IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 5 of 2009

M/s. R.K. Stone Crusher .... ***Petitioner***

Mr. B. Panda, Advocate

-versus-

State of Odisha and Others .... ***Opposite Parties***

Mr. S.S. Padhy, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No.

ORDER
17.05.2022

06. 1. The present petition by M/s. R.K. Stone Crusher arises from an order dated 31st January, 2008 passed by the Odisha Sales Tax Tribunal, Cuttack (Tribunal) in S.A. No.188 of 2004-05 for the year 1994-95. By the said order, the Tribunal affirmed the order dated 18th September, 2003 of the Assistant Commissioner of Sales Tax, Cuttack II Range, Cuttack (ACST) dismissing the Assessee's Sales Tax Appeal No.AA 375/DL/02-03 on the question of the tax demand but deleting the penalty of Rs.10,000/- imposed under Section 12 (8) of the Orissa Sales Tax Act, 1947 (OST Act).

2. While admitting this appeal by order dated 30th November, 2015 the following question of law was framed by this Court for consideration:

> "Whether in the facts and circumstances of the case the Tribunal is justified in holding that the D.I.C. had no authority in law to issue the eligibility certificate for expansion and or modernization with retrospective effect?

3. The background facts are that the Petitioner is carrying on business of a crushing unit at Boinda in Angul district. The Petitioner is a new small-scale industrial (SSI) unit having obtained a certificate to that effect from the District Industries Centre (DIC), Angul in terms of the Industrial Policy Resolution, 1989 (IPR 1989) issued by the General Manager, DIC on 3rd January, 1992. The manufacturing process was authorised to be carried on in stone chips and metal quantified by the annual installed capacity of 2,88,000 cft valued at Rs.15,12,000/-. The commercial production began on 1st October, 1991. Exemption from payment of sales tax was to be availed for a period of 7 years from that date i.e. up to 1st October, 1998. This was notified on 16th August, 1990.

4. According to the Petitioner, within the period of exemption limit an application was filed before the General Manager, DIC, Dhenkanal on 22nd July, 1997 for amendment and enhancement of the annual production installed capacity for the years 1994- 95 to 1996- 97. Thereafter, by a certificate dated 2nd September, 1997 the manufacturing capacity was enhanced to 3,21,748 cft.

5. During the year in question i.e. 1994-95, the Sales Tax Officer (Vigilance) (STO) detected that chips were found to have been sold to the extent of 5,66,187 cft and therefore, the surplus transaction of 2,78,187 cft was valued at Rs.11,25,000/- and held not qualified for exemption. A fraud report was submitted on 2nd May, 1997. An assessment order was passed by the STO on 30th May, 2002 raising an extra demand of Rs.1,58,500/- inclusive of penalty of Rs.10,000/-.

6. Against the above assessment order, the Assessee went in appeal to the ACST. While dismissing the appeal by an order dated 18th September, 2003 it was noted by the ACST that none appeared on the side of the Appellant. It was further noted that although there is a limitation on the production of stone chips and sales thereof as stipulated by the DIC, Angul, this was ignored by the Appellant. The Appellant ought to have waited till the requisite certificate for the enhanced capacity was obtained from the DIC. The subsequent certificate issued on 2nd September, 1997 had been issued relying on a notification dated 16th August, 1990 of the Finance Department, Government of Odisha but the said notification did not authorise the General Manager, DIC to issue the certificate enhancing the production capacity for the period retrospectively. The transactions had been made during 1994- 95 whereas the certificate was issued on 2nd September, 1997.

7. The Assessee then went in appeal before the Tribunal which by the impugned order affirmed the aforementioned order of the ACST.

8. This Court has heard submissions of Mr. B. Panda, learned counsel for the Petitioner and Mr. S.S. Padhy, learned Additional Standing Counsel for the Opposite Party.

9. It was sought to be urged by Mr. Panda that as long as the DIC Certificate approved the enhancement of the capacity to 5,85,739 cft. for the period in question, it did not matter whether such certificate had been issued subsequently on 2nd September, 1997 with retrospective effect. He submitted that the said certificate had been accepted in the subsequent years and referred to a *suo motu*

revision order passed under Section 23 (4) read with Rule 80 of the OST Rules by the Commercial Tax Officer on 6th December, 2006.

10. As far as the last-mentioned submission is concerned, the period in question is the same i.e. 1994- 95 but the gross turnover (GTO) is noted in the said order of *suo moto* revision order dated 6th December, 2006 is different. In the order dated 30th May, 2002 of the STO, Dhenkanal Circle the GTO was noted as Rs.11,25,000/- which had escaped turnover and the Petitioner's exemption was disallowed insofar As it pertained to the excess production. On the other hand, the order dated 6th December, 2006 of the CTO appears to deal with supplies made to the Railways.

11. However, as far as the impugned orders are concerned, it is plain that the Assessee claimed exemption on the strength of an earlier DIC certificate which did not authorise production beyond 2,70,187 cft. There is no power in the DIC to issue a certificate granting exemption retrospectively from an earlier date. Therefore, the certificate dated 2nd September, 1997 could not have possibly been used for calming exemption from payment of sales tax on the excess production year in the year in question i.e. 1994- 95.

12. The Court is not satisfied that the concurrent findings of the STO, the ACST and the Tribunal on this aspect suffer from any legal infirmity that warrants interference.

13. Consequently, the question framed by this Court is answered in the affirmative i.e. in favour of the Department and against Assessee by holding that the Tribunal in the impugned order was justified in holding that the DIC had no authority in law to issue

the eligibility certificate for exemption for expansion on modernisation with retrospective effect.

14. The revision petition is accordingly dismissed, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.