

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

SA No. 2730 of 2003-04

&

SA No. 1406 of 2005-06

(Arising out of orders of the learned ACST, Puri Range,
Puri in FA No. AA- 296/PU.II/2002-03 &
No. AA- 212(PUII) 04-05, disposed of on 18.09.2003
& 29.07.2005 respectively)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member, &
Shri M. Harichandan, Accounts Member-I

M/s. Kali Oil Mill (P) Ltd.,
At/P.O.- Jatni, Dist.- Khurda. ... Appellant

-Versus-

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack ... Respondent

For the Appellant : Sri K.C. Tripathy, A/R
Sri Mukesh Agarwal, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 28.02.2023 *** Date of order : 27.03.2023

ORDER

Both the appeals relate to the same parties for two different periods involving common questions of facts and law and, therefore, these appeals are heard together and disposed of by this composite order.

2. The Dealer is in appeals against the orders dated 18.09.2003 & 29.07.2005 of the Asst. Commissioner of Sales Tax, Puri Range, Puri (hereinafter called as 'First Appellate Authority') in F A No. AA- 296/PU.II/2002-03 and AA- 212(PUII) 04-05 confirming the assessment orders

of the Sales Tax Officer, Puri-II Circle, Jatni (in short, 'Assessing Authority').

3. Briefly stated, the case of the Dealer-appellant is that:

Dealer- M/s. Kali Oil Mills (P) Ltd. is an SSI Unit and carries on business in purchase of cereals, manufacturing of oil and sale of oil and oil cake. The DIC issued certificate certifying the date of commercial production w.e.f. 01.04.1994. As per the provision of IPR, 1989, the Dealer was entitled to exemption of tax for a period of seven years from the date of commercial production. The incentive of IPR was withdrawn by the Govt. w.e.f. 01.08.1999 vide FD Notification No. 33558-CTA-71/99-F dated 30.07.1999. The Dealer had challenged the validity of the said Notification before the Hon'ble Court in OJC No. 4297 of 2000.

Fraud Case Reports were submitted in respect of both the periods of assessment.

The assessment periods relate to 1999-2000 and 2000-01. The Assessing Authority raised tax demands of ₹2,57,226.00 for the year 1999-2000 and ₹5,63,629.00 for the year 2000-01 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

Dealer preferred first appeals against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the tax demands and dismissed the appeals. Being aggrieved with the orders of the First Appellate Authority, the Dealer prefers these appeals. Hence, these appeals.

4. The State files no cross-objection.

5. Learned Counsel for the Dealer submits that the Hon'ble Supreme Court though upheld the validity of the withdrawal Notification dated 30.07.1999, but were pleased to grant liberty to the Dealer to raise the issue of exemption benefit before the competent authority. He further submits that the State Govt. cannot repeal or withdraw the IPR benefit in view of Section

5 of Odisha General Clauses Act, 1937 and Section 6 of Central General Clauses Act, 1937 unless a different intention appears in the repealing Act. So, he submits that the orders of the First Appellate Authority and the Assessing Authority are contrary to the provisions of law and facts involved and the same require interference in these appeals. In support of contention, the learned Counsel relies on plethora of decisions of the Hon'ble Apex Court and Hon'ble Court.

6. Per contra, learned Standing Counsel (CT) for the State submits that the Assessing Authority and the First Appellate Authority have rightly disallowed the exemption benefit granted under the IPR, 1989 keeping in view the Notification dated 30.07.1999. He further submits that promissory estoppel is not available. He further submits that the State Government may by notification withdraw any such exemption u/s. 6 of the OST Act. He further submits that the notification was done in public interest taking into the financial condition of the State, so the public interest must override any consideration of private loss or gain. He relies on the decision of the Hon'ble Apex Court in case of *Sales Tax Officer and another v. Shree Durga Oil Mills and another*, reported in [1998] 108 STC 274 (SC).

7. Having heard the rival submissions and on carefully scrutiny of the materials available on record, the following factual aspects are not in dispute :-

(i) The Dealer is an SSI Unit having DIC certificate availing benefit under IPR, 1989 from the date of commercial production for a period of seven years w.e.f. 01.04.1994.

(ii) The Dealer was availing such exemption benefit w.e.f. 01.04.1994. Eligibility certificates have been issued in favour of the Dealer from the first year of the commercial production starting from 01.04.1994 to 31.03.1995 to subsequent year upto sixth year.

(iii) The State has withdrawn the IPR benefit as per Section 6 of the OST Act in a Notification dated 30.07.1999 issued under public interest taking into consideration the fiscal condition of the State.

(iv) The validity of the said Notification was challenged before the Hon'ble Court. Hon'ble Court dismissed the writ petition and upheld the validity of the said Notification. Hon'ble Apex Court **also confirmed the same and did not interfere in it in SLP (C) No. 26002 of 2004.**

(v) DIC authorities declined to issue such certificates after withdrawal notification of the Govt.

8. On bare perusal of the Notification, it reveals that the Notification vide SRO No. 622/1999 came into force on 30.07.1999. In the case of *M/s. Priti Oil Ltd. v. State of Orissa* in **STREV No. 472 of 2008** dated 02.08.2022, Hon'ble Court have been pleased to observe as under :-

“2. As far as the Question (a) is concerned, it stands answered by the order dated 5th January, 2016 of this Court in STREV No. 470 of 2008 involving the very same Assessee where similar question arose under the Orissa Sales Tax Act, 1947 (OST Act). In that order, it was held that the benefit under the IPR 1999 would be available to the Petitioner till 31st July, 1999. Accordingly, the Question (a) is answered by holding that the benefit under the CST Act to the Petitioner would correspondingly be available under the IPR 1999 till 31st July, 1999.”

On perusal of the orders of the Assessing Authority and First Appellate Authority relate to the assessment year 1999-2000 which is the subject matter in S.A. No. 2730 of 2003-04. So, in view of the aforesaid decision of the Hon'ble Court, the Dealer in S.A. No. 2730 of 2003-04 is entitled to get all benefits till 31.07.1999.

9. The Dealer claims that the Hon'ble Court were pleased to give liberty to the Dealer to raise the claim before the statutory authority in the

case of *Shree Jagannath Packers and others v. State of Orissa and others*, reported in [2005] 141 STC 26 (Orissa). The relevant portion of the judgment is reproduced herein below for better appreciation :-

“69. In the result, we are not inclined to quash the impugned notifications dated July 30, 1999 and February 17, 2000 issued by the State Government and we declare the said notifications to be valid in law. All interim orders passed by this Court in these cases are vacated. It will be, however, open for the petitioners to contend before the competent authority of the State Government or the competent authority under the Orissa Sales Tax Act and the Central Sales Tax Act that despite the impugned notifications dated July 30, 1999 and February 17, 2000 which we have held to be valid, the petitioners are still entitled to exemption from tax or deferment of payment of tax, as the case may be.”

10. The Dealer advances its pleas as follows -

- (i) The Dealer is entitled to the benefit under the entries of 26-F and 30-FFF if the following two conditions are fulfilled –
 - (a) The Unit must have set up on or after December 1, 1989; and
 - (b) must have started commercial production thereafter inside State.

In support of his contention, he relies on the case of *Crystal Towers v. Commissioner of Commercial Taxes, Orissa & others*, [1998] 110 STC 160 (Orissa).

- (ii) Dealer had accrued right to exemption for a block period of seven years cannot be denied in view of Section 5 of the Odisha General Clauses Act, 1937.

In support of his contention, he relies on the decision of the Hon'ble Court in the case of *Mahalaxmi Flour and Oil Mills v. Commissioner of Sales Tax and others*, reported in [1990] 79 STC 279 (Orissa).

11. As regards to the first contention, i.e. regarding entitlement of exemption benefit under IPR, 1989, Hon'ble Court were pleased to observe in the case of *Crystal Towers* cited supra as follows :-

“20. ...The two conditions to avail of the benefit are that (a) the unit must have set up on or after 1-12-1989; and (b) must “have started commercial production ‘thereafter’ inside the State. The exemption is to be allowed for a period of seven years from the date of commencement of commercial production to be certified by the District Industries Centre...”

In the case at hand, the State Govt. has withdrawn the benefits of IPR, 1989 as per the Notification **No. 622/1999** dated 30.07.1999 w.e.f. **01.08.1999** taking into consideration the financial condition of the State. So, merely because the Dealer fulfils the two conditions enumerated in the above decision of the Hon'ble Court, the Dealer is not entitled to get the benefit as per IPR, 1989. So, the aforesaid decision is of no assistance to the Dealer in the present fact and circumstances of the case.

12. Further plea of the Dealer is that the accrued right for exemption for a block period of seven years cannot be denied in view of Section 5 of the Odisha General Clauses Act, 1937. He relies on the case of *Mahalaxmi Flour and Oil Mills* cited supra. The relevant portion of the decision in paras – 5 & 6 are extracted herein below for better appreciation:-

“5. Section 14-A has been omitted from the Act by Act No. 23 of 1983 with effect from August, 12, 1983. Notwithstanding such repeal, right accrued under the said provision would be available to be exercised in view of Section 5 of the Orissa General Clauses Act, 1937, which reads as follows :-

5. Effect of repeal.:- Where any Orissa Act repeals any enactment hitherto made, or hereafter to be made, then, unless a different intention appears, the repeal shall not-

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture: or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

6. This brings us to consider the main question involved in the writ application. For considering the same, Section 14-A which has stood repealed is to be kept in mind. It reads as follows :

“14-A. Refund of tax in special cases, -- Notwithstanding anything contained in this Act or in any other law for the time being in force where any amount is either deposited by any person under Sub-section (3) of Section 9-B or paid as tax by a dealer and where such amount or any part thereof is not payable by such person or dealer, a refund of such amount or any part thereof can be claimed only by the person from whom such person or dealer has actually realised such amounts whether by way of sales tax or otherwise and the period of limitation provided in the proviso to Section 14 shall apply to the aforesaid claims.”

A bare perusal of the aforesaid provision makes it clear that in view of the non obstante clause refund is not controlled by any other provisions of the Act or any other law for the time being in force except the period of limitation as provided in Section 14, proviso. Only requirement for claim of refund is : payment of an amount as tax by the dealer which is not payable by him. Therefore, the Commissioner was required to consider (i) whether the amount claimed as refund was paid as tax or otherwise by the dealer, (ii) whether the application for refund has been made within the period prescribed under Section 14, proviso. Finality of any order of assessment wherefrom order of

refund does not flow would not affect the claim of the dealer since the same is excluded by the non obstante clause -

“Notwithstanding anything contained in this Act or any other law for the time being in force.”

Bare reading of aforesaid Section 5 reveals that any benefit accrued under any Act or enactment shall not be affected unless a different intention appears in the repealing Act. It means Section 5 shall be applicable if any Act is repealed.

13. Now let's examine whether the Dealer was availing the exemption benefit on the strength of any statutory provision.

In the case at hand, the Dealer was availing the exemption as per Notification issued by the State Govt. vide **SRO No. 469/76** dated 23.04.1976, which is an administrative order of Finance Department extended in the aid of Section 6 of the OST Act. The same has also been withdrawn by the Finance Department by virtue of an administrative order in the aid of Section 6 of the OST Act.

Application of Section 5 of the General Clauses Act, 1937 will not come in the aid of the Dealer to avail the exemption benefit granted under IPR after such withdrawal Notification issued by the State Govt. as there was no repeal of the Act, rather the administrative/executive order granting exemption benefit was withdrawn by an administrative/executive order taking into consideration the fiscal condition of the State, which are in consonance with the provisions of Section 6 of the OST Act.

14. **Section 6** of the OST Act empowers the State Govt. to exempt from tax the sale or purchase of any goods. Likewise, empowers the State Govt. to withdraw any such exemption thereof.

Section 6 of the OST Act provides the power to the Government to withdraw any such exemption by way of Notification. Section 6 of the OST Act is quoted below for better appreciation of the case-

“The State Government may, by notification subject to such conditions and exceptions, if any exempt from tax the sale or purchase of any goods or class of goods and likewise withdraw any such exemption.”

By exercising such power u/s. 6 of the OST Act, the State Government extended a package of measures for stimulating the growth of industries by way of IPR benefit to the Industrial Units of Odisha. Likewise, the said Section 6 empowers the State Govt. to withdraw the any such exemption.

By exercise the powers conferred u/s. 6 of the OST Act, the State Govt. has withdrawn all such benefits granted to the Industrial Units taking into consideration the condition that the State Govt. was passing through a phase of grave fiscal imbalances characterized by mounting revenue and fiscal deficits by issuing Notification vide **SRO No. 622/1999** dated 30.07.1999 w.e.f. 1st August, 1999.

The Dealer had availed the exemption benefit under IPR, 1989 on the strength of a notification of the State Govt. in SRO No. 469/76 dated 23.04.1976 in the aid of Section 6 of the OST Act. The same benefit was withdrawn on the strength of a notification of the State Govt. in SRO No. 622/1999 dated 30.07.1999 in the aid of said Section 6.

The validity of the Notification i.e. SRO No. 622/1999 dated 30.07.1999 was challenged before the Hon’ble Court and the Hon’ble Court was pleased to hold the same as valid in the case of ***Shree Jagannath Packers*** cited supra. Hon’ble Apex Court affirmed the order passed by the Hon’ble Court and dismissed the SLP (Civil) No. 26002 of 2004 filed by the Dealer. This issue is longer *res integra* in view of the aforesaid decision of the Hon’ble Court and Hon’ble Apex Court.

15. Moreover, Hon’ble Apex Court in the case of ***Sales Tax Officer & another v. Shree Durga Oil Mill and another***, reported in [1998] 108 STC 274 (SC), have been pleased to observe as follows :-

“Held, reversing the decision of the High Court,

- (i) that the doctrine of promissory estoppels could not be raised by the respondent in this case; no particulars were given by the respondent as to when the decision to set up the industry was taken, the date when the loan was obtained, exactly when the land was purchased and machinery was acquired for setting up the small scale industrial unit and the respondent had not given factual details as to how in the short span of four months, from July 18, 1979, when the resolution was issued to November 28, 1979, when the provisional certificate was issued, it set up its industry;
- (ii) that the Government could change its industrial policy if the situation so warranted; merely because the resolution was announced for the period 1979-1983, it did not mean that the Government could not amend or change the policy under any circumstance;
- (iii) that the Industrial Policy Resolution dated July 18, 1979, by itself did not grant any exemption; it merely promised that orders would be issued laying down the method of administering the concessions and incentives by the concerned departments. Exemptions could only be granted in the manner laid down by the Orissa Sales Tax Act, 1947. The State Government, by an executive order, could not override the requirement of the statute. The method and manner of granting exemption was laid down in section 6 of the Act and that section specifically provided that exemptions were to be granted by a notification issued under that section could be modified or withdrawn by the State Government at any point of time. The State Government was fully competent to issue the exemption notifications of 1969 and 1976, and, when it subsequently decided to withdraw the exemption in respect of some of the industries which had commenced production after April 1, 1977, to issue the notification withdrawing the exemption in relation to those industries. Moreover, withdrawal of the notification was done in the public interest and the court would not interfere with any action taken by the Government in the public interest.”

So, in view of the settled principle of law laid down by the Hon’ble Apex Court in both the cases cited supra, the State Govt. is fully competent to do so under the provision of Section 6 of the OST Act. Moreover, the both the Notifications granting exemption benefit and

withdrawal of the said benefits are in consonance with the provisions of Section 6 of the OST Act. The learned Counsel for the Dealer relies on plethora of decisions. The same are not applicable to the present facts and circumstances of the case as Section 5 of the Odisha General Clauses Act, 1937 is not applicable to the present fact and circumstances of the case and the State Govt. is competent to issue Notification extending financial package and withdrawing the same taking into consideration the fiscal conditions of the State in the aid of Section 6 of the OST Act.

16. In view of the foregoing discussions, we are of the unanimous view that the State Govt. is competent to issue Notification extending financial package and withdrawing the same taking into consideration the fiscal conditions of the State in the aid of Section 6 of the OST Act and the First Appellate Authority and the Assessing Authority have rightly rejected the claim of the Dealer for the periods under assessment. Hence, it is ordered.

17. Resultantly, both the second appeals are dismissed and the impugned orders of the First Appellate Authority are hereby confirmed.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

**Sd/-
(G.C. Behera)
Chairman**

I agree,

**Sd/-
(S.K. Rout)
2nd Judicial Member**

I agree,

**Sd/-
(M. Harichandan)
Accounts Member-I**