

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

**S.A. No. 71(C) of 2005-06**

(Arising out of order of the learned ACST, Jajpur Range,  
Jajpur Road in First Appeal No. AA- 56/KJC/2003-04,  
disposed of on 18.11.2004)

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

M/s. D.R. Patnaik,  
At/PO- Joda, Dist. Keonjhar ... Appellant

-Versus-

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

For the Appellant : Sri P.K. Jena, Advocate  
For the Respondent : Sri M.L. Agarwal, S.C. (CT)

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Date of hearing : 22.09.2022 \*\*\* Date of order : 29.09.2022  
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**ORDER**

The Dealer assails the order passed on 18.11.2004 by the Assistant Commissioner of Sales Tax, Jajpur Range, Jajpur Road (hereinafter called as 'First Appellate Authority') in F A No. AA- 56/KJC/2003-04 confirming the order of the Sales Tax Officer, Keonjhar Circle, Keonjhar (in short, 'Assessing Authority').

2. The brief facts of the case are that -

Dealer deals in raising of iron ore and manganese ore and effecting sale thereof both inside and outside the State. The Dealer had established a crusher unit in the lease hold area of Maurgabada Iron Ore

Mines. He was also selling size iron ore both inside and outside the State. The assessment relates to the period 2001-02. The Assessing Authority raised tax demand of ₹11,56,201.00 u/r. 12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

Dealer preferred first appeal before the First Appellate Authority against the said order of assessment. The First Appellate Authority dismissed the appeal and confirmed the order of the Assessing Authority. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection against the appeal prefers by the Dealer.

3. Learned Counsel for the Dealer submits that the orders of the First Appellate Authority and the Assessing Authority are erroneous and contrary to the provisions of law and fact involved. He submits that the Assessing Authority has not extended the benefit of IPR, 1996. He further submits that the calculation of ceiling limit under the CST Act is to be calculated on the sales turnover under the CST Act @ 4% since the transactions are covered against 'C' declaration form. He further submits that the learned Assessing Authority has not decided the ceiling limit to avail the tax exemption as per the order of the First Appellate Authority for the year 2000-01, therefore, the impugned order of the First Appellate Authority confirming the subsequent assessment order for the year 2001-02 is erroneous and the same needs interference in this appeal. He further submits that this Tribunal has already decided the same issue of the Dealer in S.A. No. 631 of 2005-06 decided on 14.02.2011 relating to the assessment year 2001-02 and in S.A. No. 139 (C) of 2006-07 decided on 06.06.2022 for the assessment year 2002-03.

4. On the other hand, learned Standing Counsel (CT) for the State objects the contention of the learned Counsel for the Dealer and submits that the appellant is not a manufacturer and no finished goods are produced in

the said Unit. So, he submits that the appellant is not entitled to the benefit of IPR, 1996 and calculation of ceiling limit to avail exemption is not justified. He further submits that the Dealer is only crushing the mineral ores into size, which is not coming under the category of manufacturing as per the decision of Hon'ble Supreme Court of India in case of *M/s. Chowgule & Co. v. Union of India*, reported in [1981] 47 STC 124 (SC) and in case of *State of Maharashtra v. Mahalaxmi Store*, reported in [2003] 129 STC 79 (SC). He further submits that the appellant is to pay the tax in usual rate and the entire turnover of sales are to be taxed and the Assessing Authority and First Appellate Authority have committed no wrong and the orders of the forums below need no interference in this appeal.

5. On hearing the rival submissions and on carefully scrutiny of the materials available on record, the Dealer claims exemption for different periods and the same are detailed below :-

<u>Year</u>	<u>Tax exemption availed</u>
1999-2000	₹ 6,53,431.00
2000-01	₹ 9,25,819.00
2001-02	<u>₹12,08,962.40</u>
<b>Total -</b>	<b>₹27,88,212.00</b>

Fixed capital invested as certified by the DIC - ₹38,19,239.00

Balance exemption benefit to be availed - ₹10,31,027.00

Exemption availed during the period 2002-03 - ₹ 9,07,225.00

Exemption benefit to be availed in 2003-04 - ₹ 1,23,802.00

On such claim of exemption, this Tribunal has already decided the self-same issue in S.A. No. 139 (C) of 2006-07 on 06.06.2022 and remanded the matter to the Assessing Authority with a direction to reassess as per the observations given in the said order. The relevant portion of the said order is reproduced herein below for better appreciation :-

“We observe that the assessment orders passed U/s. 12(4) of the OST Act and U/r. 12(5) of the CST(O) Rules for the year 2000-2001 by the LAO were set-aside and remanded to the LAO to consider the turnover of the IPR Unit only, exclusive of the mines Head and compute the ceiling in the light of Luis Packaging case as stated supra. However, we don't find any re-assessment order under both the Acts by the LAO for the year 2000-2001 on record in order to ascertain as to whether the assessee has crossed the tax exemption limit by 01.03.2000 as alleged in the impugned assessment order. Moreover, we observe that as per certificate of eligibility for sales tax exemption, the assessee is entitled to get such exemption on purchase of machinery spare parts, raw materials and packing materials apart from sale of finished products i.e. sized iron ore to the extent of 100% of fixed capital investment for a period of six years from the date of commercial production. However, no such calculation on tax exemption towards purchase of machineries spare parts and packing materials are available on record to determine the quantum of tax exemption availed from the date of start of commercial production till the end of impugned period. The LAO is to calculate the tax exemption availed by the assessee on purchase of machinery spare parts and packing materials together with sale of finished products by the end of March, 2001, so as to ascertain the balance tax exemption available with him for the impugned period. While making such calculation, concessional rate of tax will be calculated on submission of valid 'C' forms towards claim of tax exemption.”

6. This Tribunal has already recorded a finding in earlier order that this Tribunal do not find any reassessment orders under both the Acts by the Assessing Authority for the year 2000-01 on the record to ascertain as to whether the assessee has crossed the tax exemption limit by 01.03.2000 as alleged in the assessment order so as to ascertain the balance tax exemption available with him for the assessment year 2002-03 and accordingly remanded the matter for reassessment. The Assessing Authority has not reassessed the tax liability of the Dealer in terms of the earlier orders of this Tribunal.

7. So, without expressing any opinion on the merit of the appeal, we feel it proper to remit the matter back to the Assessing Authority to reassess

the tax liability as per the observations made by this Tribunal in aforesaid orders including the tax exemption available to the Dealer under IPR, 1996 for the present assessment period, i.e. 2001-02. The Dealer is at liberty to produce statutory declaration forms, if any, before the Assessing Authority for his consideration as per the provisions of law. Hence, it is ordered.

8. In the result, the appeal filed by the Dealer is allowed and the impugned order of the First Appellate Authority is hereby set aside. The matter is remanded to the Assessing Authority for assessment afresh keeping in view the observations made above within a period of three months from the date of receipt of this order. Cross-objection is disposed of accordingly.

**Dictated & Corrected by me**

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

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

**I agree,**

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

**I agree,**

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