

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

S.A. No. 165 (C) of 2005-06

(Arising out of order of the learned ACST, Jajpur Range,
Jajpur Road in First Appeal No. AA- 57/KJC/2002-03,
disposed of on dated 21.03.2005)

Present: **Shri A.K. Das, Chairman**
Smt. Sweta Mishra, 2nd Judicial Member
&
Shri M. Harichandan, Accounts Member-I

M/s. V.A. Transport (P) Ltd.,
At/PO- Barbil, Dist. Keonjhar ... 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 D. Behura, S.C. (CT),
Sri M.S. Raman, Addl.SC (CT) &
Sri S.K. Pradhan, Addl.SC (CT)

Date of hearing: 11.11.2021 *** Date of order: 17.11.2021

O R D E R

The dealer-appellant has preferred this appeal assailing the order dated 21.03.2005 passed by the learned Asst. Commissioner of Sales Tax, Jajpur Range, Jajpur Raod (hereinafter called as 'first appellate authority') in Appeal Case No. AA- 57/KJC/2002-03 thereby confirming the order of assessment dated 25.09.2002 passed by the

Sales Tax Officer, Keonjhar Circle, Keonjhar (in short, 'assessing authority') raising tax demand of ₹17,89,053.00 u/r. 12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') for the assessment period 2001-02.

2. The facts in nutshell giving rise to the present appeal are that the dealer-appellant is engaged in manufacturing and sale of iron ore. It sold finished products, size iron ore manufactured out of iron ore lumps to outside the State of Odisha. In response to the notice issued u/r. 12(5) of the CST (O) Rules, the dealer produced the books of account for examination, on verification of which the assessing authority found the dealer to have sold finished goods, size iron ore to outside the State of Odisha to the tune of ₹2,92,39,550.00 during the period in question. The dealer could not produce valid declaration in Form-C for an amount of ₹1,76,607.00 which the assessing authority taxed appropriately. It also despatched goods in course of export to the tune of ₹74,50,375.00 which was allowed as deduction by the learned assessing authority. The dealer also sold goods to the extent of ₹1,61,51,438.00 which he claimed exemption under IPR, 1996 and such claim of the dealer was disallowed as he had already crossed the ceiling

limit under the IPR having availed 100% tax exemption/benefit of fixed capital investment, i.e. ₹80,37,507.00. Accordingly, the assessing authority raised tax demand to the tune of ₹17,89,053.00.

2(a). The dealer-appellant being aggrieved with the aforesaid findings of the assessing authority, preferred appeal before the first appellate authority, who also did not accept any of the contentions raised by it in the grounds of appeal and confirmed the order of the assessing authority. The dealer being further aggrieved with the aforesaid findings of the first appellate authority has preferred the present second appeal.

3. When the matter was called on for hearing, none appeared on behalf of the dealer-appellant despite due service of notice. So, the matter was taken up for hearing *ex parte* in the presence of the learned Standing Counsel (CT) representing the State.

4. It appears from the memorandum of appeal that the dealer has mainly assailed the impugned orders of both the forums below on the ground of disallowing the benefit under IPR, 1996. It has been asserted in the memorandum of appeal that the appellant was eligible for

exemption of sales tax for a period of six years i.e. w.e.f. 19.04.1998 from the date of commercial production, but the assessing authority as well as the first appellate authority did not allow the claim of exemption within that period of six years. Therefore, the impugned orders passed by both the forums below were not sustainable.

5. Learned Standing Counsel (CT) for the State supporting the impugned orders of both fora below vehemently urged that the assessing authority in the impugned order categorically observed that the dealer-appellant had already availed 100% tax exemption of fixed capital investment by the time of assessment. So, it rightly negated the claim of exemption, which was on appeal confirmed by the first appellate authority. There is no illegality and impropriety in the orders of the forums below disallowing the claim of exemption under IPR, 1996 warranting interference of this tribunal.

6. We have heard the learned Standing Counsel (CT) for the State, gone through the grounds of appeal, impugned orders passed by the forums below vis-a-vis the materials on record. On perusal of the impugned orders passed by the forums below we find that the learned

assessing authority in its order categorically observed that the dealer sold goods to the tune of ₹1,61,51,438.00 which he claimed as exemption under IPR, 1996 and disallowed such claim of the dealer as he had already crossed the 100% of fixed capital investment to the tune of ₹80,37,507.00. In the appeal filed before the first appellate authority, the dealer did not produce material to satisfy the appellate authority that the finding of the assessing authority about availing benefit/tax exemption to the extent of 100% of fixed capital investment, i.e. tune of ₹80,37,507.00 was incorrect, for which the first appellate authority also agreed with the view expressed by the assessing authority and disallowed the claim of exemption under IPR, 1996. In the second appeal also at the time of hearing, the dealer did neither appear nor produced any material to substantiate his claim of exemption and falsify the findings of the assessing authority that it had already availed tax exemption/benefit to the extent of 100% of fixed capital investment. The reason assigned by both the forums below for disallowing the claim of exemption under IPR, 1996 is just, proper and legally sustainable. There is nothing on record to show that the dealer had not availed the tax exemption/benefit to the

extent of 100% of fixed capital investment and in the absence of any material to substantiate the claim of the dealer-appellant, we do not think it just and proper to interfere with the impugned orders of the forums below.

7. In view of the discussions made above, the second appeal filed by the dealer-appellant being devoid of merit stands dismissed and the impugned orders of forums below disallowing the claim of exemption under IPR, 1996 and consequently raising tax demand of ₹17,89,053.00 are hereby confirmed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(Sweta Mishra)
2nd Judicial Member

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I