

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

S.A.No.394 of 2001-02

(Arising out of the order of the learned ACST, Balasore Range
Balasore, in Appeal case No.AA-103/BD/2000-01,
disposed of on 28.02.2001)

**Present: Sri Sashikanta Mishra, Sri Subrat Mohanty & Sri Ranjit Ku.Rout,
Chairman. Judicial Member-II Accounts. Member-II.**

M/s.J.S.Refineres (P) Ltd.,
Industrial Estate, Rahanja, Bhadrak. ... Appellant.

- V e r s u s -

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

For the Appellant ... None.
For the Respondent ... Mr.S.K.Pradhan, Id.Addl. S.C.(C.T.).

Date of hearing: 19.03.2018 * * * Date of Order:20.03.2018

ORDER

This tax appeal is preferred by the assessee dealer against the order of first appellate authority dated 28.02.2001 in first appeal case No.AA-103/BD/2000-01, whereby the first appellate authority confirmed the order of the assessing authority denying the exemption under IPR,1989 to the dealer's industrial unit.

2. Whether exemption under IPR,1989 was available to the dealer for the tax period for the period 1996-97 or not was in

question before the assessing authority in a proceeding under Section-12(4) of the OST Act on the basis of report submitted by vigilance wing, Cuttack I Range. It was an ex parte order whereby the learned assessing authority accepted the vigilance case report as there was no industrial activities on the date of visit of the vigilance officer, the dealer was engaged in sale of materials in same form it was purchased, there was no manufacturing activities undertaken by the dealer as it has not purchased any raw material including crude oil un-refined oil or seeds chemicals etc. The assessing authority on scrutiny of the way bill through which refined oil was purchased and in consideration of other factors such as, the dealer assessed was found to be not consuming electricity as consumed by similar industries, the dealer was found not to have purchased raw materials etc. held that no manufacturing activities was under taken by the dealer but the dealer was selling refined oil in same form in which it was purchased in a camouflaged manner just to avail exemption under IPR,1989. The GTO was determined as per the assessment record of the dealer to the tune of Rs.87734028.45. Without giving deduction during the entire amount was treated as TTO tax @10% was collected on Rs.87417930.20 and @12% on Rs.316098.25 and in addition to that surcharge at 15% on tax which became calculated to Rs.3858116.00 only was raised against the dealer.

3. As against the order, the dealer preferred first appeal no.103/BD/2000-01. The first appellate authority also passed an exparte order as the dealer remained absent after appearing on two dates. In the impugned order, the first appellate authority also found that the dealer was not engaged in any industrial activity. It was purchasing pure crude oil and selling the same as evident from the way bills and the dealer was found not to have purchased any other raw materials required for the industrial activities. It was also found to have not consumed energy as consumed by similar industrial units. Finally, accepting the view taken by the assessing authority, the first appellate authority also confirmed the view that the dealer is not entitled to exemption and accordingly the assessment order remained undisturbed.

4. When the matter stood thus the dealer preferred this appeal on the ground that the dealer was not given proper opportunity to produce the cogent materials and hence, the fora below have gone wrong in relying on the vigilance report. The assessing authority has not sought for any opinion from the DIC about manufacturing / industrial activities of the assessee dealer and has mechanically taken an adverse view by holding that the dealer was not engaged in industrial activities and thereupon denied the incentives/ exemption to which the dealer is entitled.

Finding:

4. Unfortunately, the present appeal though preferred by the dealer, was also heard *exparte* as the dealer himself remained absent on hearing despite due service of notice of hearing. On careful perusal of the assessment order as well as the impugned order, it is found that the dealer was an exempted unit under IPR,1989 duly registered under DIC having certificate of purchase of raw materials, crude oil and unrefined oil for production of refined oil. In the assessment proceeding, the assessing authority has categorically held that the dealer was engaged in business of purchase and sale of refined oil, he was not running the industries and he was not involved in the manufacturing process as per the IPR,1989 policy. As such, the dealer is not qualified for the concession/incentives of the tax benefit. In the impugned order, the first appellate authority has also categorically gone into the documents initially presented before him by the dealer, he has verified the Xerox copies of the bills through which the dealer purchased refined oil and thereafter came to a conclusion that the dealer's unit is not entitled to get the concession. There is no reason established to interfere with the order of the fora below as it is based on fact and law and thereby it is held that the impugned order confirming the order of assessment by denying the IPR benefit to the dealer, calls for no interference. Accordingly. It is ordered.

5. The appeal is dismissed against State as of no merit.

Dictated and Corrected by me,

(Sri Subrat Mohanty)
Judicial Member-II.

(Sri Subrat Mohanty)
Judicial Member-II.

I agree,

(Sri Sashikanta Mishra)
Chairman.

I agree,

(Sri Ranjit Ku.Rout)
Accounts Member-II.