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IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.5 of 2008

M/s. J.B. Ferro Alloys

....

Petitioner

Mr. Jagabandhu Sahoo, Senior Advocate

-versus-

State of Orissa represented by

....

Opposite Party

Commissioner of Sales Tax, Cuttack-1

Mr. S.S. Padhy, Additional Standing Counsel

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

Order No.

ORDER

29.03.2022

Dr. S. Muralidhar, C.J.

08.

1. Although the present revision petition was admitted by an order dated 17th July 2008, no question of law as such has been framed. Nevertheless, the question that is urged by the Assessee in the present revision petition for being considered by this Court reads as under:

“Whether in the facts and circumstances of the case the raw material purchased by the Petitioner for the purpose of adjustment of eligible exemption amount as against the certified exemption limit in terms of Entry-43 (a) of the Finance Department Notification No.41261-CTA-106/92-F dated 23.09.1992 is to be calculated at the rate of 16% as held by the Tribunal as against the rate of 4% claimed by the Assessee?”

2. The background facts are that the Petitioner is a small scale industrial unit under the Industrial Policy Resolution (IPR) of 1992 engaged in manufacturing of low carbon, ferro manganese, roasted manganese and manganese product. In terms of IPR 1992 and in terms of Entry 43 (a) of the tax free schedule in terms of

the notification issued by the Government of Odisha under Section 6 of the Orissa Sales Tax Act, 1947 (OST Act), the Petitioner is entitled to avail sales tax exemption both on purchase of raw material as well as on the sale of finished products for a period of five years in terms of the eligibility certificate issued by the competent authority. However, this exemption is subject to a capping or ceiling of 75% of the fixed capital investment.

3. The Petitioner states that it made a fixed capital investment of Rs.15,55,904/- and therefore is entitled to avail exemption from payment of sales tax up to a maximum ceiling limit of 75% thereof i.e. Rs.11,66,928/- both towards purchase of raw materials, spare parts, machineries as well as sale of finished products.

4. For the assessment year (AY) 1997-98, the Petitioner claimed exemption in respect of purchase of manganese ore worth Rs.11,57,823.62 on the strength of Form I-D (92). It also claimed exemption in respect of the sale of low carbon, ferro manganese amounting to Rs.52,800/-.

5. The Assessing Authority (AA) observed that the Petitioner had already availed exemption to the tune of Rs.10,79,821/- and therefore was eligible to avail sales tax exemption only to an extent of 87,107/- for the AY 97-98. Consequently, the AA calculated the rate of sales tax on the purchase of manganese at 16% as per Entry-69 of the Schedule to the OST Act. The net

result was the Petitioner was held liable to pay sales tax on the purchase of raw materials to the extent of Rs.6,13,404.87 at the rate of 16% and this amount was added to the taxable turnover of the Petitioner. Sales tax was also levied on the sales turnover of Rs.52,800/- . A total tax demand by the assessment order dated 24th March 2001 was to the tune of Rs.1,06,593/-.

6. Aggrieved by the above order, the Petitioner filed an appeal before the Assistant Commissioner of Sales Tax (ACST), Cuttack-II Range, Cuttack who by an order dated 28th February 2002 confirmed the order of the AA. Thereafter, the Assessee went before the Orissa Sales Tax Tribunal, Cuttack (Tribunal) with S.A. No.2289/2002-03. The order of the AA and the ACST was concurred with by the Tribunal by its order dated 12th April, 2007.

7. This Court has heard the submissions of Mr. Jagabandhu Sahoo, learned Senior Advocate appearing for the Petitioner and Mr. S.S. Padhy, learned Additional Standing Counsel for the Department.

8. Mr. Jagabandhu Sahoo, learned Senior Advocate places reliance on the decision of this Court in ***Luis Packaging Pvt. Ltd. v. State of Orissa and others (2010) 32 VST 481 (Ori)*** where it was held that when the State Government granted benefits under an IPR (in that case, it was IPR 1996), it must be presumed to be aware of the concessions otherwise available to the dealers under the OST Act and that therefore the benefits under the IPR-96

“was over and above what was provided under the OST Act”. This decision was reiterated in the subsequent decision dated 20th March 2019 of this Court in W.P.(C) No.11513 of 2005 (***Rexon Strips Ltd. v. State of Orissa***). It is accordingly submitted that in the present case, the matter should be remanded to the Tribunal to work out the exact concession that the Petitioner would be able to avail vis-à-vis the balance sum of Rs.87,107/-.

9. Mr. Sahoo further adds that at the time when the Form I-D (92) was produced by the Petitioner, it could not have produced a Form-IV for availing of the benefit of paying sales tax at 4% since the Assessee like the Petitioner were not aware of the correct legal position as was explained by this Court in ***Luis Packaging Pvt. Ltd.*** (supra). He accordingly submits that the Petitioner should now be permitted to produce the Form-IV to avail a concessional rate of sales tax. In other words, the Petitioner should be allowed to pay tax on the purchase of manganese to the extent of Rs.6,13,404.87/- at 4% instead of 16%.

10. Mr. S.S. Padhy, learned Additional Standing Counsel for the Department on the other hand contests the above proposition by pointing out that even the availing up the benefits on the strength of Form I-D (92) by the Petitioner was impermissible as it had already exhausted the ceiling limit to the extent of Rs.10,79,821/. At that time, it was entitled to only to avail the balance amount of Rs. 87,107/- for the AY 1997-98. The Petitioner chose to produce I-D (92) in relation to the purchase of manganese ore worth

Rs.11,57,823.62. He further points out that it would have been open to the Petitioner to produce Form-IV for the balance sum of Rs.87,107/-, but it chose not to do so at the relevant point in time and therefore, the Petitioner should not be permitted to do so at this stage.

11. The above submissions have been considered. While it is true that the legal position became clear after the decision of this Court in *Luis Packaging Pvt. Ltd. (supra)* where the Court categorically holding that the benefits available to the dealers under the IPR would be over and above what was provided in the OST Act, the fact remains that in the present case the Petitioner had already availed, for AY 1997-98, benefit under the IPR-92 to the extent of Rs.10,79,821/- leaving a balance of Rs.87,107/-. It would not have been possible therefore for the Petitioner to have filed a Form I-D (92) for the entire sum of purchase of manganese ore as was done by the Petitioner.

12. There is merit in the contention of Mr. Padhy learned Additional Standing Counsel for the Department that having not furnished a Form-IV at the relevant stage, the Petitioner should not be permitted to do so at this stage.

13. The Court therefore is unable to find any error committed in the AA requiring the Petitioner to pay sales tax @ 16% on the balance purchase of manganese ore of the value of Rs.6,13,404.87/-. At the highest, a sum of Rs.87,107/- can be adjusted against tax liability so determined.

14. Consequently, the question of law framed is answered against the Assessee and in favour of the Department.

15. The revision petition is disposed of.

16. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin

