**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**STREV No.87 of 2011**

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| ***M/s. Indian Metals & Ferro Alloys Ltd., Therubali, Rayagada*** | .... | ***Petitioner*** |

M/s. P. K. Jena and associates, Advocates

*-versus-*

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| ***State of Orissa, represented by Commissioner of Sales Tax, Orissa, Cuttack*** | .... | ***Opposite Party*** |

Mr. S. K. Pradhan, ASC

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

**ORDER**
**28.06.2022**

**Order No.**

05. 1. This is a revision petition filed by the Assessee arising from an order dated 4th February, 2011 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) dismissing the Assessee's appeal i.e. S.A. No.1605 of 2005-06 for the Assessment Year (AY) 2003-04.

2. By virtue of the above impugned order, the Tribunal affirmed the order dated 20th September, 2005 passed by the Assistant Commissioner of Sales Tax (ACST), Koraput Range confirming the Assessment Order passed by the Sales Tax Officer (STO) raising a demand of Rs.2,49,226/- for the year in question.

3. While issuing notice in the present revision petition on 11th January 2013, this Court has admitted the following substantial question of law:

> *"I. Whether on the facts and in the circumstances of the case, the mechanism of calculation of set off under Note-1 and Note-2 of List-C of OST Act in respect of Entry No.76 by forums below is correct in law?"*

4. The background facts are that the Assessee has a manufacturing unit to produce Ferro Silicon and High Carbon Ferro Chrome at Therubali in the district of Rayagada. For manufacturing and producing finished product, the Assessee utilized raw materials like quartz, charcoal, scrap/gas cutting, carbon paste, lime stone, bauxite, magnesite, coke and chrome ore. While passing the Assessment Order for the year 2003-04, the STO verified the Assessee's books of accounts. The STO did not accept the calculation adopted by the Assessee to claim a set off of Rs.2,74,907/- under the OST Rate Chart (C) Note-1 (a) and Note-2(VI).

5. The STO allowed the double set off of tax to the tune of Rs.25,681/-. The reason given by the STO for not accepting the set off claimed by the Assessee was that no accounts had been maintained by the Assessee but showed that raw materials purchased from inside the State of Orissa was used for manufacturing of the finished products sold inside the State at 8% on priority basis. This was in violation of Clause-VI of Note-2 of List 'C' of the tax rate schedule which permitted

proportionate deduction “in case a dealer sells a part of his finished products in the course of inter-State trade or commerce or disposes in a way other than sale in Orissa.”

6. When the matter went before the ACST at the instance of the Assessee, he concurred with the STO on the issue of set off of proportionate tax for the sale of finished goods inside the State of Orissa. Against this concurrent finding, the Assessee went before the Tribunal, which has in the impugned order affirmed the orders of the STO and ACST.

7. It has been factually found by the Tribunal that no document was filed by the Assessee to disprove the allegation of the assessing authority denying the set off in respect of consumable since there was no purchase invoice produced by the Assessee. Importantly, the Tribunal noted that although in the grounds of appeal the Assessee claimed to have documents he was willing to produce, in fact he failed to produce such documents to disprove the case of the Department.

8. As regards the applicability of the decision of this Court in ***Luis Packaging Pvt. Ltd. v. State of Orissa, [2010] 32 VST 481 (Ori)***, here again the Tribunal has dealt with the said question and concluded as under:

> “6. We have already quoted the relevant portion from the impugned order as well as the assessment order to find out the real dispute urged before us. It appears that the provisions prescribing the set off vide rate chart ‘c’ note (I) and Note-(II) have been kept in view by both authorities below. The question of getting double benefit

is no way relevant to the dispute here. In the aforesaid Luis Packaging case, the dealer was availing benefit under IPR-1996 and their Lordships in consideration of law have held that in the absence of clear provision promoting different treatment to person who obtain for exemption or deferment, the computation of taxable turnover can be done under the OST Act without reference to the exemption under IPR, 1996. It is specifically held that the benefits under IPR-1996 were over and above what has provided for under the OST Act.

7. Having carefully gone through the aforesaid decision, we do not find any applicability to the dispute at hand. The law as prescribed under Note (I) and Note (2) of List-C as well as the rate of tax provided as per entry No.76 under list-C are not disputed here and it is applied. The assessing authority has denied the set off in respect of consumables on the ground that there was no support of purchase invoice. As against the above finding, the ground of appeal quoted above shows that appellant was willing to produce relevant records to disprove the above conclusion. But fact remains that no document is filed to disprove the allegation of learned assessing authority. Because of this, we have no hesitation to conclude that the denial of set off benefit in respect of consumables for want of supporting and satisfactory invoice was justified."

9. Learned counsel for the Assessee was not able to dispute that the Assessee here is not claiming a benefit under any IPR and the question therefore of Assessee being entitled to benefit of exemption apart from the benefit under the IPR does not arise. Consequently, no fault can be found with the Tribunal for holding that the decision in ***Luis Packaging Pvt. Ltd.*** *(supra)* is not relevant to the case on hand.

10. The Court is not inclined to interfere as the orders impugned appear to have turned purely on facts and have not been shown to be perverse or erroneous. Consequently, the question framed is answered in the affirmative i.e. in favour of the Department and against the Assessee.

11. The revision petition is dismissed.

***(Dr. S. Muralidhar)***
***Chief Justice***

***(R. K. Pattanaik)***
***Judge***

*M. Panda*