova, Everytime, Amarspray etc. are sold either as Baby Food or for preparation of Tea and Coffee. Every product has got the particulars of the contents but in common commercial parlance all products including ANMOL are sold as partly skimmed milk powder for preparation of Tea and Coffee. The argument advanced by the learned counsel of the appellant is that the item called Ghee i.e. Entry No.124 of Part-I of Schedule B contains 99% fat which is less than the skimmed milk powder and is taxable at 4%. Further it is argued that the entries in the Schedule are to be interpreted according to the common commercial parlance and it is to be taxed at 4%. As per the CODEX STANDARD the skimmed milk powder has to contain maximum milk fat 1.5% m/m and less than 26% m/m. In the ingredients of the ANMOL DAIRY CREAMER SPRAY DRIED the fact is 8.0g



and it does not come under the category of skimmed milk powder as per the entry No.103 of Schedule B of Part-II. The said CODEX STANDARD FOR MILK POWDERS AND CREAM POWDER is a standard applied to the milk product. So, the contention raised by the Revenue that the said skimmed milk powder does not come under entry No.103 has got force. The ANMOL milk powder, a partly skimmed powder, is different from skimmed milk powder as argued by the learned counsel of the appellant is not tenable in law. So, this forum after accepting the CODEX STANDARD FOR MILK POWDERS AND CREAM POWDER arrived at a conclusion that the ANMOL milk powder is an unscheduled item for which it is leviable to 13.5% of tax.

4. As discussed above, this forum unanimously gives advance ruling on the application of the appellant that the ANMOL milk powder marketed by one M/s. Supreme Agro Foods Pvt. Ltd. is an unscheduled goods under the O.V.A.T. Act and is exigible to 13.5% of tax.

Dictated & Corrected by me,

Sd/-  
(G.C.Patnaik)  
2<sup>nd</sup> Judicial Member.

Sd/-  
(G.C.Patnaik)  
2<sup>nd</sup> Judicial Member.

I Agree,

Sd/-  
(S.K.Paty)  
1<sup>st</sup> Judicial Member.

I Agree,

Sd/-  
(P.C.Mishra)  
Accounts Member-II.

**Attested As True Copy**

  
**Senior stenographer**

O/O the Commissioner of Commercial Taxes,  
Adisha, Cuttack.

Memo No. 16251 /Ct

Dated. 21-09-12

IC XXII 5 of 11 All officers of all-lead office  
Copy forwarded to all sub-ordinate offices for information and necessary action.

*[Signature]*  
Dy. Sate representative.  
17.9.2012

Memo No. 16252 /Ct

Dated. 21-09-12

Copy forwarded to the A. C. C. T. (I.T & Policy) for favour of information and necessary action.

*[Signature]*  
Dy. Sate representative.  
17.9.2012  
g/c

o/c

