BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 2953 of 2003-04
&
S.A. No. 2955 of 2003-04

(Arising out of orders of the learned ACST, Sundargarh Range, Rourkela in First Appeal Case Nos. AA- 473 (RLII)/2002-03 & AA- 146 (RLII)/2002-03, disposed of on dated 20.11.2003)

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

M/s. Deepak Engineering Udyog,
Mandiakudar, PO- Chungimati,
Dist. Sundargarh ... Appellant

-Versus-

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

For the appellant : Sri D. Pati, Advocate
For the respondent : Sri D. Behura, SC (CT) &
Sri M.S. Raman, Addl. S.C. (CT)

Date of hearing: 06.09.2021 *** Date of order: 30.09.2021

O R D E R

Both these appeals are heard analogously and disposed of by this common order as these cases involve common question of fact and law.

2. The dealer-appellant preferred S.A. No. 2953 of 2003-04 challenging the order dated 20.11.2003 passed

by the Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter called as 'first appellate authority') in Appeal Case No. 473 (RLII)/2002-03 thereby confirming the order of assessment dated 18.07.2002 passed by the Sales Tax Officer, Assessment Unit, Rajgangpur (in short, 'assessing authority') raising extra demand of ₹15,01,493.00 u/s. 12(8) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the assessment period 1995-96. The dealer-appellant also preferred S.A. No. 2955 of 2003-04 assailing the order dated 20.11.2003 of the first appellate authority in Appeal Case No. 146 (RLII)/2002-03 thereby confirming the order of assessing authority raising extra demand of ₹16,48,921.00 for the assessment period 1996-97 u/s. 12(4) of OST Act (remand case).

3. The relevant facts which are necessary for adjudication of the present second appeal are that Sri Manoj Kumar Sharma, proprietor of M/s. Deepak Engineering Udyog having place of business at Mandiakudar in the district of Sundargarh got its business registered u/s.9 of the OST Act vide R.C. No. RLII/R-913 dated 29.04.1995. The dealer-appellant was granted registration certificate for resale of "iron and steel" which he got amended w.e.f. 27.06.1995 for manufacture and sale of the finished

products like steel fabrication, cut and sized of industrial scrap, cut and sized of re-rollable scraps, cut and sized of cast iron scraps, manufacturing of “tawa, karai, tagari, bucket”. Further, the dealer was also allowed in amendment for manufacturing of the above finished products on the basis of application dated 27.06.1995 with the following raw materials :-

(i) Angle, channel, joist, plates etc.

(ii) All coils, sheets, Def. plates, coil ends, Def. G.P. sheets, Def. H.R. coil, Def. C.R. sheets, flats and flat ends, Def. C.R. coil

(iii) Def. slab, semi rolled plates, plate cutting, plate shearing and ingots

(iv) C.I. skull, steel skull, UR/ bottom plate, ingots mould etc.

(v) Def. H.R. coil, Def. plate.

3(a). The dealer obtained the certificate for sales tax concession on purchase of spare parts of machinery, raw materials and packing materials as per IPR, 1989 vide Sl. No. 201 dated 05.08.1995 from G.M., DIC, Sundargarh and also obtained certificate of eligibility of sales tax concession on finished products as a Small Scale Industry under IPR, 1989 from the said authority vide Sl. No. 199 dated

05.08.1995. Those certificates were valid during the period from 27.06.1995 to 31.03.1996. The industrial unit of the dealer-appellant was also recognized as SSI Unit and was accorded Permanent Registration Certificate bearing R.C. No. 15/13-01461/PMT/SSI dated 16.12.1994 by the G.M., DIC, Sundargarh. As per the eligibility certificate, the Unit was set up after 01.12.1989 and it went for commercial production on 05.11.1994.

3(b). The Commercial Tax Officer, who enjoys administrative powers besides assessment work as Sales Tax Officer, over the sub-ordinate office worker as per para-10 of Chapter-2, paras-41, 42 and 43 of Chapter-9 and para-31 of Chapter-8 of Orissa Commercial Taxes Manual, Vol.-III of Part-A, after due enquiry passed orders for deletion of amendment dated 27.06.1995 for manufacture and sale of finished goods with retrospective effect on 14.07.1995 as the industrial Unit did not carry any manufacturing activities as per order communicated vide Letter No. 2769 dated 30.09.1996 of the Sales Tax Officer, Rourkela-II Circle, Panposh who is also the Commercial Tax Officer, administrative head of the Circle including the Assessment Unit, Rajgangpur. The amendment allowed to the R.C. as aforesaid was again revived retrospectively as per

the order of the Hon'ble High Court of Orissa dated 26.10.1996 passed in O.J.C. No. 11161 of 1996. The revive order was communicated vide letter No. 9643/CT dated 16.11.1996.

3(c). The dealer used to file periodical returns before the concerned assessing authority who in order to verify the correctness and accuracy of the returns called for books of account u/s. 12(4) of the OST Act. The dealer, responding to such notice, appeared on 08.01.1999 and produced the books of account such as purchase and sale registers, purchase vouchers, sale memos and sales tax register. The assessing authority on examination of the books of account determined the GTO at ₹3,06,28,649.05 and after allowing the exemption towards sale of finished products as per IPR, 1989 determined the TTO at ₹4,08,155.85 on which tax was calculated @4% which came to ₹16,326.00.

3(d). The assessing authority having found that the industrial Unit of the dealer-appellant is a fake one having no real existence and is established only on paper works, reopened the case u/s. 12(8) of the OST Act for assessment of tax. The dealer on receipt of the notice, appeared and filed a time petition on the ground of

attending a patient who was admitted in the hospital, but thereafter did not appear. So, further intimation was issued to the dealer in his factory address which could not be served as the dealer had closed his business. The last intimation bearing No. 2025 dated 21.06.2002 was served on the dealer by way of affixture in presence of two witnesses and in pursuance of such notice, the dealer also did not appear on the date fixed for hearing i.e. 18.07.2002. So, the assessing authority proceeded to assess the dealer to the best of his judgment basing on the materials available on record as the matter was going to be barred by limitation in view of the amendment to the OST Act.

3(e). The assessing authority on scrutiny of the materials available on record opined that the industrial Unit of the dealer-appellant did not carry manufacturing activities for which it is not entitled to exemption on purchase of raw materials and on sale of finished products as per IPR, 1989 and accordingly, raised demand of ₹15,01,493.00.

4. The dealer-appellant challenging the aforesaid findings of the assessing authority preferred first appeal before the first appellate authority who also by its order dated 20.11.2003 dismissed the appeal and confirmed

the impugned order of assessing authority. The dealer-appellant being further aggrieved against the impugned orders passed by the fora below preferred the second appeal mainly on the following grounds :-

(i) The order of assessment passed by the assessing authority u/s. 12(8) of the OST Act is merely a change of opinion, without ascribing any reason and such demand raised by the assessing authority denying exemption under IPR, 1989 is illegal, arbitrary and against the sanction of law;

(ii) The dealer-appellant having been granted PMT to carry on manufacturing activities which was in force on the date of assessment, the assessing authority was not correct in its approach in ignoring such certificate while denying the claim of exemption on flimsy and invalid ground;

(iii) The dealer was also subsequently assessed for the period 1999-2000 in which it has been allowed to claim exemption under IPR, 1989. Disallowing the claim of exemption under IPR, 1989 for the assessment periods 1995-96 and 1996-97 and allowing the claim of exemption for the assessment period 1999-2000 is

double standard of approach of the assessing authority, which is unacceptable to any prudent man;

(iv) The first appellate authority while concurring with the findings of the assessing authority did not consider all the contentions raised by the dealer-appellant and illegally confirmed the order of assessment;

(v) The appellant got the R.C. u/s. 9 of the OST Act after due enquiry and verification of documents by the competent authority which was subsequently amended and the manufacturing activities was incorporated in the same. There was no material before the assessing authority as well as the first appellate authority to disbelieve the certificate issued by the competent authority for denying the claim of exemption under IPR, 1989; and

(vi) The Inspector of Factories and Boilers and the Inspector of Sales Tax also visited the business premises of the dealer-appellant many times and after due inspection found that the industrial Unit of the dealer-appellant is a manufacturing Unit which is clearly evident from different letters issued by him (Inspector of Factories and Boilers). The forums below

illegally ignored these letters while denying the claim of exemption under IPR, 1989.

5. The learned Counsel appearing for the dealer-appellant challenging the impugned orders passed by both the forums below vehemently urged that the forums below having illegally discarded the certificate issued by the G.M., DIC, Sundargarh denying the claim of exemption under IPR, 1989, the impugned orders are liable to be quashed. The certificate issued in favour of the dealer-appellant by the competent authority having not been cancelled, the forums below were not competent enough to discard this certificate and basing on irrelevant materials came to the conclusion that the industrial Unit of the dealer-appellant does not carry manufacturing activities. The dealer-appellant was assessed u/s. 12(4) of the OST Act and a very small amount of demand was raised, the subsequent demand raised by the assessing authority by reopening the case u/s. 12(8) of the OST Act is a change of opinion without any basis and justifiable reason, for which the impugned orders passed by both the forums below are unsustainable in the eye of law. Further, the dealer-appellant having been allowed exemption under IPR, 1989 for the assessment period 1999-2000, the fora below could not have denied the

exemption for the assessment periods 1995-96 and 1996-97. The impugned orders passed by both the forums below are illegal, arbitrary and against the sanction of law which need interference of this Tribunal and are liable to be set aside.

6. Per contra, learned Standing Counsel (CT) for the State supporting the impugned orders argued that the assessing authority has vividly discussed the reason for denying the claim of exemption under IPR, 1989. Mere holding a certificate from the competent authority does not entitle a person to claim exemption of tax under IPR, 1989. If such kind of person is allowed exemption under IPR, 1989, the purpose of bringing such resolution by the Government would be frustrated. The industrial Unit of the dealer-appellant is a fake industrial Unit, who managed to obtain the certificate from the competent authority through paper work for which both the forums below were correct in their approach in denying the claim of exemption under IPR, 1989. The assessing authority has given a justifiable reason for reopening the case u/s. 12(8) of the OST Act for which the same needs no interference. He strenuously argued that the huge transaction effected by the dealer-appellant makes his claim that his industrial Unit is a manufacturing

industrial Unit and manufactures the items, i.e. finished goods as mentioned in the certificate issued by the competent authority, improbable. He submitted that there is no legality or impropriety in the impugned orders of the forums below warranting interference by this forum and accordingly, the appeal filed by the dealer-appellant is liable to be dismissed.

7. We have heard the learned Counsel for the parties, gone through the orders of the fora below, grounds of appeal vis-a-vis the materials available on record. In view of such rival contentions of the parties, the crux of the dispute is whether the forums below were correct in their approach in denying the claim of exemption under IPR, 1989 by the dealer-appellant on the basis of certificate issued by the competent authority i.e. G.M., DIC, Sundargarh.

8. Before addressing the issue involved in the present appeal, it is profitable to recapitulate some of the undisputed facts for better appreciation of the contentions raised by both the parties. There is no dispute that-

(i) The dealer-appellant is a registered firm u/s. 9 of the OST Act vide R.C. No. RL-II/R-913 dated 29.04.1995 and it deals with resale of 'iron and steel'.

(ii) The dealer got his R.C. amended w.e.f. 27.06.1995 incorporating manufacture and sale of finished products as mentioned therein.

(iii) The dealer obtained eligibility certificate for sales tax concession on purchase of spare parts of machinery, raw materials and packing materials as per IPR, 1989 vide Sl. No. 201 dated 05.08.1995 from G.M., DIC, Sundargarh and certificate of eligibility of sales tax concession on finished products of Small Scale Industries vide Sl. No. 199 dated 05.08.1995.

(iv) Both certificates were valid for the period from 27.06.1995 to 31.03.1996 and has been accorded Permanent Registration Certificate bearing R.C. No. 15/13/01461/PMT/SSI dated 16.12.1994 by the G.M., DIC, Sundargarh.

(v) The eligibility certificate discloses the Unit was set up after 01.12.1989 and has gone for commercial production on 05.11.1994.

(vi) The Commercial Tax Officer passed orders for deletion of amendment regarding manufacturing activities with retrospective effect on 16.07.1995 holding that the industrial Unit does not carry

manufacturing activities which was communicated vide letter No. 2769 dated 30.09.1996.

(vii) The amendment to carry manufacturing activities was again revived retrospectively as per the order of the Hon'ble High Court of Orissa passed in O.J.C. No. 11161 of 1996 dated 26.10.1996, which was communicated vide letter No. 9643/CT dated 16.11.1996.

9. Now the issue involved in the present appeal is to be answered in the backdrop of undisputed facts. On perusal of the impugned order of assessment dated 18.07.2002 passed by the assessing authority, we find that it negatived the claim of benefit under IPR, 1989 for the following reasons :-

(a) The dealer furnished forged bonafide certificate from the registered dealer – M/s. Bata India Ltd. (authorized dealer), Main Road, Rajgangpur. The signature of Sri Pranay Kumar Roy on this document was forged. The dealer furnished this forged certificate along with application for grant of registration in the prescribed form. The dealer claimed to have started the business in the name and style M/s. Manoj Engineering Udyog in a rented land belonging to Sri

Ramesh Kumar Agrawalla over Plot No. 1132 under Khata No. 124 measuring 16 X 10 ft. and 16 X 15 ft. w.e.f. 05.11.1994 whereas the agreement in question was signed on 07.12.1994.

(b) The dealer in his statement given before the Sales Tax Officer on 03.05.1995 at the time of examination of books of account stated that he engaged himself in trading of iron and steel from the present place of business at Mandiakudar since 05.11.1994 and his first sale was effected vide bill No. 001 dated 07.11.1994 to M/s. Hathi Industries, Vedvyas for ₹4,850.00 towards sale of cutting and C.I. skull. There was no industry set up prior to the date of visit of the Sales Tax Officer on 08.05.1995. The dealer obtained I-D forms by virtue of amendment made to the Certificate of Registration incorporating manufacturing activities w.e.f. 27.06.1995 as per the order dated 14.07.1995 and purchased huge quantities of iron and steel from SAIL, RSP, Rourkela on free of tax and sold 95% of it as such. The lease deed having been executed on 07.12.1994, it is not believable that the dealer purchased and installed machineries in January, 1992. The lease agreement was drafted and designed to enter

into the policy of IPR, 1989 as a new industry and get the benefit thereof.

(c) There are two witnesses to the lease deed, amongst whom Sri Ramawatar Sharma is the elder brother of the dealer, who purported to have funded for capital at the beginning and the second witness is one Binod Prasad, who is an employee of the dealer. Therefore, the agreement seems to be false and fabricated.

(d) The Sales Tax Officer who visited the business premises of the dealer which comprised of two sheds during enquiry only noticed a weighing bar for 100 kgs. capacity.

(e) The G.M., DIC, Sundargarh issued PMT Registration in favour of a shadow industry which had no existence at all. It is quite impossible to manufacture such a huge quantities of finished products with closing stock of 22.370 MT in small two sheds. The G.M., DIC, Sundargarh has issued PMT Registration in favour of other five fake industries in the same vicinity, which had built up shadow industries causing loss to the State exchequer. The dealer while attending the investigation made by the

Sales Tax Officer regarding manufacturing activities carried on by him, furnished forged purchase bill in support of purchase of machineries. The dealer purchased machineries and tools and tackles for the industry for ₹30,550.00 from M/s. Jee Kay Enterprises, 2 B, Jadulal Mallick Road, Calcutta-7 vide purchase bill No. 107/1991-92 dated 17.01.1992. During investigation by the Sales Tax Officer regarding genuineness of the purchase bill, he found that a fake bill was engineered by the dealer with an intention to avail benefit of IPR, 1989 after expiry of the scheduled period. A registered letter vide Circle Office Letter No. 2559/CT dated 12.09.1996 was issued to the dealer at Calcutta which returned back with an endorsement “no such address was there”. The signature bearing on the body of the bill of M/s. Jee Kay Enterprises tallied with the signature put by Sri Ramawatar Sharma, the elder brother of the proprietor on the sale bill No.001/95-96 dated 22.06.1995. It was held that the dealer fabricated the bill by himself. The dealer also could not produce material with regard to payment and transportation to satisfy that the bill was genuine.

(f) The rate of 5 sabal (crow bar) is ₹750.00 @ ₹150.00, but the total value five crow bar has been mentioned in the bill is ₹1,250.00 excess by ₹500.00. Similarly, the total amount typed out as ₹30,500.00 on the body of the bill, is not correct.

(g) Since the agreement relating to land and purchase of machineries were found false, the only inference is that the industry was never set up during its operational period i.e. after 01.12.1989 and within 01.08.1992. So, the dealer-appellant was not entitled to get any sales tax incentive as per IPR, 1989.

(h) There was no electric connection to the industry and no sophisticated machineries to manufacture huge quantities of finished products which the dealer disclosed in the return filed by it.

(i) The CTO/STO administrative head of the Circle and other officials getting information about lifting of 555 MT of short plates during the period from 03.08.1996 to 31.08.1996 from SAIL, RSP, Rourkela in an open sale vide Tender No. Ref.martg/05/96 dated 08.07.1996, on 31.08.1996 they found no stock of raw materials, finished products, cutting and end pieces. Accordingly, the dealer was issued with a show-cause

notice for deletion of amendment and on the failure of the dealer to produce the document, the manufacturing activities from the R.C. was deleted with retrospective effect. The Sales Tax Officer vide letter No. 2 dated 08.01.1997 intimated the G.M., DIC, Sundargarh regarding the fraudulent manufacturing activities of the dealer for action, who remained silent and issued eligibility certificate closing his eyes. The dealer failed to satisfy as to how he sold huge quantities of short plates without leaving closing stock of raw materials and finished products too.

(j) The sale bill No. 2 dated 08.11.1994 issued in favour of M/s. Gupta Store, Daily Market, Rourkela for ₹17,912.50 was also a fake bill. On cross-verification of accounts of the purchasing dealer, no such purchase was found. On the request of the dealer, notice u/s. 21 was issued to the above named purchasing dealer, who appeared and gave his statement denying to have purchased anything from the dealer. The dealer remained absent on health ground on that date.

(k) Another instance of issue of fake bill was in favour of M/s. Ramesh Chandra Sahu, Municipal Market, Baripada, Mayurbhanj towards sale of dosa

tawa and tagari for ₹1,72,615.00. On reference, the Commercial Tax Officer, Mayurbhanj Circle, Baripada made detailed investigation through one of the Sales Tax Officers of his Circle including the Municipal record and octroi points and found no such dealer named Ramesh Chandra Sahu in Municipal Market area exist nor the goods were entered in the Municipal area.

(l) Another sale bill vide bill No. 54/96-97 dated 20.09.1996 issued in favour of M/s. Saha Hardware Store, Daily Market, Bargarh for sale of tawa and kadai for ₹1,66,895.00 was cross verified which was also found to be fake a bill as no such dealer existed in that area. The enquiry report of the Inspector of Sales Tax, Sambalpur-II Circle, Bargarh was communicated vide D.O.L. No. 118 dated 04.01.1997.

(m) Adverse report was also similarly received from the office of the Commercial Tax Officer, Bhubaneswar-I Circle, Bhubaneswar against the dealer on the following transactions :-

Bill No.	Name of the party against bills were issued	Amount	Goods
35 dt. 22.7.96	M/s. Rampal Gen. Store, Vivekananda Marg, Bhubaneswar	₹1,63,325/-	Tagari & Tawa
31 dt. 26.8.96	M/s. Kalika Hardware Store, Kalpana Square, Bhubaneswar	₹ 40,035/-	Tawa for 2.315 MT
56 dt. 28.9.96	M/s. Orissa Gen. Store, Station Road, Bhubaneswar	₹1,59,705/-	Tawa, Karai & Clamps

(m) The dealer while depositing money in favour of SAIL, RSP, Rourkela for purchasing the goods cleverly prepared P.Os. and D.Ds. ion favour of fake buyers.

10. The assessing authority opined that the dealer did not carry any manufacturing activities for production of huge quantities of finished goods as reflected in the returns, but managed to produce a very small quantity of tawa, karai, tagari etc. manually to deceive the Government officials at the time of visit to the place of business. Therefore, he held that 95% of raw materials were sold without manufacturing anything and 5% of the same were used in the manufacturing activities only. The dealer-appellant misutilized the Form I-D while effecting purchase from SAIL, RSP, Rouekela free of tax. So, on this finding, the assessing authority treated 95% of raw materials purchased from SAIL, RSP, Rourkela as sold as such without

manufacturing any finished products and added the same to the TTO for assessment of tax on account of contravention and misutilization of forms. The first appellate authority concurred with the findings of the assessing authority and dismissed the appeal.

11. In course of argument, the learned Counsel for the dealer-appellant only harped on the PMT certificate issued by the G.M., DIC for availing the benefit under IPR, 1989. It was strenuously argued that the PMT certificate having been issued by the competent authority after due enquiry, the fora below were not correct in their approach in discarding the document and depriving the dealer-appellant the benefit under IPR, 1989. This contention raised by the learned counsel for the dealer-appellant does not sound good. It clearly reveals from the impugned order of the assessing authority that the dealer-appellant managed to obtain the certificate by paper work, but he did not carry any manufacturing activities as per the returns submitted by him. It is found from the materials on record that the dealer has lifted huge quantities of materials from SAIL, RSP, Rourkela and manufactured huge quantities of finished products, which is impossible on its part to manufacture in the absence of sophisticated machineries

and sufficient work force. He engaged only few workers to manufacture tawa, karai, tagari etc. with an intention to claim the benefit under IPR, 1989. Mere issuance of certificate in favour of the dealer-appellant by the G.M., DIC, does not entitle him the benefit under IPR, 1989 in the absence of actual physical manufacturing activities. The assessing authority has very vividly spelt out in his order how different bills with regard to sale of finished products and purchase of machineries were manufactured and forged by the dealer-appellant with an intention to get the benefit under IPR, 1989. In course of hearing of the appeal, the learned Counsel for the appellant did not put forth any material before us to satisfy that the findings of the assessing authority were wrong and incorrect. No argument was also advanced challenging the findings of the assessing authority with regard to the fake bills procured by the dealer-appellant showing purchase of machineries and sale of finished products to different dealers. It shows that the dealer has resorted to corrupt practice in obtaining the PMT certificate for the purpose of getting the IPR, 1989 benefits.

12. It was vehemently urged before us that the dealer was extended with IPR benefit for the assessment period 1999-2000. On going through the assessment order

dated 31.12.2001 for the assessment period 1999-2000, we find that the assessing authority has neither taken note of the earlier order passed by the assessing authority while denying the benefit of IPR, 1989 to the dealer-appellant nor examined any materials with regard to physical manufacturing activities of the dealer. He simply extended the benefit of IPR, 1989 on the basis of PMT certificate which cannot help the dealer-appellant in this case in any manner. Moreover, it is settled position of law that the assessment for each year is to be made on the basis of facts and circumstances of the particular case for the particular period. The assessment order passed for different periods cannot operate as *res judicata* and cannot debar the assessing authority from raising tax demand against the dealer-appellant on the basis of the materials available on record before him. In the case of State of Orissa Vs. Kamadhenu Enterprises, reported in [1991] 83 STC 147 (Ori.), the Hon'ble Court held that the Tribunal can take two different views for different assessment years and the finding in respect of one assessment year is not binding for another year. In the present case also, the order passed by the assessing authority on 31.12.2001 for the assessment period 1999-2000 cannot be binding on the assessing

authority on the assessment made by him for the assessment periods 1995-96 and 1996-97. There is nothing on record also to show that the dealer-appellant has brought to the notice of the assessing authority that his claim for IPR benefit was negatived by the assessing authority for the periods 1995-96 and 1996-97 against which appeal is pending. The order passed by the assessing authority, therefore, cannot help the appellant in any manner.

13. It was next contended by the learned Counsel for the dealer-appellant that the Inspector of Factories and Boilers visited the factory premises of the dealer-appellant on different occasions and found about manufacturing activities. The letter of the Inspector of Factories and Boilers and his report regarding manufacturing activities cannot bind the assessing authority. The assessing authority making independent enquiry and during enquiry he having found that there was no physical manufacturing activities of huge quantities of finished product as claimed in the return, the fake bills were submitted for obtaining the benefit, it rightly denied the claim of benefit under IPR, 1989 to the dealer-appellant. There is nothing on record to show that the Inspector of Factories and Boilers had, in fact, visited the business

premises of the dealer-appellant on the alleged date of visit. Even it is assumed that the Inspector has visited the business premises of the dealer-appellant, his letter does not show that sophisticated machineries were being used for the purpose of manufacturing of huge quantities of finished products as claimed in the return. It can only be inferred from the letter of Inspector of Factories and Boilers on which the learned Counsel for the appellant relies that manufacturing of tawa, karai, tagari, etc. was going on manually in small quantities with the help of few labourers. So, the assessing authority rightly held that the dealer-appellant only used 5% of the raw materials purchased by him for the purpose of manufacturing activities and rest 95% of raw materials purchased by him from SAIL, RSP, Rourkela were sold as such.

14. The learned Counsel for the dealer-appellant further challenged the impugned orders of the fora below on the ground that there is change of opinion without any basis and materials. The learned assessing authority assessed the dealer-appellant u/s. 12(4) of the OST Act raising demand of ₹16.326.00 and allowing benefit under IPR, 1989, but subsequently he changed his opinion and reopened the case u/s. 12(8) of the OST Act. The orders passed by both the

forums below do not reveal the basis of such change of opinion on account of which orders of both the fora below are unsustainable in the eye of law and liable to be set aside. This contention raised by the learned Counsel for the dealer-appellant is also not legally sustainable. On perusal of the order of the assessing authority, we find that he has clearly observed that the order dated 30.01.1999 passed u/s. 12(4) of the OST Act raising tax demand of ₹16,326.00 that due to expiry of period of limitation, he was compelled to pass the impugned order, which was subsequently reopened on the basis of the observations rendered in the order of assessment dated 28.03.2000 for the year 1996-97. The dealer-appellant in order to get the benefit of IPR, 1989 created fake industrial Unit on the basis of forged purchase and sale bills. The assessing authority had thoroughly enquired into the matter and came to a categorical opinion that purchase and sale bills were fake and forged, as already discussed in preceding paragraphs. Therefore, under these circumstances, it cannot be said that the assessing authority was unjustified in reopening the case and raising tax demand of ₹15,01,493.00 against the dealer-appellant. The assessing authority was correct in its approach in reopening the case u/s. 12(8) of the OST Act in the facts of

the present case. In the case of **K.J. Ispat Ltd. Vs. Commissioner of Commercial Taxes, Orissa, reported in [2012] 55 VST 228 (Ori.),** the Hon'ble High Court of Orissa in para-9 of the judgment observed as under :-

> " ... As stated above, in earlier assessment order, the adverse material utilized against the petitioner in impugned assessment order had not been utilized. Hence, the question of change of opinion of assessing officer does not arise in the facts and circumstances of the case."

The law laid down by the Hon'ble Court in the case of K.J. Ispat Ltd. (supra) is squarely applicable to the facts and circumstances of the present case. In the case in hand, there are adverse materials against the dealer-appellant to reopen the case which have been vividly discussed in the orders of the fora below. Therefore, there is no illegality or infirmity in such order of reassessment and confirmed by the first appellate authority warranting interference of this forum.

15. It is pertinent to mention here that for the purpose of getting the IPR benefit, first eligibility criteria is fixed capital investment, which is defined in the Industrial Policy Resolution 1989 as follows :-

> "2.3. "Fixed Capital Investment" means investment on land, building, plant and machinery and other equipments of permanent nature.
>
> Explanation- The calculation of fixed capital investment shall be made according to the principles outlined by Government of India for administration of Central Investment subsidy as is or, was in force."

16. In the present case, the dealer-appellant was running his business firm on a rented shed alleged to have been taken on lease from one Ramesh Kumar Agarwalla. This lease deed is an unregistered one which has been signed by the brother of the dealer-appellant and his another employee. It was claimed by the dealer-appellant that subsequently this land was purchased by the proprietor by virtue of sale deed dated 25.09.1996. On verification of this document, we find that Plot No. and area have been subsequently incorporated in the lease deed and the Plot No. has been also scored through. Moreover, Khata No. and Plot No. of the lease deed and sale deed do not tally with each other. So, it cannot be said that the dealer-appellant fulfilled the first criteria of fixed capital investment for the purpose of getting the benefit under IPR, 1989.

17. The dealer-appellant having forged the bills relating to purchase of machineries, the only inference is

that he did not carry on any manufacturing activities as claimed in the returns except producing some tawa, karai, tagari etc. manually with the help of few casual labourers. The dealer-appellant failed to offer any explanation with regard to the purchase bill of machineries which was found to be fake by the assessing authority on due enquiry. So, we are also of the view that no machineries were purchased by the dealer-appellant for installation in his industrial Unit to manufacture finished products like tawa, karai, tagari etc.

18. In view of the discussions made above, we are of the considered opinion that both the forums below have correctly negatived the claim of the dealer-appellant for benefit under IPR, 1989 holding that it did not carry on any manufacturing activities as claimed in the returns and he sold out 95% of the raw materials as such without manufacturing anything. Therefore, there is no illegality or impropriety in the impugned orders of the fora below warranting interference of this Tribunal.

19. So far as S.A. No. 2955 of 2003-04 is concerned, the assessing authority rightly negatived the claim of benefit under IPR, 1989 to the dealer-appellant for the assessment period 1996-97 for the foregoing reasons, which is valid and legally sustainable. There is no illegality

to interfere with the impugned order dated 20.11.2003 which is the subject matter of the present second appeal warranting interference of this Tribunal.

20. For the foregoing reasons, we are of the considered opinion that both the appeals filed by the dealer-appellant are devoid of any merit and accordingly, the same stand dismissed and the impugned orders of the fora below 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/-
(S. Mishra)
Accounts Member-II