

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

**S.A. Nos. 43 & 44 of 2005-06**

(Arising out of order of the learned ACST, Jajpur Range,  
Jajpur Road in First Appeal No. AA – 660 & 664/CU III/03-04,  
disposed of on 17.11.2004)

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

M/s. Shree Jagannath Steels,  
Janha, Jajpur Road ... Appellant

-Versus-

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

For the Appellant : Sri S.B. Agarwal, Advocate &  
Sri S.K. Samal, Advocate

For the Respondent : Sri M.L. Agarwal, S.C. (CT)

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Date of hearing : 15.11.2022      \*\*\*      Date of order : 19.11.2022

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**ORDER**

Both these appeals for two different periods relate to the same Dealer involving common question of facts and law. Those are heard and disposed of by this composite order for the sake of convenience.

2. The Dealer assails the order dated 17.11.2004 of the Assistant Commissioner of Sales Tax, Jajpur Range, Jajpur Road (hereinafter called as 'First Appellate Authority') in F A No. AA – 660 & 664/CU III/03-04 confirming the assessment orders of the Sales Tax Officer, Cuttack-III Circle, Jajpur Road (in short, 'Assessing Authority').

3. The case of the Dealer, in brief, is that –

M/s. Shree Jagannath Steels being an SSI Unit is engaged in manufacture of M.S. rod, bars etc. The assessment periods relate to 1996-97 and 1997-98. The Assessing Authority raised tax demands including penalty of ₹18,53,154.00 for the year 1996-97 and ₹19,93,127.00 for the year 1997-98 u/s. 12(8) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') basing on A.G. (Audit) objection.

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

The State files no cross-objection.

4. The learned Counsel for the Dealer challenges the orders of the fora below on the ground that the fora below cannot sit on the certificate issued by the DIC. He further submits that the fora below went wrong in disallowing the exemption, which has been allowed in original assessment proceedings passed u/s. 12(4) of the OST Act. He further submits that the findings of the fora below are contrary to the proposition of law and material available on record and the same need interference in appeal. He relied on the decision of the Hon'ble Apex Court in the case of *Vadilal Chemicals Ltd. v. State of Andhra Pradesh & others*, reported in [2005] 142 STC 76 (SC) and the decision of the Hon'ble Court in the case of *Bajrangballi Wire Products Ltd. v. State of Odisha*, reported in [2021] 90 GSTR 343 (Orissa).

5. Per contra, the learned Standing Counsel (CT) for the State vehemently objects the contentions of the learned Counsel for the Dealer and submits that the certificate of the DIC is not genuine as the same was issued on 29.04.1992, which was signed on 29.04.1992 certifying commencement of commercial production w.e.f. 25.04.1992 on the strength of the affidavit, which was sworn on 28.04.1992. He further submits that the

Dealer admits in the affidavit that he wants to start an SSI Unit, but he claims to have started commercial production on 25.04.1992, which is self contradictory. So, he submits that the learned fora below have rightly disallowed the exemption on the strength of the DIC certificate and the same needs no interference in appeal.

6. On hearing the rival submissions and on careful scrutiny of the materials available on record, it is not in dispute that the DIC authority has issued the certificate in respect of the Dealer's Unit on 29.04.1992 and the same was signed on 29.04.1992 certifying the commencement of commercial production on 25.04.1992. It is also not in dispute that the Dealer had furnished an affidavit on 28.04.1992 to the effect that he wants to set up an SSI Unit. It is also not in dispute that the DIC certificate was still in existence and the same was not cancelled by the competent authority on the report of the officials of the respondent State.

7. It is also not in dispute that the Dealer is entitled to the exemption for seven years from the date of commencement of the commercial production, i.e. on 25.04.1992, as per the certificate of the DIC authority. The Sales Tax authorities verified the account (sale register) on 08.06.1993 and 03.05.1996. Question remains whether the Dealer is not entitled to exemption if any mistake is detected in the certificate issued by the DIC and the same was in force.

8. Relying the cases of *Vadilal Chemicals Ltd.*, in the case of *Bajrangballi Wire Products Ltd.* cited supra, Hon'ble Court have been pleased to observe that the DCCT certainly could not assume that the exemption was wrongly granted nor he has any jurisdiction u/s. 20 of the State Act to go behind the eligibility certificate and embark upon a fresh inquiry with regard to the appellant's eligibility for the grant of the benefits.

In the case at hand, it is not in dispute that the certificate of the DIC was in existence at the time of assessment and at the time of A.G.

(Audit). The exemption was already granted in the proceedings u/s. 12(4) of the OST Act and the same cannot be denied in a proceeding u/s. 12(8) of the said Act by the Assessing Authority on the strength of A.G. (Audit).

9. So, in view of the decision of the Hon'ble Court in the case of *Bajrangballi Wire Products Ltd.* cited supra, the benefits availed by the Dealer under IPR, 1989 on the strength of DIC certificate cannot be denied. Therefore, the orders of the fora below regarding disallowance of the exemption, which was already granted in the proceedings u/s. 12(4) of the Act, are contrary to law and the same are not sustainable in the eyes of law. Hence, it is ordered.

10. In the result, the appeals are allowed and the impugned order of the First Appellate Authority confirming the assessment orders of the Assessing Authority is hereby quashed.

**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**