IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3834 of 2003

M/s. Sree Metallicks Ltd., Keonjhar .... ***Petitioner***

Mr. Sidhartha Ray, Advocate

-versus-

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

Mr. Sunil Mishra, Additional Standing Counsel for the Revenue Department

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
28.02.2022

Order No.

26. 1. The prayer of the Petitioner, which is a company, headquartered at Barbil in Keonjhar District, carrying on the business of manufacturing, processing and selling of Sponge Iron, Ore Fines and Dole Char, is for a direction to the Opposite Parties-State to include the Petitioner-Industry in the list of Pipeline Industries for the purposes of grant of sales tax incentives. The Finance Department Notification dated 26th July, 1996, restricting the benefit of concession to Industrial Units operating prior to 1st March, 1996 has been challenged.

2. On 4th July, 2003, the following order was passed by this Court in Misc. Case No.3526 of 2003while issuing notice in the main petition:

> "In view of the recommendation of the State Level Empowered Committee in their meeting held on

> 19.4.2000 for grant of sales tax benefit on the incremental sales to the new units and suggesting amendment in para 5-7 of Part-II of the IPR-1996 by including the word 'new' along with exiting industries, no coercive action be taken against the petitioner by the Sales-Tax Department with regard to incremental sales from October, 2001 onwards."

3. Later, by an order dated 22nd March, 2005, the above interim order was modified. It was now stated by the Court as under:

> "xxx. We make it further clear that our order dated 4.7.2003 shall not stand on the way of the Revenue in taking action for realization of the demand, if any, raised for the aforesaid year. So far as the returns for the subsequent years are concerned, the interim order dated 4.7.2003 shall not stand on the way of the Assessing Officer to deal with the same in accordance with law.
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> With the aforesaid modification the misc. case stands disposed of."

4. This Court has heard the submissions of Mr. Sidhartha Ray, learned counsel for the Petitioner and Mr. Sunil Mishra, learned Additional Standing Counsel for the Revenue Department.

5. The case of the Petitioner is that it was registered as a Small-Scale Industry (SSI) Unit and in that capacity availed of the sales tax benefit under the provisions of the Industrial Policy Resolution, 1996 (IPR-1996), made a capital investment on 3rd May, 1996 and commenced its commercial production on 10th December, 1998. Subsequently, the Director of Industries (DIC) (Opposite Party No.4) granted the Petitioner a Production Certificate as a Medium Scale Industry (MSI). Contending that

an MSI continues to be governed under IPR-1996, on the basis of having undertaken Expansion, Modernization and Diversification (EMD), the Petitioner sought sales tax incentive.

6. By a letter dated 22nd October, 2001, the Industries Department informed the DIC that "no sales tax benefit can be extended any more amending paragraph 5.7.(Part-II) of IP-96 which may lead to violation of national policy. Therefore, Govt. after careful consideration have been pleased not to make any amendment to the provisions of IPR-96 in this regard and decide that the pending proposals may please be disposed off accordingly."

7. Both counsel referred to the definition of 'effective date' in clause 2.1 and 'existing industrial unit' in clause 2.2 of the IPR-1996. The said two expressions read as under:

> "2. Definition:
>
> 2.1 "Effective date" means the date of issue of this policy on and from which, the provisions thereof shall be operative.
>
> 2.2 "Existing industrial unit" means an Industrial unit where fixed capital investment has commenced before the effective date."

8. It is not in dispute that the Petitioner was a new Industrial SSI Unit with reference to 1st March, 1996 as the 'effective date.' It is also not in dispute the Petitioner has got the sales tax incentive as a new industrial SSI unit having started after 1st March, 1996. It is only after the Petitioner was recognized as an MSI that the

Opposite Parties have declined to give it the benefit of para 5.7 i.e. for EMD. This is because the definition of 'existing industrial unit', makes it clear that the EMD incentive is for existing undertakings (i.e. satisfying the definition under Clause 2.2) and not for a new MSI unit like that of the Petitioner.

9. There is no clause in IPR-1996 that permits the grant of incentive to the same entity which was an SSI to begin with and availed of the benefit and then became an MSI. In the absence of a specific clause in the IPR-96 that permits it, it is not possible for the Court to issue any mandamus in that regard.

10. The Court sees no merit in the present petition and it is dismissed as such.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda