BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No. 3 OF 2003-04

(Arising out of order of the learned ACST, Puri Range,
Bhubaneswar in Sales Tax Appeal No. AA. 102/BH.I/2002-03,
disposed of on dated 10.01.2003)

Present: Shri R.K. Pattanaik, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member, and
Shri R.K. Pattnaik, Accounts Member-III

M/s. Automotive India (P) Ltd.,
Mancheswar Industrial Estate, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri M.S. Raman, Additional S.C. (CT)

Date of hearing: 06.03.2020 ***** Date of order: 18.03.2020

O R D E R

Whether the appellant unit is exigible to tax or entitled to exemption is the subject matter in question before the Tribunal, inasmuch as, the assessment order of the Sales Tax Officer, Bhubaneswar-I Circle, Khurda (in short, 'the AA') under Section 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'the Act') for the assessment year 1996-97 raising an extra demand of ₹9,65,891.00 being confirmed by the Assistant Commissioner of Sales Tax, Puri Range, Bhubaneswar (in short, 'the FFA') vide impugned order dated 10.01.2003 is currently under challenge invoking

Section 23(3)(a) of the Act on the grounds inter alia that such confirmation of assessment is bad in law.

2. In the instant case, the appellant contends that the assessment as well as the impugned order dated 10.01.2003 are neither based on facts nor supported by law and thus, without jurisdiction and therefore, liable to be set aside. It is also contended that the appellant is a dealer of a small scale industrial unit which enjoys benefits extended under different Industrial Policy Resolutions (in short, 'IPR') notified by the Industries Department being concurred by the Finance Department of the Government of Odisha from time to time and as such, it enjoys IPR, 1989 on the sale of finished products for a period of 07 years, but unfortunately, the AA ignoring the explanation and exemption certificate granted by the Director of Industries (in short, 'DIC') duly concurred by the Finance Department, Government of Odisha made the assessment which is without the authority of law.

3. On the other hand, the State would contend that there is no error or illegality in so far as the assessment by the AA for the assessment year 1996-97 is concerned besides the impugned order dated 10.01.2003 promulgated by the FAA, more particularly when, it was concluded that the appellant unit is not entitled to tax free under any of the provisions of the IPR for not being supported by law.

4. In fact, none appeared for the appellant and in presence of the learned Additional Standing Counsel (CT) appearing for the State, the matter was heard ex parte, for its disposal on merit.

5. As regards the appellant, it is a private limited company and an assessee which manufactures spring leaf and fabricated goods and by a notice under Section 12(4) of the Act, the books of account were directed to be produced, but then, exemption under the IPR, 1989 was claimed and while doing so, a request was made to withhold the assessment 1996-97, as is revealed from the assessment order dated 05.12.1997. Such request of the appellant was rejected by the AA who ultimately proceeded to dispose of the proceeding under Section 12(4) of the Act ex parte and finally concluded that in absence of a notification under Section 6 of the Act, such an exemption cannot be claimed. It was also concluded that the appellant could not produce any certificate issued by the Industry Department, Government of Odisha and in absence of any specific provision under the Act for the revival of a sick unit of IPR, 1989, no such benefit can be extended. The decision of the AA, as above, was confirmed by the FAA under the impugned order dated 10.01.2003. Now, the question is, whether, there was any material produced by the appellant seeking exemption from payment of tax in consonance with Section 6 of the Act?

6. In fact, the industrial policy of the State is always flexible and does not remain static considering the changed scenario developments in the industry and reckoning various factors which is decisive in formulating policy to provide certain incentives to different types of industries by fixing eligibility criteria, as has been deciphered in a decision of the Hon'ble Court in the case of M/s. Orissa Sponge Iron Ltd. and another Vs. State of Orissa and others in O.J.C. No. 4056 of 1995 disposed of on 14.05.1996. With respect to Section 6 of the Act, it is clearly

mandated that the State Government may by a notification, subject to such conditions and exceptions, if any, exempt from tax, the sale or purchase of any goods or class of goods and likewise, withdraw any such exemption. The above is with respect to goods or class of goods, whereas, Section 7 of the Act relates to the authority of the State Government to exempt dealer or class of dealers from the payment of tax or its deferment subject to such restrictions and conditions including conditions as to registration and registration fees. It does mean that under Sections 6 and 7 of the Act, subject to restrictions and conditions, either goods or class of goods and dealer or class of dealers, respectively may be exempted from payment of tax by a notification issued by the State Government. As to the present case, the appellant, whether, is entitled to any such exemption under Section 6 or 7 of the Act and if at all, any such material was produced by it, the same is to be looked into so as to take a decision vis-a-vis the sustainability of the impugned order dated 10.01.2003.

7. The first and foremost thing for the Tribunal is to ascertain if any certificate was produced by the appellant before the AA while asking for exemption benefit. It is made to understand from the assessment order that the appellant failed to produce any certificate issued by the Industry Department, Government of Odisha. Before the FAA, the appellant could have produced the same, while demanding exemption from payment of tax. There is no evidence on record to substantiate such a claim of the appellant regarding exemption by virtue of any certificate which was claimed to have been issued by the Director of Industry duly concurred by the Finance Department, Government of Odisha. The Tribunal is also

unable to ascertain, if at all, the benefit of exemption vis-a-vis the appellant unit could really be extended in absence of any specific provision under the Act. More or less, the certificate of exemption was found not to have been submitted to the AA or at least before the FAA by the appellant during the pendency of 1st appeal. Actually the claim of the appellant was denied on the ground that no such certificate was produced and that apart, in absence of a notification for exemption, either in respect of goods or dealers, as the case may be. It was the duty and responsibility of the appellant unit to submit that there was a notification under Section 6 or 7 of the Act pursuant to which certificate of exemption was issued. Rather, from the grounds of appeal, it is suggested that such exemption, if any, was unilaterally withdrawn without referring to the Industry Department, Government of Odisha alleging it to be an arbitrary exercise of power. Frankly speaking, it is not within the realm and competence of the Tribunal to consider such a contention of the appellant. On the one hand, it is claimed by the appellant that it had not collected sales tax for the financial years 1992-93 to 1998-99 being allowed to avail exemption by the Industry and Finance Departments, Government of Odisha and on the other hand, demanded that its withdrawal unilaterally to be an act of arbitrariness and colourful exercise of power by the State Government. If a particular goods or class of goods, or dealer or dealers, as the case may be, is or are to be included or excluded or retained to receive benefits of exemption, as per the understanding of the Tribunal, is the absolute prerogative of the State Government and any action in respect thereof may be a subject of challenge on the ground of irrational and discriminatory classification. So far as the Tribunal is

concerned, it does not have the power to entertain and adjudicate upon such a contentious issue which is with respect to unilateral withdrawal of exemption without any reference to the Industry Department, Government of Odisha. So, the aforesaid contention of the appellant does not really hold any ground.

8. Another contention raised before the AA is in respect of withholding the assessment which was denied on the ground that the same is not permissible in the eye of law. In fact, the appellant desired that the assessment for subsequent year should be held up, when the previous one to be subjudice. A decision is referred to that of the Hon'ble Supreme Court of India in the case of U.P. Sales Tax Service Association Vs. Taxation Bar Association, Agra and others reported in 100 STC 108 (SC) by the AA, while rejecting the claim of the appellant and according to the Tribunal, it has rightly been applied. In that decision, the Hon'ble Apex Court held and observed that though the power is wide and expansive, no Court shall have power to issue prohibitory orders against authority from discharging its statutory functions. So, the request for withholding the assessment for a particular year as advanced by the appellant was rightly denied by the authority of first instance.

9. It is settled law that unless and until a notification under Section 6 or 7 of the Act is issued by the State Government for exemption from tax in respect of certain goods or dealers, it cannot be permitted and in the present case, the appellant miserably failed to substantiate its exemption by producing any such certificate granted by the Industry Department on being duly concurred by the Finance Department, Government of Odisha. In other words, absence of

notification in respect of goods of the appellant was considered to be the ground against availing exemption benefit by the appellant. The Tribunal does not find any legal infirmity in the decisions of the AA as well as FAA, for that matter.

10. The appellant relied upon a decision of the Hon'ble Apex Court in the case of Radhasoami Satsang Vs. Commissioner of Income Tax reported in (1992) 193 ITR 321 (SC) and it was contended that the principle so laid down therein should have been applied. In the decision (supra), it is held that each assessment year being a unit, what is decided in one year may not apply in the following year, but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the same, it would not be at all appropriate to allow the position to be changed in a subsequent year. The appellant claimed that since it was exempted from payment of tax for certain years, a decision to change or withdraw or deny such exemption is clearly susceptible to attack. In other words, the claim is that assessments may change but not the fundamental aspects, which according to the appellant, has been totally lost sight of by the AA. The aforesaid decision is in relation to and in the context of an Income Tax proceeding and the Hon'ble Apex Court at the end observed that the ratio of the decision is only confined to the facts of that case and may not be treated as an authority on aspects which have been decided for general application. The principle as deducted from the said decision of the Hon'ble Apex Court is that the stand which is taken by one of the parties and opposed by the other and finally decided and continued to be so without being any challenge by

such party against whom the decision has gone, in subsequent years of assessment, the fundamental aspect which has remained although should not be changed which was particularly in reference to the provisions of the Income Tax Act. In that case, whether, the party which approached the Hon'ble Apex Court is entitled to exemption or not being a religious subject was dealt with and in that context, it was held that the fundamental aspect of the case ought not to be changed, while determining the assessment for a particular year or thereafter. The decision (supra) and its principles which are not of general application can be extended to the case of the appellant. Since it is depending on a notification issued under Section 6 or 7 of the Act, inclusion or exclusion of items, whether, of goods or dealers is based on the Industrial Policy of the State Government, it cannot be claimed as a matter of right by the appellant that such exemption to continue for subsequent years by referring to the said decision of the Hon'ble Supreme Court of India which is again held to be applicable to the facts of that case and not to be treated an authority for all general purposes. So, it can safely be held that the AA, though for different reasons, rightly declined the exemption which was claimed by the appellant by heavily relying upon the aforesaid decision of the Hon'ble Apex Court. So, the inevitable conclusion of the Tribunal is that there is absolutely no ground existing to extend any such exemption benefit in favour of the appellant in absence of a notification under Section 6 or 7 of the Act.

11. Hence, it is ordered.

12. In the result, the appeal stands dismissed. As a consequence, the impugned order dated 10.01.2003 passed in Sales Tax Appeal No. AA. 102/BH.I/2002-03 by the FAA confirming the assessment of the AA for the year 1996-97 is hereby upheld and confirmed.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(A.K.Dalbehera)
1st Judicial Member

I agree, Sd/-
(R.K. Pattnaik)
Accounts Member-III