



the said order as bereft of consideration of material fact with the provisions of law for which the impugned order is illegal and bad in law.

3. The brief fact of this case is that the dealer-assessee is a mine owner having leasehold mines situated in the district of Keonjhar. The assessee used to extract mineral ores like manganese ore and sells it both in intra-state and inter-state transaction along with export. At the assessment stage, the LAO observed that the dealer has returned his GTO and TTO at Rs.4,24,66,659.00 and Rs.1,62,44,755.00 respectively. The assessee has claimed exemptions for Rs.2,26,80,629.00 and Rs.35,41,275.00 under IPR'96 and sales made in course of export respectively. He further observed that the assessee has been registered under DIC, Keonjhar as an SSI Unit to obtain 100% tax exemption of the capital investment on sale of finished products for a period of six years from the date of commercial production, being set up under Zone B in the district of Keonjhar. However, on verification of documents produced, he found that his tax exemption under IPR'96 is over by 01.03.2000 making him liable to pay tax w.e.f. 02.03.2000. As such, the claim of exemption of tax on Rs.2,26,80,629.00 was disallowed by him which was taxed accordingly. Moreover, due to non-submission of 'C' Form towards claim of concessional rate of tax on Rs.2,14,008.00, he taxed this amount at State rate. All these resulted in an extra demand of Rs.9,20,146.00 which was challenged by the assessee in first appeal

before the ld. FAA. The ld. FAA, after due examination the case, confirmed the assessment order passed by the LAO for the impugned period with his reasoned order.

4. Being further aggrieved by the aforesaid order of Ld.FAA, the assessee preferred second appeal before this Tribunal mainly on the following grounds:

- i. "That as per IPR' 96, the appellant is eligible to avail tax exemption to the extent of fixed capital investment made in the SSI Unit which has duly been certified by the DIC.
- ii. That while completing the assessment for the year 2000-01, the learned Sales Tax Officer without taking into consideration the sale turnover of Crusher Unit for computation of tax liability in respect of fixed capital investment, took the entire transaction relating to regular sales from the Mines Head and from the Crusher Unit for computation of tax liability in respect of fixed capital investment and has come to a conclusion that exemption limit granted under the IPR' 96 has been crossed by 28.02.2001 and the appellant is liable to pay tax on its sales with effect from 1.3.2001.
- iii. That against such erroneous finding, the appellant had filed appeal before the Assistant Commissioner of Sales Tax, Cuttack-II Range, Cuttack against the assessment for the year 2000-01. The Assistant Commissioner while disposing of the appeal was pleased to set-aside the assessment with a direction to recompute tax liability after taking into the consideration the sales from the Crusher Unit only.

But unfortunately without completing the reassessment, the Sales Tax Officer, Keonjhar Circle completed the assessment for subsequent years which is illegal, arbitrary and bad in law.

- iv. That sales from the Crusher Unit being exempted from payment of tax under the IPR'96 to the extent of fixed capital investment by the appellant, the tax liability for the year 1999-2000 comes to Rs.6,53,431.00 and for the year, 2000-01, the total tax liability both under the OST Act and CST Act comes to Rs.9,25,819.00. The total liability from the date of production commencing from Crusher Unit till 31.03.2001 works out to Rs.15,79,250.00 leaving a carry-forward amount of Rs.22,39,989.00 for the year 2001-02 out of the fixed capital investment of Rs.38,19,239.00.
- v. That during the year 2001-02 the Appellant had sold sized ore from the crusher unit both under the OST Act and CST Act and the total tax liability for the aforesaid transaction works out to Rs.12,08,962.40.
- vi. That taking into consideration the total tax benefit available to the appellant for the years 1999-2000, 2000-01 and 2001-02 works out to Rs.28,41,643.40. Thus the appellant is due to avail tax exemption of Rs.9,77,596.00 during the year 2002-03 against the fixed capital investment of Rs.38,19,239.00.
- vii. That during the year 2002-03, the appellant had sold sized ore from the SSI Unit amounting to Rs.2,26,90,629.00 and the tax under the CST Act thereon against submission of declaration form

'C' the rate of tax of 4% and accordingly the tax liability comes to Rs.9,07,225.00. Thus, the appellant is due to avail tax exemption of Rs.70,371.00 during the year, 2003-04.

- viii. That while completing the assessment, the learned sales tax officer as well as assistant Commissioner had calculated the rate of tax on the sale of goods from the SSI Unit at the rate of 16% during 2000-01 to arrive at their conclusion against submission of declaration Form 'C'.
- ix. That when declaration form 'C' has been submitted, the rate of tax should have been calculated at the rate of 4% and not at the rate of 16% which is illegal and arbitrary.
- x. That as per general conditions and exception, sales Tax for the purpose of calculating the ceiling of the benefit shall include Sales Tax payable under the OST Act and CST Act taken together. The tax payable under the CST Act as defined U/s.8 of the CST Act is 4% of the turnover or at the rate as applicable to sale and purchase of goods inside the appropriate State under Sales Tax Law of that State, which-ever is lower.
- xi. That since the appellant had collected declaration Form 'C' against his sale made from the SSI Unit during the years 1999-2000 and 2000-01, the applicable rate for calculation of ceiling limit should have been calculated at the rate of 4% instead of 16% which has been adopted by the Sales Tax Officer as well as Assistant Commissioner Sales Tax."

5. During the course of hearing, the Id. Counsel for the assessee strongly challenged the impugned order and averred that both the forums have erred in determining the tax exemption period. He stated that this Unit started its commercial production on 08.04.99 and is eligible for exemption of sales tax on sale of its finished product to the extent of 100% of fixed capital investment for a period of six years from the date of commencement of production as per IPR' 96 being located in Zone- 'B' subject to such restriction and conditions as laid down in Finance Department Notification bearing No.33376/F dtd.26.07.96 amended from time to time. He further stated that the assessee has availed the following tax exemption for different periods under both OST and CST Acts taken together:

<u>Year</u>	<u>Tax exemption availed</u>
a. 1999-2000	Rs.6,53,431.00
b. 2000-2001	Rs.9,25,819.00
c. 2001-2002	Rs.12,08,962.40
<b>Total</b>	<b>Rs.27,88,212.40</b>

Fixed capital invested as certified by the DIC = Rs.38,19,239.00

d. Balance exemption benefit to be availed = Rs.10,31,027.00

e. Exemption availed during impugned period

of 2002-03 = Rs.9,07,225.00

f. Exemption benefit to be availed in 2003-04= Rs.1,23,802.00

He argued that both the forums below have wrongly calculated CST at state rate as a result which they come to a wrong conclusion that the assessee has exhausted his tax exemption limit by 01.03.2000. In this regard, he mentioned the judgment of Hon'ble Orissa High Court in case of Luis Packaging Pvt. Ltd. Vrs. State of Orissa and Others reported in (2010) 32 VST 481 (Ori.) in which their Lordship observed that both concession and exemption can be availed simultaneously by a dealer.

6. Per contra, the Id. Standing Counsel(C.T.) for the State argued vehemently in favour of the orders of forums below being just, proper and in accordance with the provisions of law that does not warrant any further interference by this Tribunal.

7. From the rival contentions of both the parties, the moot question involved in the present case to be adjudicated in a proper and rational manner is :

“Whether, in the facts and circumstances of the case, it is permissible for the appellant to avail both concessions and exemption under IPR'96?”

In order to properly address the above question it will first be prudent to have a bird's eye view on the PMT and eligibility certificate issued by the DIC, Keonjhar and thereafter glance through the relevant provisions of the statute with cited case law.

We observe that the assessee has been issued with a PMT Certificate bearing No.150801830 dtd.27.05.1999 by the GM, DIC,

Keonjhar to produce sized iron ore of 1,20,000MT with date of commercial production on 08.04.1999. As per certificate of eligibility, the assessee has been allowed to purchase machinery spare parts, raw materials and packing materials, having fixed capital investment of Rs.38,19,239.00. He is allowed exemption of sales tax to the extent of 100% of fixed capital investment in plant and machinery having located in Zone 'B' under IPR'96. The assessee has claimed that it has availed sales tax exemption to the tune of Rs.27,88,212.00 from 1999-2000 to 2001-2002, leaving a balance of Rs.10,31,027.00 out of which it has availed tax exemption of Rs.9,07,225.00 during the impugned year by submitting valid declaration form 'C' in inter-State sale of finished goods without having any sale transaction under the OST Act.

It is now pertinent to know the condition of availing tax exemption under the CST Act which reads as under:

“In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956(74 of 1956), the State Government, having been satisfied that it is necessary so to do in the public interest, do hereby direct that no tax under the said Act shall be payable in respect of sales in the course of inter-State trade or commerce, of goods manufactured/processed by a registered dealer having his place of business in the State of Orissa, if such sales are made from such place of business in Orissa [to a registered dealer or the Government] during the period when such dealer is entitled to the exemption of sales tax under Section 6 of the Orissa Sales Tax Act,

1947, under the notification of the Government of Orissa in the Finance Department No.33376/F., dated the 26<sup>th</sup> July, 1996, as amended from to time subject to the limitations, exceptions and conditions specified therein [and also subject to the condition of production of declaration in Form 'C' or certificate in Form 'D' as the case may be, prescribed under the Central Sales Tax (Registration and Turnover) Rules, 1957, to the assessing authority] and direct that this notification shall be deemed to have come into force, with effect from the 1<sup>st</sup> March, 1996.]”

As such, in order to avail exemption of tax in inter-state sale of goods, it is mandatory on the assessee to submit the required form 'C' before the LAO/Ld. FAA, failing of which tax exemption will be calculated at State rate. In this connection, the Hon'ble High Court Judgment in case of Luis Packaging Pvt. Ltd. Vrs. State of Orissa and Others reported in (2010) 32 VST 481 (Ori.) is worth mentioning. The Hon'ble Orissa High Court in the aforesaid case has held as under:

“14. In view of the facts and submission noted hereinabove and in the light of the case law cited, we are of the considered opinion that when the State Government issues a notification for providing concession in tax, it would be assumed that the Government is well aware of the concessions otherwise available to the dealer under the Act and whatever is given under the notification is over and above what is provided under the Statute. In other words, when the benefit under the IPR, 1996 was promulgated with new industries becoming entitled

to exemption from sales tax on sales and purchases, it has to be assumed that the State Government was well aware of the concessions otherwise available to the dealers under the OST Act, 1947 and that the benefits under the IPR'96 were over and above what was provided for under the OST Act.”

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.

8. Accordingly, it is ordered.

The appeal filed by the dealer-appellant is allowed and the case is remanded to the LAO for re-assessment in the light of our above observations for the impugned period and to complete such re-assessment preferably within three months from the date of receipt of this order giving the assessee a reasonable opportunity of being heard.

The case is disposed of accordingly.

Dictated & corrected by me,

Sd/-  
**(Srichandan Mishra)**  
Accounts Member-II

Sd/-  
**(Srichandan Mishra)**  
Accounts Member-II

I agree,

Sd/-  
**(A.K. Das)**  
Chairman

I agree,

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