

Sulphate. The unit started commercial production w.e.f. 27.12.1993. As per the PMT certificate the annual installed capacity of the unit for manufacturing of Sodium Dichromate and Sodium Sulphate has been fixed at 300 MT in each case. During the year in question the dealer-appellant has effected inter-State sale goods worth Rs.1,90,80,171.00 and claimed tax exemption sale in course of interstate trade and commerce to the tune of Rs.96,74,271.00 and concessional sale @4% CST to the tune of Rs.90,44,144.00 against declaration in Form 'C'. As the dealer-appellant failed to produce any declaration in Form 'C' and wilfully withheld CST of Rs.3,61,756.00, the learned assessing authority raised demand of Rs.19,68,231.00 reducing the exemption as per IPR-89 from Rs.96,74,271.00 to Rs.46,10,996.00 with the following observation:-

“XXX XXX XXX Considering the annual installation capacity recommended by the DIC as per PMT certificate having 300 MT capacity for each product and exemption allowed till 31.07.1999 i.e. the part of the financial year, the exemption limit now comes to 100.273 MT for each product. Hence the claim of exempted sales as per IPR-89 effected in the dealer reduce and estimated at Rs.46,10,996.00 which is allowed and the balance taxed at its appropriate rate. XXX XXX”

3. Being aggrieved the instant dealer carried the matter in first appeal with the following grounds:-

That the assessment order is a fit case to be quashed and demand annulled as the same is not based on facts and circumstances of the case and the learned assessing authority passed the assessment order by not allowing enough opportunities to produce 'C' Forms.

The first appellate authority considering the 15 nos. of declaration in Form 'C' produced at the time of hearing allowed concessional sales by accepting the declaration forms submitted at the appeal stage to the tune of Rs.49,85,721.00 on proper verification of the forms with reference to the books of accounts produced. As the dealer-appellant failed to produce declaration in form 'C' for claimed

concessional sales amounting to Rs.40,58,423.00 before the first appellate authority, concessional sales were disallowed to the extent. Accordingly, the appeal was allowed in part and the demand was reduced to Rs.14,79,631.00.

4. Further aggrieved by the order of the learned first appellate authority, the dealer approached this Tribunal with the following grounds:-

- (1) The order passed by the below forums suffers from illegality and arbitrariness.
- (2) The basis adopted for estimating the tax liability by the below forum is not a fair and true one and it is not based on all relevant aspects and requisite materials.
- (3) The learned below forum are not justified in not allowing reasonable opportunity for furnishing the central Sales tax declaration form.
- (4) The levy of surcharge is illegal and arbitrary and contrary to the provisions of the law.

5. Shri B. B. Panda, the learned Advocate appearing on behalf of the dealer-appellant reiterating the grounds of appeal filed and filed a written note of submission and citation indicating the points as follows:-

- (i) Whether under the facts and circumstances of the case, the forums below has justified for disallowing the exemption claimed in the return supported with valid documents without giving any reason as per the provisions of law?
- (ii) Whether under the facts and circumstances of the case, the learned first Appellate authority is justified by not considering the declaration forms filed at the time of hearing of the appeal?

The issue-wise submission are as follows:-

- (I) (a) The learned Advocate submitted that the appellants unit has been certified by the Competent Authority of Industry that for the year 1999-2000, the instant capacity of production has been enhanced as

per the certificate where the maximum annual production capacity of four products has been mentioned at page No.2 are as follows:-

From 27.12.1998 to 31.07.1999 (6th year of production)

- | | | |
|------|-------------------|----------------|
| (i) | Sodium Dichromate | ... 426.550 MT |
| (ii) | Sodium Sulphate | ... 336.660 MT |

But nowhere in the certificate it has been mentioned that the above two products maximum capacity of production was 300 MT each. The exemption has been reduced to 100.273 of each products is not supported with any reason and materials.

The maximum limit as per the certificate (a photo copy produced) should be allowed basing on calculation from 01.04.1999 to 31.07.1999 that is for periods of four months by applying mathematical formula as follows:-

Product No. i 426.550 MT + product No. ii 336.660 MT = 763.210 MT

Production capacity for month 763.210 divided with 12= 63.60 MT per months and for four months April, 1999 to July, 1999 should be 63.60 MT ×4= 254 MT against allowed quantity of 100.273MT.

The findings of the forum below not supported with any material and reason rather the appellant above submission is supported with the certificate and books of accounts and returns figures disclosed before the learned Assessing Officer

(b) The appellant is relying upon the latest judgment of the Hon'ble Orissa High Court in case of Lingaraj Pipes Pvt. Ltd. Vrs. Sales Tax Officer, Bhubaneswar-II Circle, and others reported in 2007 Vol. 9 VST at page 95(Orissa). Their lordships have held that..." ***the petitioner is entitled to avail benefit on the basis of the certificate granted to it. Even any mistake is found in the certificate by giving any retrospective operation it would result in total injustice and would amount to arbitrary action and be violative of Art.14 of the Constitution. At best such mistake notion can be could be corrected only a prospective manner. Therefore, the impugned assessment order and the consequential demands were liable to be quashed.***

(c) The above ruling made it clear that even though the certificate may not be correct, but the factual aspect should be taken into consideration after examining the facts of the industrial development of State by the Industry Department creating an atmosphere of contribution of an industrialist towards the labour and employment. Basing on the aforesaid spirit the appropriate order may be passed on the first issue.

(II) On the second issue that is on non-consideration of original C declaration forms four nos. for an amount of Rs.8,81,639.00 and one duplicate form by mistake for an amounting to Rs.1,83,864.00, in total for a sum of Rs.10,65,503.00, the learned Appellant authority has not given any reason. Therefore, the appellant is filing herewith an application for acceptance of original one original form for Rs.1,83,864.00 in place of duplicate form submitted with a list U/r. 61 of the OST Rules. And submitted the forms submitted earlier as per the list may be considered in order to give due justice to the petitioner as per the settled principles of law made by the High Court's on this issue.

6. Shri S.K. Pradhan, the learned Addl. Standing Counsel (C.T.) appearing on behalf of the Revenue supported the order passed by the learned first appellate authority as just and proper. He has also argued that as an SSI unit the dealer-appellant is entitled to concession of tax till 31.07.1999. Further he forcefully argued that the eligibility of the dealer appellant as a small scale industrial unit has been accorded PMT Registration No.15/14/02784/PMT/SSI dated 30.12.1993 Under IPR 1989. The dealer-appellant was eligible for sales tax concession on finished product of the unit for a period from 30.01.1993 to 31.07.1999. The learned Addl. Standing Counsel (C.T.) furnished a memo enclosing the photo copies of the orders passed by this Tribunal in S.A. No.3159/2003-04, for the assessment period 1996-97 passed under OST Act and S.A. No. 225(C)/2003-04, for the assessment period 1996-97 passed under the CST Act concerning eligibility for sales tax concession on finished product in respect of the instant dealer.

7. We have heard the averments of the learned Counsels for both the parties, gone through the impugned orders of the fora below, grounds of appeal of the appellant, the written submission filed by the learned Advocate on behalf of the dealer-appellant and the memo filed by the learned Addl. Standing Counsel (C.T.) appearing on behalf of the respondent- State at the time of hearing before the Bench. The issues to be addressed before the Bench are as follows:-

- (i) Whether the learned first appellate authority is justified in accepting the exemption of 100.273 MT for each product of the unit up to 31.07.1999 during 1999-2000 in consideration of the fact that the annual installation capacity as per PMT certificate is 300MT for each product (sodium Dichromate and Sodium Sulphate)?
- (ii) Whether the claim of the learned Advocate on behalf of the dealer-appellant that the learned first appellate authority has not considered the four nos. of original declaration form in 'C' submitted before her for consideration of concessional CST sales amounting to Rs.8,81,639.00 is to be entertained at this stage?
- (iii) Whether the original declaration form 'C' bearing No. NH/01/6646736 produced before the Bench for transactions to the tune of Rs.1,83,864.00 is to be accepted?

(i) The learned Addl. Standing Counsel (C.T.) Shri S.K. Pradhan, appearing on behalf of the respondent-State took the following contentions in respect of justification of the findings of the fora below in respect of eligibility or entitlement of sales tax exemption as allowed to the dealer-appellant. The period of assessment in question is 1999-2000. The benefit under IPR 1989 had been withdrawn by the Finance Department w.e.f. 01.08.1999. The learned Addl. Standing Counsel(C.T.) has cited the case of Shree Jagannath Packers Vrs. State of Odisha, (2005) 141 STC 26 (Ori) in connection with validity of withdrawal notifications issued by the Finance Department were challenged and the Hon'ble Court declined to struck down the action of the Govt. The said judgment being questioned before the Hon'ble

Supreme Court the same was dismissed vide (2005) 10 SCC 423 : Shree Jagannath Packers Vrs. State of Odisha. The learned Addl. Standing Counsel (C.T.) has also pointed out the judgment of the Hon'ble High Court of Odisha in the case of Priti Oil Mill Vrs. State of Odisha, STREV No.470 of 2008, disposed of on 05.01.2016 held that:

“XXX XXX XXX The challenge made to the notification withdrawing the benefit has to be rejected but insofar as the assessment year 1999-2000 is concerned, since the notification of withdrawal was given effect from 01.08.1999, the petitioner would be entitled to the benefit of the I.P.R.89 till 31st July, 1999. He further forcefully argued that when the appellant has not taken any ground in the second appeal with regard to claim of the entitlement of benefit of IPR 1989, the same does not deserve consideration.

It is observed that for the earlier assessment year, 1996-97, this Tribunal in Full Bench in S.A. No.225(C) of 2003-04 vide order dated 13.03.2008 in the matter of this dealer observed thus:

“7. XXX XXX We are convinced that the PMT certificate contains the actual annual installed capacity of the unit run by the dealer and the said capacity for sodium dichromate and sodium sulphate is 300 MT each. As it transpired from the letter of the Director of Industries, Cuttack bearing No.6359, dt.24-28.05.2001 addressed to the General Secretary to Government of Orissa, Industries Department, Bhubaneswar on clarification of IPR, 1989 the original installed capacity of the unit cannot be changed frequently and it can be changed only if the unit undergoes EMD. From the clarification as given by the Director of Industries, the capacity mentioned in the PMT certificate at the time of issue can be occasionally changed but in the instant case such occasional change has not been effected in the PMT Certificate XXX XXX.”

The learned Advocate on behalf of the dealer-appellant has relied upon the judgment of the Hon'ble Odisha High Court in case of M/s. Lingaraj Pipes Pvt. Ltd. Vrs. STO reported in (2007) Volume 9 VST 95 (Ori). The said case relates to IPR, 1996. Granting the certificate

under mistaken notion would not debar the assessee from claiming the benefit under IPR. But in the instant case, the appellant-dealer has not raised this issue neither before the first appellate authority nor before this Tribunal by way of grounds of appeal. Therefore, the Judgment is not applicable to the present case.

The aforesaid exemption under IPR, 1989 as claimed by the learned Advocate appearing on behalf of the dealer-appellant appears to have no relevance as the assessing authority has already made his observation in the matter which has already been discussed above which is not stated to be incorrect by the appellant. As no such ground was taken by the dealer-appellant before the learned assessing authority or before the first appellate authority and also not raised in the grounds of appeal at the time of filing of second appeal before this Tribunal. This contention taken by the learned Advocate on behalf of the dealer-appellant at the time of hearing before the Bench deserves no consideration.

(ii) Fact of production of certain documents before the first appellate authority cannot be accepted at this distance of time. No relief can be granted basing on the affidavit dated 02.07.2018 inasmuch as the appeal order was passed on 25.02.2008 pertaining to the period 1999-2000. No documentary evidence could be adduced in support of proof of filing of four original and one duplicate copy of declaration in form 'C' before the first appellate authority. Perusal of grounds of appeal does not reveal such fact. The fact contained in the affidavit is contrary to what has been sought for in ground No.3 of grounds of appeal filed by the dealer-appellant before this Tribunal which is extracted hereunder:

“03. That the learned below forum are not justified in not allowing reasonable opportunity for furnishing the Central Sales Tax declaration Form.”

On receipt of the first appeal order, non-recording of fact of submission of declaration forms and non-consideration of the same by the first appellate authority could have been brought the notice

of the learned first appellate authority by the dealer-appellant at the relevant point of time. Filing of affidavit as done by the managing partner of the dealer-appellant in his own statement, in favour of the dealer-appellant (own concern), cannot be regarded as sufficient evidence on the basis of which a conclusion can be arrived at as regards a particular fact-situation.

So far as the contention taken by the learned Advocate on behalf of the dealer-appellant that the first appellate authority has not considered the four nos. of declaration in Form 'C' in original and one duplicate copy of declaration Form 'C' it is pertinent to make a mention here that there was no such discussion in the order of the first appellate authority. It is not correct to say that the dealer-appellant was not allowed natural justice in filing declaration in Form 'C' for the assessment for the impugned period was completed on 31.03.2003 and the first appeal order was passed on 25.02.2008. The first appellate authority has already considered the declaration Form 'C' produced before her in course of appeal hearing duly verifying the forms with the books of accounts. The first appellate authority has categorically stated that the appellant failed to produce declaration in Form 'C' for transactions to the tune of Rs.40,58,423.00 at the stage of first appeal hence the disallowed the claim of concessional sales in course of interstate trade and commerce as the sales are not supported with the declaration Form 'C'. The learned Advocate appearing on behalf of the dealer-appellant could not adduce any documentary evidence in support of the contention taken only at the time of hearing before the Bench. Hence the contention of the learned Advocate on behalf of the dealer-appellant is not accepted being devoid of corroborative evidence.

(iii) As the learned Advocate on behalf of the dealer-appellant produced one original declaration in Form 'C' bearing Sl. No. MAH/01/6646736 issued by Sudarshan Chemical Industries Ltd., Pune for Rs.1,83,864.00 at the time of hearing before the Bench, the order of the first appellate authority warrants interference to that extent. The

photo copy of the original declaration form produced by the learned Advocate on behalf of the dealer-appellant is retained and the original form is returned to the learned Advocate for submission before the first appellate authority for necessary verification with the books of accounts for acceptance of the same in accordance with law.

8. In the result, the appeal is partly allowed with a limited point for adjudication to the learned first appellate authority to verify the genuineness of transaction and allow concessional sale against submission of the declaration form bearing Sl. No. MAH/01/6646736 by the dealer-appellant, if found proper on verification. This exercise should be completed within a period of four months from the date of receipt of this order.

Dictated and Corrected by me.

(P.C. Pathy)
Accounts Member-I

I agree,

(P.C. Pathy)
Accounts Member-I

(Suchismita Misra)
Chairman

I agree,

(Subrat Mohanty)
Judicial Member-II