

1947 (in short, "OST Act") in respect of the dealer-assessee for the period 2003-04 raising an extra demand of Rs.73,92,062.00.

2. The facts of the case as revealed from the record are that the dealer-assessee M/s. Nilachal Ispat Nigam Ltd. in the district of Jajpur is a manufacturer of Pig Iron from iron ore. At the time of original assessment for the relevant period 2003-04 it was found that the dealer was allowed tax exemption on the intra-state sale turnover of the finished product i.e. pig iron and by-products such as iron scraps and slags worth Rs.25,34,76,182.00 under IPR-1992 which included sale of finished products as well as by-products. However, it was pointed out in the A.G. Report that grant of exemption in favour of the dealer on the intra-State sale of by-products such as iron scraps and slag was irregular since as per the IPR Policy sales tax concession is available on sale of finished products only. Therefore, in the instant case though the dealer was found eligible to avail exemption on both purchase of raw materials/ spare parts of machineries and sale of finished products to the maximum ceiling limit of the fixed capital investment within a period of five years i.e. from 11.12.2001 to 10.12.2006 yet it was denied exemption on sale of by-products as mentioned above. Thus on scrutiny of the eligibility certificate issued by the Director of Industries, Cuttack in favour of the dealer-assessee for sales tax exemption on sale of its finished product of pig iron vide memo No.8888(4), dated 17.07.2003, the authority concerned could find that the dealer appellant had rightly availed sale tax exemption in sale of pig iron only. The assessing officer, however, could not accept another eligibility certificate issued subsequently in favour of the dealer-assessee by the Director of Industries incorporating therein the by-products of the dealer i.e. iron scraps and granulated slags were also exempted from levy of sales tax on the ground that the same was against the IPR Policy. Thus the assessing officer without allowing the sales tax exemption in respect of above stated by-

products of the dealer assessed its tax liability and demanded Rs.73,92,062.00 to be paid by the dealer.

Not being satisfied with the aforesaid assessment order the dealer preferred an appeal before the First Appellate Authority. But the First Appellate Authority did not interfere with the order of assessment while opining as mentioned below.

Quote: “ I have carefully gone through the Assessment order of the Ld. Assessing Officer vis-à-vis written submission made by Sri B.B.Pani, Asst. Manager, (Finance) on behalf of the dealer-appellant. The bone of the contention made by the appellant is to include Iron Scrap and Granulated slag as finished products eligible for exemption. On the other hand the Assessing Officer has not accepted this contention and as such not allowed exemption. In this contention it is to mentioned that the Director of Industries, Orissa, Cuttack has issued two nos of Memos viz No.8888(4) dtd.17.07.2003 and No.10971 (5) dated 29.08.2003 which is self contradictory in nature. The two nos of memos can not operate simultaneously. It is not know which memo will override.” Unquote.

3. Being aggrieved by such order of assessment passed by the Assessing Officer as well as the First Appellate Authority the dealer came up with the second appeal on the ground that the order of assessment is bad in law being contrary to well established legal propositions. The First Appellate Authority mis-read and mis-interpreted the Notification No.41261-CTA- 106/92-F dated 23.09.1992 issued by the Finance Department, Government of Odisha as well as the Certificate in Form E-92 issued by the Director of Industries in conformity with the aforesaid notification of the Finance Department. With the aforesaid contention the dealer urged before this forum to set aside the impugned order dated 30.08.2011.

4. Cross-objection on behalf of the State has been filed to the effect that this appeal is not sustainable being devoid of merit. The order of assessment as well as the impugned order are correct having been passed in conformity with the statutory provisions under the relevant Act and Rules.

5. In course of hearing learned Counsel for the dealer took us through some documents and on perusal of the same we felt that those are quite relevant to take note of for a just conclusion in the case. From the copy of the letter No.____(not clearly legible)-29/2003, Cuttack dated 28.08.2003 issued from the office of the Director of Industries, Odisha, Cuttack to the dealer it is revealed that a certificate of eligibility for sales tax concession on raw material, machinery spare parts and finished products under IPR- 1992 (New Unit) was extended in favour of the dealer and in that communication it was also made clear that besides Pig Iron, the Iron Scrap and granulated slag produced in the dealer's company were also described as finished product for the said business concern and not only that but further this communication was made in supersession to the order No.8887, dated 17.07.2003 issued earlier in favour of the dealer.

6. Thus it is found from the impugned order that the first appellate authority has certainly come to a very unreasonable rather harsh conclusion by reflecting that the memos No. 8888 (4) dated 17.07.2003 and No.10971 (5) dated 29.08.2003 issued by the Director of Industries, Orissa are self-contradictory and both of them can not operate simultaneously. Further he also could not find as to which memo will override. This appears to be absolutely wrong on his part to give such opinion and leave the matter as such. He should have at least the patience to read the entire memo in question which consists of only two pages and wherein it is clearly mentioned (in paragraph 8) that the said letter i.e. letter No.10971(5) dated 29.08.2003 supercedes order No.8887

dated 17.07.2003 issued earlier. Thus the author of the impugned order certainly invites a stricture on this issue but we desist ourselves from passing any stricture against him since he has not been afforded with the opportunity of being heard with regard to his aforesaid observations in the impugned order.

7. Therefore, in view of our above observation in the matter we feel this is a fit case for remand. Besides this in course of hearing learned Addl. Standing Counsel appearing on behalf of the State also submitted that if at all the case needs to be remanded for fresh assessment then it should be pointed out to the authorities concerned to keep in view that the unit of the dealer being located at Kalinga Nagar Industrial Complex, Duburi comes under Zone-B, Sub-Division of Jajpur as per Finance Department Notification, dated 23rd September, 1992 and make the assessment accordingly. In reply to this contention of the State learned Counsel for the dealer submitted that the dealer would have no objection if its unit would be permitted to avail concession or exemption as applicable to the units coming under Zone-B.

8. Thus the impugned order is set aside and the matter is remitted back to the Assessing Officer with a direction to make fresh assessment and complete the same within a period of three months from the date of receipt of this order keeping in view the memo No.10971(5), dated 29.08.2003 issued by the Director of Industries, Cuttack in favour of the dealer-assessee while treating the unit of the dealer coming under Zone-B and not under Zone-A (as described in Memo No.10971 (5), dated 29.08.2003 issued by the Director of Industries, Cuttack) as per the Finance Department Notification mentioned above published in the Orissa Gazette on September,28, 1992. The dealer-assessee is directed to furnish the aforesaid documents before the Sales Tax

Officer i.e. the assessing officer in original within the time fixed by the latter for disposal of the matter within the stipulated period.

9. Accordingly, the appeal preferred by the dealer-assessee is allowed and the cross objection is disposed of accordingly.

Dictated & Corrected by me,

(Smt. Suchismita Misra)
Chairman.

(Smt. Suchismita Misra)
Chairman.

I agree,

(Smt. Sweta Mishra)
2nd Judicial Member.

I agree,

(Rabindra Ku. Pattnaik)
Accounts Member-III.