IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.395 of 2008

Sri Venkateswar Industries, Berhampur	....	***Petitioner***
		Mr. S. Kanungo, Advocate
-versus-		
State of Orissa represented by the Commissioner of Sales Tax, Orissa	....	***Opposite Party***
		Mr. S.S. Padhy, A.S.C.

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
10.05.2022

Order No.

04. 1. Admit. The following question of law is framed for consideration:

> "Whether under the facts and circumstances of the case the learned Tribunal being aware that the Applicant who has been certified as a new small scale industry and enjoying the benefit as a continuing industry of IPR' 89 on and from 1st December 1989 is correct allowing the exemption of sales tax on finished product for the year 1988-89 with effect from 2nd October 1986 which is prior to 1st December, 1989?

2. The background facts are that the Petitioner is carrying on business under the name and style of M/s. Sri Venkateswar Industries at Berhampur since 1961. It manufactures lozenge, sugar candy etc. and has been registered under the Orissa Sales Tax Act, 1947 (OST Act).

3. To avail up the incentives offered by the Industrial Policy Resolution of 1989 (IPR 89), the Petitioner submitted a proposal for establishing a new small scale industry manufacturing

biscuits by automatic mechanized process at Berhampur. The District Industries Centre issued a certificate dated 6th June 1988 *inter alia* certifying the date of commencement of commercial production of the Assessee's new small scale industry at Kapileswarpeta, Berhampur to be 2nd October, 1986.

4. The case of the Petitioner is that the goods produced by its new small scale industry at Kapileswarpeta exempted payment of tax in terms of the IPR 1986. For the period 1988-89, the Petitioner claimed exemption under Sl. No.30-FF of the list of tax-free goods before the STO. However, the STO by an order dated 22nd August 1989 for the year 1988-89 disallowed the exemption holding that the new unit was only an extension of the old unit.

5. The Assessee then went in appeal before the Assistant Commissioner of Sales Tax (ACST) who by the order dated 15th April 1991 allowed the appeal of the Assessee by holding that the new unit was not an extension of the old unit; that it was set up after 1st April 1986 and is therefore was entitled to the benefit in Sl. No.30-FF of the tax-free list of the schedule on and from 2nd October 1986, but not from the date of commercial production.

6. Two appeals one by the Department and one by the Assessee were preferred before the Tribunal. It was pointed out before the Tribunal that for the period 1992-93, the Applicant claimed exemption on the sale of finished products by virtue of Sl No.30-FFFF which entitled the Petitioner to exemption for a period of seven years from 1st December 1989 or the date of commercial production whichever is later. It is pointed out that since commercial production in the Petitioner's new unit started on 2nd

October 1986, the Assessee was entitled to avail the exemption for a period of seven years after 1st December, 1989 i.e. till 30th September, 1996. Likewise, for the period 1993-94, a similar claim was laid.

7. Today, the Petitioner has filed an additional affidavit placing on record the orders of the Assessing Officers allowing tax exemption on sale of finished products for the periods 1989-90, 1990-91 and 1991-92. These are undisputed facts. Even for the period 1996-97, the exemption has been allowed on the sale of finished products.

8. Consequently, for the periods in question, i.e. 1992-93 and 1993-94, the exemption from sales tax could not have been denied to the Petitioner. The Tribunal therefore was not justified in allowing the exemption with effect from 2nd October 1986 and not from 1st December 1989.

9. Consequently, the question framed is answered in favour of the Assessee and against the Department by holding that the Assessee is entitled to exemption for a period of seven years from 1st December, 1989. The revision petition is disposed of in the above terms.

10. Urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin