

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.2 of 2009

***M/s. Jay Jagannath Cement
Udyog (P) Ltd.***

....

Petitioner

Mr. S. Ray, Advocate

-Versus-

***State of Odisha represented by the
Commissioner of Sales Tax,
Orissa, Cuttack***

....

Opp. Party

Mr. S.S. Padhy, ASC

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

**ORDER
17.05.2022**

Order No.

R.K. Pattanaik, J

06. 1. Instant petition under Section 24(1) of the Orissa Sales Tax Act, 1947 is at the behest of the Petitioner questioning the legality and judicial propriety of the order dated 16th April, 2008 of the Orissa Sales Tax Tribunal, Cuttack (in short 'Tribunal') passed in S.A. No.2957 of 2003-04 whereby it has been held ineligible to avail sales tax exemption on the excess production and sale of cement of a quantity of 1670 MT.
2. The Petitioner set up a small scale industrial unit for manufacture and sale of cement and registered itself with the Director of Industries, Govt. of Orissa w.e.f. 11th September, 1990 and in that regard, PMT certificate was issued by the Project Manager, District Industries Centre, Rourkela (PM, DIC).

It is pleaded that in conformity with the declaration of I.P.R.1989, the eligibility certificates (Annexure-2&3) were issued in favour of the Petitioner for availing the sales tax exemption on purchase of raw materials and the finished product.

3. It is not in dispute that the Petitioner had production and sale of 16670 MT and for the year 1995-96, assessment under Section 12(4) of the Orissa Sales Tax, 1947 (hereinafter referred to as 'OST Act') was initiated. The Sales Tax Officer, Rourkela II Circle, Panposh (STO) by assessment order dated 31st March, 1989 held that the installed capacity of the Petitioner being 15000 MT, the production and sale of 1670 MT of cement is in excess and therefore, it is not entitled to sales tax exemption, instead liable to pay tax @ 12% over a turn over determined at Rs.28,35,660/- with a tax effect of Rs.3,40,279/- along with surcharge of Rs.40,027,92/-. Then, the Petitioner being aggrieved of the order of assessment under Annexure-4 filed an appeal before the Assistant Commissioner of Sales Tax, Sundergarh Range, Rourkela (ACST) by claiming that since the industry is entitled to sales tax exemption as per the terms of I.P.R.1989, the STO erroneously held the excess production as exigible to tax. The appeal was disposed of by the ACST with the order of assessment set aside carrying a direction for fresh assessment. During the reassessment, relying upon clarification issued by the Director of Industries, Orissa, Cuttack (DIC) dated 23th May, 2000 and 28th May, 2001, the concession claimed by the Petitioner was denied which was again challenged before the ACST on the ground that it was beyond the competence of the

STO to travel contrary to the direction contained in the remand appeal. The ACST, however, affirmed the assessment and held that the excess production of 1670 MT is amenable to tax. Against that decision of the ACST, the Petitioner finally approached the Tribunal which again held that such excess production and sale of cement which may be accidental or occasional is exigible to sales tax @ 12% with surcharge @ 10% on the tax so assessed. In other words, the claim of the Petitioner vis-à-vis exemption over and in respect of the excess production of 1670 MT stood disallowed by the Tribunal thereby upholding the assessment of the STO and ACST.

4. Heard Mr. S. Ray, learned counsel for the Petitioner and Mr. S.S. Padhy, learned ASC for the Department.

5. Mr. Ray contends that the Petitioner is entitled to avail the sales tax exemption in view of Clause 7.1.4 of I.P.R. 1989 and Entry No. 30FFF of List-A of the Orissa Sales Tax Rate Chart notwithstanding the installed capacity of 15000 MT of the unit and in that respect, the Project Manager, District Industries Centre (PM, DIC) did offer clarification to the effect that such capacity stands on a single shift basis and that apart, there is no bar or prohibition as such against excess production. In other words, the contention is that irrespective of the installed capacity as per Annexure-2 and 3, the unit being a small scale industry is entitled to sales tax exemption over the entire production.

6. On the other hand, Mr. Padhy submits that the Tribunal correctly held that the Petitioner is liable to pay tax @ 12% in

respect of the excess production of 1670 MT from its unit. It is contended by Mr. Padhy that since the installed capacity is 15000 MT, the Petitioner having made excess production of 1670 MT cement is liable to pay sales tax thereon and as such, cannot claim exemption for 16670 MT and therefore, the assessment so arrived at for the year 1995-96 is perfectly justified.

7. The unit is a small scale industry and was with the registration certificate under Annexure-1. The eligibility certificates as per Annexure-2&3 were issued in favour of the Petitioner for availing sales tax exemption on the purchase of raw materials and sale of finished product. The only question is, whether, over the entire production of 16670 MT, the Petitioner is entitled to sales tax exemption? As already stated, the Tribunal being in agreement with the assessment of the STO and ACST rejected the claim of the Petitioner and held that the exemption is confined to 15000 MT and for the excess production of 1670 MT, it is exigible to tax @ 12%.

8. By placing reliance upon a letter dated 10th October, 2000 (Annexure-5) of the PM, DIC, the contention of the Petitioner is that the installed capacity of the unit is 15000 MT on a single shift basis and for the excess production, the tax benefit cannot be denied. As per Annexure-5, during the impugned period, the unit was in operation for more than 8 hours which is beyond one shift and hence, the production capacity crossed the capacity as fixed in the PMT certificate reaching at 16670 MT. However, the STO ignored Annexure-5 and relying upon the clarification of the DIC held it otherwise and against the plea of tax concession.

9. The industrial unit was to avail tax exemption in terms of I.P.R.1989. The installed capacity of the unit is that which stands certified under Annexure-2 and 3 and it cannot be changed or modified unless there is expansion/modernization/diversification. In other words, the installed capacity can be altered subject to the justification by amending the registration certificate. In the instant case, the claim of the Petitioner's case is not based on any such expansion etc. Of course, no bar lies for excess production which may be accomplished with more than one shift but the exemption which the Petitioner is entitled would stand restricted to 15000 MT and cannot cover the excess production. In so far as the letter of the PM, DIC is concerned, which is relied upon by the Petitioner, it does not imply that the unit is entitled to exemption for the excess production of 1670 MT. Rather as per the clarification of the DIC, once the eligibility certificate for sales tax exemption is issued, it cannot be amended and also there is no provision in the I.P.R.1989 or operational guidelines under the respective I.P.R. to amend the eligibility certificate for sales tax concession issued by the DIC. Admittedly, no expansion has been undertaken by the Petitioner and notwithstanding the fact that there is excess consumption of power and raw materials during the impugned period, such exemption can only be made available only to the extent of production of 15000 MT that being the installed capacity and for the excess production of 1670 MT, the unit is ineligible for the concession and hence, in the considered view of the Court, the Tribunal rightly upheld the assessment for the year 1995-96 and

concluded that the Petitioner is required to pay sales tax thereon @ 12%.

10. Accordingly, it is ordered.

11. Resultantly, the revision stands disposed of with the question answered in favour of the Department and against the Petitioner.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice



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