

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

**S.A. No. 502 of 2007-08
&
S.A. No. 53(C) of 2007-08**

(Arising out of orders of the learned ACST (Appeal), Jajpur Range,
Jajpur Road in Appeal Nos. AA – 93/KJ/06-07 & AA-30/KJC/06-07,
disposed of on 07.03.2007)

Present: **Shri G.C. Behera, Chairman
Shri S.K. Rout, 2nd Judicial Member &
Shri B. Bhoi, Accounts Member-II**

M/s. Deepak Minerals (P) Ltd.,
Barbil, Dist. Keonjhar ... Appellant

-Versus-

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

For the Appellant : Sri D.K. Mohanty, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 18.07.2023 *** Date of order : 11.08.2023

ORDER

Both these appeals relate to the same party and for the same period involving common question of facts and law, but under different Acts. Therefore, they are taken up for disposal by this composite order for the sake of convenience.

S.A. No. 502 of 2007-08 :

2. Dealer is in appeal against the order dated 07.03.2007 of the Asst. Commissioner of Sales Tax (Appeal), Jajpur Range, Jajpur Road (hereinafter called as 'First Appellate Authority') in F A No. AA –

93/KJ/06-07 confirming the assessment order of the Sales Tax Officer, Keonjhar Circle, Keonjhar (in short, 'Assessing Authority').

S.A. No. 53(C) of 2007-08 :

3. Dealer also assails the order dated 07.03.2007 of the First Appellate Authority in F A No. AA – AA-30/KJC/06-07 confirming the assessment order of the Assessing Authority.

4. The facts of the cases, in short, are that –

M/s. Deepak Minerals (P) Ltd. is engaged in processing of iron ore and manufacturing of sponge iron and trading thereof. The assessments relate to the year 2002-03. The Assessing Authority raised tax demand of ₹35,96,341.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act'). Likewise, the Assessing Authority raised tax demand of ₹24,27,445.00 u/r. 12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

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

The State files no cross-objection.

5. The learned Counsel for the Dealer submits that the Assessing Authority and First Appellant Authority computed the tax liability adopting the GTO returned of the previous years on the basis of tax exemption, which is erroneous. So, he submits that the orders of the First Appellate Authority are otherwise bad in law and the same need interference in appeal.

6. Per contra, the learned Standing Counsel (CT) for the State submits that the Assessing Authority specifically observed that the Dealer had already availed the tax exemption benefit till the year 2001-02. So, he submits that the Assessing Authority has rightly rejected the tax exemption

benefit further under IPR, 1996 and thereby he computed the tax liability of the Dealer for the period under appeals. He further submits that the Dealer fails to produce any material evidence before the First Appellate Authority and before this forum to substantiate its claim. So, he submits that unless the Dealer furnishes the relevant materials for the earlier periods regarding availing of sales tax exemption benefit basing on the certificate granted, the basis of calculation for exemption as adopted by the Assessing Authority cannot be questioned.

7. Heard the rival submissions of the parties and gone through the orders of the First Appellate Authority and Assessing Authority vis-a-vis the materials on record. The Dealer challenged the disallowance of exemption benefit under IPR'96 under both the OST and CST Act. The Assessing Authority disallowed the same on the ground that the Dealer has exhausted the ceiling limit of ₹4,31,49,336.00 during 2001-02. The DIC certificate reveals that the Dealer was availing IPR'96 benefit with date of commercial production w.e.f. 07.07.1999 against the goods under Sl. No. 1, i.e. sponge iron, with capacity 12168 MT for value ₹6.08 crore. The same was amended on 25.10.1999 for inclusion of additional items under Sl. Nos. 2, 3, 4 & 5 with same date of commercial production, i.e. 07.07.1999.

The Dealer is entitled to the IPR'96 benefit from the date of commercial production, i.e. 07.07.1999, till 06.07.2005. The DIC certificate reveals that the total fixed capital investment (land, building, plant, etc.) with limit of ₹4,31,49,336.00. It is submitted by the Dealer that the Assessing Authority computed the ceiling limit benefit of exemption under the IPR, 1996 by considering the GTO of the years 1999-2000, 2000-01 and 2001-02. The Dealer claims that the exemption should be made on the tax component, but not from the GTO. The record reveals that the GM, DIC has certified that the Unit is eligible for exemption of sales tax on purchase of raw materials, machinery, spare parts, packing materials and sale of finished

products to the extent of ₹4,31,49,336.00 for the period of six years from the date of commencement of commercial production under IPR, 1996 vide eligibility certificate No. 3902 dated 10.09.1999.

The assessment order under the OST Act reveals that the Dealer had opening stock of 206.770 MT of sponge iron. It produced 51797.680 MT of sponge iron and sold 51365.350 MT of sponge iron. The Dealer has shown closing balance of 639.100 MT. During the year under assessment, the Dealer had sold sponge iron free of tax for ₹4,12,88,450.00 and tax paid coal for ₹1,53,88,304.00.

The Assessing Authority also found that the Dealer had already received the benefit of exemption under IPR, 1996 as follows :-

| | |
|-----------|-------------------|
| 1999-2000 | - ₹ 66,04,051.65 |
| 2000-2001 | - Nil |
| 2001-2002 | - ₹3,73,00,948.00 |
| Total | - ₹4,39,04,999.65 |

It reveals that the Dealer had already received the tax exemption above the ceiling limit of ₹4,31,49,336.00 during 2001-02. So, the Assessing Authority did not extend the exemption benefit further and accordingly computed the tax liability for the period under assessment, which gave rise to the impugned demand. The Dealer had also raised the same plea before the First Appellate Authority as raised before this forum. The First Appellate Authority specifically found that the Dealer fails to produce any material before him. The Dealer also fails to produce any material in support of his stand to substantiate the claim. The assessment order reveals that the Dealer had already availed the tax exemption of ₹4,39,04,999.65 which is more than the ceiling limit of ₹4,31,49,336.00 as granted under IPR, 1996 during the year 2001-02. The Dealer fails to produce any material evidence contrary to the observations of the First Appellate Authority and Assessing Authority.

8. Similarly, for the assessment under the CST Act, the Assessing Authority observed that the Dealer has already exhausted the ceiling limited of ₹4,31,49,336.00 during the year 2001-02. On such finding, the Assessing Authority discarded the contention of the Dealer and computed the tax liability. The First Appellate Authority concurred the finding of the Assessing Authority. The Dealer did not furnish any material evidence either before the First Appellate Authority or before this Tribunal to substantiate the plea by placing the facts and figures. Unless, the Dealer dislodges the finding of the First Appellate Authority and Assessing Authority by adducing sufficient material evidence to avail the sales tax exemption benefit under IPR, 1996, the contention raised by the Dealer does not merit for consideration by this forum. So, we are unable to accede to the contention of the Dealer on this score. Hence, it is ordered.

9. Resultantly, the appeals under the OST & CST Act are dismissed and the impugned orders of the First Appellate Authority confirming the assessment orders of the Assessing 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/-
(B. Bhoi)
Accounts Member-II**