
[2024] 159 taxmann.com 73 (Andhra Pradesh)[19-12-2023]

GST : Where assessee claimed exemption on sale of product named 'Bio pro-enhac' under HSN 2309, while impugned order was passed stating that said is classified under HSN 2936 and is taxable at rate of 18 per cent, since question as to whether supplements and additives of shrimp feed would fall under category of shrimp feed was not analysed, matter was to be readjudicated

GST : Where assessee claimed exemption on sale of product named 'Minwa and Minwa Plus' under HSN 2309 while impugned order was passed stating that Minwa and Minwa plus is classified under HSN 2931 and is taxable at rate of 18 per cent, since products' main purpose is not to act either as a shrimp food or a food supplement or additive, but its main purpose is to maintain PH level in shrimp pond, it was to be held that said product would not fall within ambit of HSN code 2309



[2024] 159 taxmann.com 73 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

B.M.R. Industries (P.) Ltd.

v.

Assistant Commissioner (ST)*

D. DURGA PRASAD RAO AND SMT. VENKATA JYOTHIRMAI PRATAPA, JJ.

WRIT PETITION NO. 9578 OF 2023

DECEMBER 19, 2023

Supplements and additives to shrimp feed - Prepared animal fodder - Heading No. 2309 - Classification of - Assessee sold products 'Bio Pro-Enhac' and claimed exemption under HSN 2309 read with Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017 - Show cause notice was issued to assessee stating that products 'Bio Pro-Enhac' falls under HSN code 2936 and it is taxable at rate of 18 per cent - It was submitted by assessee that bio pro-enhac is one variety of shrimp feed and it is having same elements that are used in manufacture of shrimp feed and therefore, it is classified under HSN 2309 - It was further submitted that Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017 provides exemption from payment of GST on supplements and additives including animal feeds - On contrary, it was submitted by department that Bio pro-enhac contains both natural and chemical elements that assists in improvement of overall health and immunity of shrimp and given its specific component Bio pro-enhac is only capable of being classified under HSN code 2936 - HELD : It was observed in impugned order that reliance was placed on decision in Sun Export Corporation v. Collector of Customs [1997 taxmann.com 696/93 ELT 641 \(SC\)](#) and some other decisions to effect that supplements and additives of shrimp feed will also fall under category of shrimp feed, however same was not discussed and analyzed by department before recording conclusion in impugned order - Therefore, impugned order was set aside to that extent and matter was remanded for fresh consideration [Section 9 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 9] [Matter remanded]

Supplements and additives to shrimp feed - Prepared animal fodder - Heading No. 2309 - Classification of - Animal feeds - Assessee sold products 'Minwa and Minwa plus' and claimed exemption under HSN 2309 read with Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017 - Show cause notice was issued to assessee stating that product and 'Minwa and Minwa plus' falls under HSN Code 2931 and it is taxed at rate of 18 per cent - It was

submitted that of Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017 provides exemption from payment of GST on supplements and additives including animal feeds - Therefore, said products manufactured by assessee are in nature of food supplements and additives to shrimp feed and they are exempted from GST under HSN 2309 - HELD : Product 'Minwa and Minwa plus' is neither a shrimp feed nor a supplement or additive of shrimp feed as it's main purpose is not to act either as a shrimp food or a food supplement or additive, but its main purpose is to maintain PH level in shrimp pond - Therefore, said product does not fall within ambit of HSN Code 2309 read with Notification No. 2/2017-Central Tax (Rate) [Section 9 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 8b and 8c] [In favour of revenue]

Circulars and Notifications : [Notification No. 2/2017-Central Tax \(Rate\), dated 28-6-2017](#)

CASE REVIEW

Sun Export Corporation v. Collector of Customs [1997 taxmann.com 696/93 ELT 641 \(SC\)](#) (para 9) followed.

CASES REFERRED TO

Sun Export Corporation v. Collector of Customs [1997 taxmann.com 696/93 ELT 641 \(SC\)](#) (para 5).

S. Ravi, Sr. Counsel and **G. Narendra Chetty** for the Petitioner.

ORDER

U. Durga Prasad Rao, J. - In this writ petition filed under Article 226 of the Constitution of India, the petitioner prays for following relief:

"to issue an appropriate writ order or direction more particularly in the nature of mandamus declaring that the impugned Assessment + penalty + interest order passed by 1st respondent in Form GST DRC-07 *vide* DIN:DIN3707022356293 dated 7-2-2023 for the Tax Periods 2020-21, 2021-22 and 2022-23 under the CGST and SGST Acts imposing tax on Bio Pro-Enhac, Minwa and Minwa Plus which are Animal Feed Supplements and Feed Additives from drugs which are exempt falling under HSN Code from 2309 without any discussion about the various judgments cited before him as arbitrary, unjust without jurisdiction contrary to law and illegal and consequently *set aside* the same and pass such other order or orders as deemed fit and proper in the circumstances of the case and in the interests of justice."

2. The petitioner's case succinctly is thus:

- (a) The petitioner is a registered tax payer under the GST Act, 2017 engaged in the business of manufacture and sale of Prawn Feed and Health Care Products of Shrimp. Prawn feed with HSN Code number 2309 is exempted from tax under the GST laws. Accordingly, the petitioner reported the sales of prawn feed sold by it in its returns and claimed exemption on the same.
- (b) The 1st respondent conducted inspection of the business premises of petitioner on 11-11-2022 and thereafter issued intimation in Form GST-01A dated 23-11-2022 and after obtaining the reply dated 6-12-2022 from the petitioner, issued show cause notice dated 9-12-2022 stating therein that the products "Bio Pro-Enhac" and "Minwa and Minwa plus" sold by the petitioner fall under HSN code 2936 and 2931 respectively and taxable @ 18% (9% CGST + 9% SGST) and proposed to reject the petitioner's claim of exemption on the ground that prawn feed fall under HSN 2309 and proposed to impose tax @ 18% in spite of the petitioner filing a detailed objection/reply *vide* letter dated 9-1-2023 and attending personal hearing on the same day and submitted additional information by email on 21-1-2023. Subsequently the 1st respondent passed the impugned assessment + interest + penalty order *vide* DIN:DIN3707022356293 dated 7-2-2023 whereunder he rejected the petitioner's claim of exemption and imposed tax @ 18% + interest + penalty equal to tax on the sales of the prawn feed supplements.
- (c) The petitioner's claim is that Bio pro-enhac is one variety of shrimp feed and it is having the same elements that are used in the manufacture of shrimp feed including calcium, propionate, fish meal, wheat bran, corn meal, high-pro soya etc. The bio pro-enhac and shrimp feed differ primarily in that instead of being pelleted, the substance that is made into feed will be fermented after production

and as a result fermented feed is referred as bio pro-enhac. The 1st respondent while admitting that the process of manufacture of bio pro-enhac uses the above elements, however, held that it contains both natural and chemical elements which mainly improve immunity, health of shrimp and digestion and food intake of shrimp and vitamins help to resist the infections.

With regard to the Minwa and Minwa plus, the 1st respondent held that in the product description it is mentioned "stabilized alkalinity and control of PH fluctuations in water", and they are not micro minerals with HSN code 2309 but come under HSN code 2931" i.e., "other organo-inorganic compounds" taxable at 18%. It is submitted that Sl.No.102 of notification number 2/2017 CTR dated 28-6-2017 provides exemption from payment of GST on

"Aquatic Feed including Shrimp Feed and Prawn Feed, Poultry Feed and Cattle Feed, including Grass, Hay and Straw, Supplements and Additives, Wheat Bran and De-Oiled Cake other than Rice Bran"

The words "supplements and additives" show that the exemption is not restricted only to "Feed" but also to "supplements and additives". In a number of decisions of the Apex Court and different High Courts, this aspect has been elaborately discussed. However, without considering all these factual and technical aspects in correct lines, the 1st respondent passed the impugned Assessment Order.

Hence, the writ petition.

3. The 1st respondent filed counter and opposed the writ petition.

- (a) After following due procedure, the impugned Assessment Order dated 7-2-2023 was passed and as the petitioner has an efficacious alternative remedy under the statute which he has not availed, the writ petition is liable to be dismissed.
- (b) The products sold by the petitioner purportedly as prawn feed supply are neither covered under HSN code 2309 nor are they exempted from tax as they do not fall under the category of aquatic feed or feed supplements that are consumed by the shrimps. The products imported from China by the petitioner cannot be exempted for the following reasons.
 - (i) Bio pro-enhac contains both natural and chemical elements that assists in the improvement of water quality, soil quality, immunity and overall health of the shrimp which falls under HSN code 2936 i.e., "Pro vitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins and inter-mixtures of the foregoing, whether or not in any solvent - vitamins and their derivatives, unmixed". Given its specific chemical components and end usage, Bio Pro-enhac is only capable of being characterized under HSN code 2936. The petitioner's contention that this product varies from shrimp feed only by way of being fermented but is nothing but shrimp feed is untenable, baseless and seeks to ignore its vitamin-based overall nature.
 - (ii) Minwa and Minwa plus are used in shrimp farming to maintain balanced water quality while promoting shrimp culture and to adjust the PH value in the water. These products are directly poured into the shrimp pond during the phase when the shrimp undergo moulting which is covered under HSN code 2931 i.e., "organic-inorganic compounds" which are taxable at 18%.
- (c) It is true that as per circular notification No. 2/2017 CTR dated 28-6-2017, the supply of "Aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplements and additives, wheat bran and de-oiled cake other than rice brawn" are exempted from tax. However, it is pertinent to note the subject matter goods supplied by the petitioner are different from the goods enumerated in the above notification. These products are covered under HSN code 2931 "Other organic and Inorganic compounds" and HSN code 2936 "vitamins and pro-vitamins"
- (d) The generic definition of animal feed which includes animal feed supplements added to animal feed cannot be relied upon as the products supplied by the petitioner are not consumed as if shrimp feed but rather are added to the water for the specified purpose of ensuring a functional shrimp habitat/environment. In the impugned order, it is elaborated as to how the petitioner's products when dissolved directly into the pond water ensure that the PH balance and alkalinity levels of the

water are neutrally maintained, thereby avoiding either acidity or alkalinity. Thus, the goods supplied by the petitioner are neither food supplements nor food additives. They are chemical-based vitamins and products that are specifically used in the shrimp ponds for the treatment of water in maintaining the PH balance and the same are not mixed in the shrimp feed. The citations relied upon by the petitioners have no application. All these aspects have been clearly considered in the impugned order and hence, the writ petition is not maintainable. The respondents thus prayed to dismiss the writ petition.

4. Heard arguments of Sri S.Ravi, Senior Counsel representing Sri G.Narendra Chetty, counsel for petitioner, and learned Government Pleader for Commercial Taxes representing the respondents.

5. The bone of contention in this case is to the taxability of two products *i.e.*, "Bio pro-enhac" and "Minwa and Minwa plus" manufactured by the petitioner under the GST regime. The petitioner is a registered taxpayer under the GST Act, 2017 and it is engaged in manufacture and sale of prawn feed and health care products of shrimp. The petitioner is allocated to central jurisdiction. The petitioner's case is that his two products *viz.*, "Bio pro-enhac" and "Minwa and Minwa plus" come under HSN code 2309 and exempted from tax under the GST Act, 2017 and therefore, the petitioner reported sales of prawn feed in its returns and claimed exemption.

(a) Learned Senior Counsel Sri S.Ravi would argue that one variety of shrimp feed is called "Bio pro-enhac" and it is having the same elements that are used to manufacture shrimp feed including calcium, propionate, fish meal, wheat bran, corn meal, high-pro soya etc. of feed raw materials. He would further submit that the "Bio pro-enhac" and shrimp feed differ primarily in that, instead of being pelleted, the substance that is made into feed will be fermented after production and as a result the fermented feed is referred as "Bio pro-enhac", whereas pelleted feed is known as shrimp feed. Learned Senior Counsel would submit that the petitioner imports the said item from China which is designated as code No. 23099090, Micro Minerals (used for animal feed grade, not for human consumption). The domestic market will sell the micro minerals packaged with label of petitioner's industry *i.e.*, BMR Industries labels under "Minwa and Minwa plus" with aforesaid HSN code 23099090 which is exempted from GST.

(b) Learned counsel would further submit that the HSN code 2309 *inter alia* covers reading vitamins and pro-vitamins which improve digestion and more generally ensure that the animal makes good use of feeds and safeguard its health. On the other hand, HSN code 2936 covers vitamins and pro-vitamins which are medicinal in nature and have much higher concentration of active substance. He would submit that the products manufactured by the petitioner are in the nature of food supplements and additives rather than having any medicinal value. He would submit that as per Sl.No.102 of notification No. 2/2017 CTR dated 28-6-2017, exemption is provided from payment of GST on:

"Äcquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplements and additives, wheat bran and de-oiled cake other than rice bran"

(c) Referring to the above notification, he would submit that the products manufactured by the petitioner would come under supplements and additives to the shrimp feed and they are exempted from GST. Learned counsel placed reliance on *Sun Export Corporation v. Collector of Customs* [1997 taxmann.com 696/93 ELT 641 \(SC\)/\[MANU/SC/0703/1997 = AIR 1997 SC 2658\]](#) and would contend that since the animal feed supplement was held to be exempted under the Customs Tariff Act in said decision, in similar lines, the shrimp feed supplements and additives are exempted from GST. He argued that in the impugned order, the 1st respondent has not properly appreciated the ratio in the aforesaid decision and came to a wrong conclusion to the effect that the two products are not exempted under the HSN code 2309 but they fall under HSN code 2936 and 2931 respectively and hence, liable for tax at 18% under the GST Act.

6. Per contra, learned Government Pleader for Commercial Tax argued that the product "Bio pro-enhac" is concerned, it contains compound amino acids, biological metabolites and fermentation flavors, promotes digestion, raises food take and also promote feed conversion of shrimp. It also enhances the shrimp immunity and healing process. Therefore, "Bio pro-enhac" is a product covered by HSN 2936 pro-vitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins and inter-mixtures of the foregoing and therefore, attracts tax at 18% and the said product will not fall under HSN 2309 but comes under 2936.

(a) He further argued that so far as the product Minwa and Minwa plus is concerned, it contains calcium, magnesium, potassium, phosphorous, aluminum and strontium. These products stabilize alkalinity and controls PH fluctuation in water. He argued that the term "PH" is the level of acidity or alkalinity in water. This is a factor that affects the health of the shrimp growing in the pond. The PH scale ranges from '0' to '14'. The numbers below '7' indicate high acidity. Similarly, numbers above '7' indicate high alkalinity, whereas, number '7' indicates a neutral status. The PH of the water in a shrimp pond should be maintained between '7' and '8' and if such value is not maintained at the optimum level, it will affect the growth and survival of the shrimp. He would submit that to maintain the required PH level, the "Minwa and Minwa plus" is used in the shrimp ponds. He would submit that this product has nothing to do with the food value nor it is a supplement or additive of the shrimp feed. Hence, it falls under HSN code 2931 i.e., "other organo-inorganic compounds" taxable at 18% GST. Learned Government Pleader would submit that in the impugned order the 1st respondent has vividly dealt with the nature of two products and correctly held as to how they fall under HSN code No. 2936 and 2931 respectively, but not under HSN code 2309. He would submit that the 1st respondent also considered the ratio in *Sun Export Corporation (supra)*. He thus prayed to dismiss the writ petition. He would further argue that since the petitioner has an efficacious alternative remedy of appeal, the writ petition is not entertainable and liable to be dismissed in limini.

7. The point for consideration is whether the two products i.e., "Bi pro-enhac" and "Minwa and Minwa plus" manufactured by petitioner fall under HSN code 2309 but not under 2936 and 2931 respectively and are exempted from tax and whether the impugned order is liable to be *set aside* to that extent?

8. Point: We have punctiliously scrutinized the pleadings and arguments addressed by both parties and perused the impugned order. The petitioner claims total exemption of his products i.e., "Bio pro-enhac" and "Minwa and Minwa plus" from GST on the ground that they fall within the HSN code 2309 and there was a notification No. 2/2017 and on the other hand, the Department would contend that the two products will fall under HSN code No. 2936 and 2931 respectively and liable to be taxed at 18% as per the GST laws. Admittedly, HSN 2309 *inter alia* covers vitamins and pro-vitamins which improve digestion and more generally ensures that the animals make good use of the feeds and safeguard its health. On the other hand, HSN code 2936 covers vitamins and pro-vitamins which are medicinal in nature and have much higher concentration of active substance, whereas HSN code 2931 covers "other organo-inorganic compounds" under GST Act, 2017.

(a) When the impugned order is perused, so far as the product "Minwa and Minwa plus" is concerned, in the impugned order it is stated that Minwa and Minwa plus contains calcium, magnesium, potassium, phosphorous, aluminum and strontium and this product i.e., Minwa and Minwa plus stabilize alkalinity and control PH fluctuations in water. The impugned order contains a vivid narration about PH value in water and requirement of maintenance of its level in a shrimp pond. Such description is mentioned under the heading "importance of PH value in shrimp farming". It is stated thus:

"The pH is the level of acidity or alkalinity in water. This is a factor that affects the health of the Shrimp growing in the pond. The pH scale ranges from 0 to 14. Numbers below seven indicate high acidity. Similarly, numbers above seven indicate high alkalinity. Similarly, the number seven indicates a neutral state.

pH of the water in a Shrimp Pond should be maintained between seven and eight. If the pH value is not at the optimum level, it will affect the growth and survival of the shrimp.

The pH of the pool water naturally decreases and rises throughout the day and night due to changes in the amount of carbon dioxide caused by the process of photosynthesis. In the absence of sunlight, since photosynthesis doesn't occurs, the pH of the water decreases at night. Similarly, the pH of the water rises in the afternoon after photosynthesis for a certain period in daytime. To control difference between minimum and maximum daily pH values by using chemicals and fertilizers.

The control of pH value in ponds by using applying a soluble calcium, Aluminium, magnesium and potassium source to ponds with moderate to high alkalinity.

Calcium is widely used to increase the pH of water. Calcium functions to minimize the rise in pH

that can occur when photosynthesis rates are high. After plants deplete the water of free carbon dioxide, they can use bicarbonate as a carbon source. But when using bicarbonate, plants release carbonate that hydrolyses and causes pH to increase. Calcium ions react at elevated pH to precipitate carbonate ions as calcium carbonate, and this reaction minimizes the amount of carbonate in the water to hydrolyse and increase pH.

Aluminium used to reduce of high-level pH value in Shrimp ponds. It is a safe and relatively inexpensive chemical. It reacts with water to form a certain acid. The pH value in Shrimp ponds can be reduced by applying 10 g of aluminium per 1000 liters of water. The pH value is likely to very quickly from the use of aluminium. It can be mixed with water and poured into various parts of the pond.

Magnesium helps maintain calcium and alkalinity levels in a Shrimp. If levels are too low, calcium will combine with alkalinity to create calcium carbonate in the water column. This creates a "snow" that can stick to pumps, impellers and heaters instead of being used by Shrimp to build their skeletons. Magnesium binds to the surface of calcium carbonate crystals. This effectively stops calcium carbonate crystal from growing and precipitating out of the aquarium water.

Potassium is used to correct ionic imbalance in pond water in shrimp farming. After potassium addition, shrimp post larvae survived well in the water. Potassium decreases gastro-intestinal pH and thereby intensifies release of buffering fluids, containing enzymes, from the hepatopancreas in shrimp pond.

The main usage of calcium, Aluminium, magnesium and potassium in shrimp farming is to control pH value in Shrimp Pond. The water with low and high pH value can be corrected by adding chemicals and fertilizers in Shrimp pond."

- (b) In the impugned order, the 1st respondent has stated that the main usage of the product Minswa and Minwa plus is to control the PH value of the shrimp pond and it is directly poured in pond. It contains organic and inorganic compounds such as calcium, aluminum, magnesium and potassium which are used to control the PH value in water. It is also stated that fertilizers and chemicals are used to stabilize alkalinity and control PH fluctuations in water. The 1st respondent thus came to conclusion that the Minwa and Minwa plus falls under schedule III Sl.No.40 and Chapter Heading 29 with description of goods

"All organic chemicals" and the rate of tax thus applicable is 18% for HSN code 2931 i.e., other organo-inorganic compounds in GST Act, 2017. The 1st respondent observed that though the petitioner claimed that the product Minwa and Minwa plus as micro minerals and feed supplements, however, it has not mentioned in its reply about HSN code 2931 and not filed its objections why the product do not fall under HSN code 2931.

- (c) We find the above observation perfectly correct. As can be seen, the product Minwa and Minwa plus is neither a shrimp feed nor a supplement or additive of the shrimp feed. The products' main purpose is not to act either as a shrimp food or a food supplement or additive, but its main purpose is to maintain PH level in the shrimp pond. Therefore, as rightly observed in the impugned order, the said product do not fall within the ambit of HSN code 2309 and notification number 2/2017 CTR dated 28-6-2017.
- (d) Thus, in our view, the impugned order is correct to this extent. So far as the other product "Bio pro-enhac" is concerned, according to the petitioner, one variety of shrimp feed is the bio pro-enhac and is having same elements that are used in the manufacture of shrimp feed including calcium, propionate, fish meal, wheat bran, corn meal, high-pro soya etc. It is also his case that bio pro-enhac and shrimp feed differ primarily in that instead of being pelleted, the substance that is made into feed will be fermented after production and as a result, fermented feed is referred as bio pro-enhac. Thus, the petitioner claims that bio pro-enhac is a one type of shrimp feed and the process of manufacture is only different and further, while the shrimp feed is in the pellet form, the bio pro-enhac is in the fermented form. His further claim is that the bio pro-enhac falls under HSN code 2309 as it works as supplement to the shrimp feed. His case is that not only shrimp feed but its supplements and additives also come under HSN code 2309 and are exempted from tax. In this context, in *Sun Export Corporation (supra)*, the Hon'ble Apex Court was dealing with the question

as to whether "the animal feed supplement would fall under the exemption notification dated 1-11-1982". Referring to the judgment of Bombay High Court, wherein it was observed that it cannot be said that animal feed concentrates are not animal feed and in the same manner products which supplement the animal feed and are generally added to animal feed are also covered by the generic term "animal feed", the Hon'ble Apex Court held thus:

"13. We are in agreement with the above view expressed by the Bombay High Court. No doubt it was contended on behalf of the Revenue that the contrary view taken by the Tribunal has been challenged in this Court which was rejected *in limine* at the admission stage. We do not think that that dismissal at the admission stage can be relied upon as a binding precedent. Even assuming that there are two views possible, it is well settled, that one favourable to the assessee in matters of taxation has to be preferred."

Be that as it may, the grievance of the petitioner is that while dealing with the issue as to whether the product "bio pro-enhac" is a supplement to the shrimp feed and thus exempted from tax, the 1st respondent has not correctly dealt with the ratio in the *Sun Export Corporation (supra)*. In this context, we have perused the impugned order. The discussion and conclusion on bio pro-enhac are as under:

"Biopro Enhac:

Discussion:

BioproEnhac contains the elements Soya bean meal, wheat bran, corn meal, Bacillus subtilis, Microzyme, Saccharifying enzyme, Xylanase, Cellulase Calcium propionate, Fish Meal and Dextrose. Bio Pro Enhac contains both natural and chemical elements which mainly improve immunity, health of Shrimp and digestion and food intake of Shrimp.

Further the BioproEnhac is in Powder form and normal Shrimp feed in pellet form. This powder form of biopro enhac is mixed with pelleted feed while giving feed to shrimp. Biopro Enhac having good smell and attracts shrimp to intake meal and it helps shrimp to digest normal feed, helps improve immunity of Shrimp.

This product mixed with vitamins, Pro Vitamins and Enzymes both in natural and chemical forms. Vitamins and Enzymes helps to resistance Infection, improve immunity and gets energy from food and digestion of food.

The normal Shrimp feed contains components are wheat flour (35 percent), soybean meal (20 percent) and fishmeal (25 percent) (Hunter and Chamberlain, 2006) and perhaps yeast and in pellet form. Normal shrimp feed does not contain any components like Bacillus subtilis, Microzyme, Saccharifying enzyme, Xylanase, Cellulase, Calcium propionate and Dextrose.

Conclusion:

Chapter 29 (equally applicable to heading 2936), if it is an item of general use. Vitamins and provitamins are normally covered under code heading 2936, but if they're prepared as food supplements in the form of tablets, etc. they would not be classifiable under this heading as the way they are presented, they are suitable for a specific use.

Heading 2309 would cover items like feed supplements for animals that contain vitamins and other ingredients such as cereals and proteins. These are covered in chapter 23 under heading code 2309, or antibiotic preparations used in animal feeding for example a dried antibiotic mass on a carrier like cereal middling. The antibiotic content in these items is usually between 8% and 16%. Thus, HS code 2309 would cover only such product, which in the form supplied, are capable of specific use as food supplement for animals and not capable of any general use.

BioproEnhac is prepared in the form of Powder which is in distinct form when compared to normal pellet feed form. By observing chapter 29 Vitamins and provitamins are normally covered under code heading 2936, but if they're prepared as food supplements in the form of tablets, etc. In Shrimp farming normally form of tablets was in these and these form tablets shaped into powder form to use shrimps easily.

On Careful examination of BioproEnhac usage is general use not in specific nature. It's used as dietary product, helps immunity and food intake of Shrimp. It's containing the elements which used for general purpose. Vitamins and provitamins are normally covered under code heading 2936, but if they're

prepared in the form of tablets, etc. The tax payer not provided information about the content percentage of elements used in Biopro enhac. (Vitamins, enzymes, antibiotics and feed percentage in this product).

Therefore, the product Biopro Enhacc falls under the HSN code 2936 i.e Provitamins And Vitamins, Natural or Reproduced by Synthesis with effect tax rate @18%."

9. From the above, it would appear, the 1st respondent rejected the claim of the petitioner on the main ground that the taxpayer has not provided information about the content percentage of the elements used in bio pro-enhac (vitamins, enzymes, antibiotic and feed percentage). Accordingly, the 1st respondent held the product bio pro-enhac falls under HSN code 2936. It must be noted that though the impugned order shows that the petitioner placed reliance on the decision in *Sun Export Corporation (supra)* and some other decisions to the effect that the supplements and additives of shrimp feed will also fall under the category of shrimp feed, the same was not discussed and analyzed by 1st respondent before recording his conclusion. Therefore, in our considered view, the impugned order is liable to be *set aside* to that extent and the matter requires remand for fresh consideration.

10. Accordingly, this writ petition is partly allowed and the impugned order dated 7-2-2023 is set aside to the extent of the 1st respondent's finding on the product "bio pro-enhac" and the matter is remanded to 1st respondent to afford an opportunity of hearing to the petitioner regarding the nature of the product "bio pro-enhac" and its taxability and pass an appropriate order afresh on merits in accordance with the governing law and rules expeditiously. No costs.

As a sequel, interlocutory applications pending if any, shall stand closed.

KEVAL

^{*}Matter remanded.