



assessee u/R. 12(4) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') pertaining to the tax period 1998-99.

2. The facts as revealed from the case record are as follows :-

The dealer-assessee M/s. Utkal Engineering Industries (P) Ltd. at Industrial Estate, Mancheswar, Bhubaneswar is a manufacturing Unit. It manufactures Post and Telegraph Line materials and mostly sells those articles to the Telephone Department. In response to a notice served on it u/S. 12(5) of the CST (O) Rules the authorized agent of the dealer-assessee had appeared before the assessing officer with its books of account and other registers. On examination of the books of account the assessing officer could find that the dealer-Company had maintained all the registers such as purchase register of raw materials, sale register of finished goods as well as day-to-day stock account of finished goods etc. pertaining to the tax period. The assessing officer also found that total purchases of raw materials and machinery and spares by the dealer-assessee during that relevant period worth ₹2,14,19,900.59 and ₹65,495.92 respectively. He did not find any material affecting adversely the dealer-assessee for which he accepted the gross turnover returned by the dealer at ₹1,98,07,405.29. The dealer-assessee on the ground of its being exempted under IPR, 1989 had not paid any tax in respect of its sale transactions during that year. On examination of the documents in detail, the assessing officer

found the dealer not entitled to get exemption on the entire sales and as such he limited its claim for exemption to ₹8,85,257.00 which related to its sale of drop wire accessories only. He thus determined the net turnover of the dealer-assessee at ₹1,76,01,335.29 by allowing deduction of ₹12,20,812.00 towards transportation charges from the gross turnover returned. On calculation of tax @ 12% on the net turnover and surcharge @ 15% on the tax due the assessing officer ultimately held that the dealer was required to pay a sum of ₹24,28,984.00 towards its tax dues and sent a demand notice accordingly.

Being aggrieved with the aforesaid order of assessment the dealer-assessee filed an appeal before the first appellate authority challenging the jurisdiction of the assessing officer as well as legality of the order of assessment. The first appellate authority, however, considering all the materials available on record as well as documents which were produced before the assessing officer and also before him confirmed the order of assessment.

3. The dealer-assessee then came up with this second appeal challenging the order of the first appellate authority on the grounds that the conclusion arrived at by the Addl. Commissioner of Sales Tax (first appellate authority) confirming the order of assessment is illegal and suffers from arbitrariness on his part. The dealer-appellant

should have been allowed to have the tax benefits in terms of its claim as per the provisions of law. Since as per Industrial Policy Resolution (IPR) issued by the Industries Department, Government of Odisha, the expansion, modernization and diversification of an existing Industrial Unit meant additional investment of 50% or more of undepreciated book value of fixed capital investment of an existing Unit in acquisition of plant and machinery for expansion, modernization and diversification of the products of the said Unit. In the instant case the dealer-appellant had undertaken only expansion of its Unit w.e.f. 07.11.1992 for production of a single additional article i.e. drop wire accessories. Then again the dealer added four more items for production in its Unit w.e.f. 28.09.1994 without making further investment for its latest addition of those four types of products namely PVC Galvanized insulated M.S. wire, Telecom overhead cables, PVC insulated copper quoted steel conductors and PVC Jumber wire. However, the assessing officer as well as the first appellate authority unjustifiably denied it to avail the benefit as per the provisions of relevant IPR by misinterpreting the said Resolution of the Government of Odisha. It is further stated by the dealer-appellant that finding of the first appellate authority to the effect that exemption in favour of the dealer cannot be allowed on the basis of amendments made in its certificate issued by the District Industries Centre w.e.f. 28.09.1994 and 30.09.1997 was the result of wrong interpretation of

the relevant provisions under Sl. 30-FFF(ii) of the list of goods exempted from Odisha Sales Tax under the OST Act. The said provision relates to EMD (expansion, modernization and diversification) undertaken Units and such EMD can be undertaken by those Units only once within the entire covered period i.e. from 01.12.1989 to 31.07.1999. The abovesaid provision does not put an embargo on the number of amendments made by the DIC (District Industries Centre) in the certificate issued to the dealer in certain exigencies. The amendments in the aforesaid certificate do not stand as a bar to the exemption granted since as per the provisions of relevant law if the prescribed conditions to avail exemption have been fulfilled by the dealer then the benefits to be extended in that event would follow automatically. In the instant case the first appellate authority did not find any sort of violation or non-fulfillment of prescribed condition by the dealer so as to debar it from availing the benefit of exemption under IPR, 1989. Further in the present case there was only a single project of expansion, modernization and diversification with the dealer-assessee on the basis of which goods incorporated in its project report were produced commercially on different dates and sale of such goods came within the scope of exemption provided under Sl. 30-FFF(ii) which the DIC had certified accordingly. Therefore, disallowance of exemption by

the assessing officer as well as by the first appellate authority assigning irrelevant and extraneous reasons is illegal and deserves to be quashed.

4. State has filed its cross-objection supporting the findings of the assessing officer as well as the first appellate authority on the grounds that the assessing officer had completed his assessment correctly and the first appellate authority decided the appeal on merit following the statutory provisions under the Act and Rules. Therefore, the impugned order does not require to be disturbed by this forum.

5. In course of hearing the appeal it was found that none appeared on behalf of the dealer-assessee despite service of notice on it by way of affixture through Asst. CT&GST Officer, Bhubaneswar-III Circle. Therefore, the appeal preferred by it (the dealer) was heard *ex parte* to be disposed of on merit as per Rule 60(1) of the OST Rules read with Rule 22 of the CST(O) Rules. Learned Addl. Standing Counsel (CT) appearing on behalf of the State who was present for hearing of the appeal placed his argument justifying the validity of the impugned order. He apprised the Bench relevant provisions meant to be followed for availing tax exemption benefit under IPR, 1989.

Perused the order of assessment as well as the order of the first appellate authority i.e. the impugned order. As revealed from the impugned order the first appellate authority while considering the grounds of appeal and connected assessment record, registration record

of the dealer as well as the order of assessment alongwith the written note of submissions filed before him by the dealer noticed that the only issue required to be addressed by him in the appeal was whether the dealer's claim for availing exemption on its entire products sold during the relevant period for the reason of those transactions being tax exempted sales was valid or not. It is further revealed from the impugned order (paragraphs-5, 6 & 7) that the first appellate authority had made a detail examination of the connected sale transactions vis-à-vis the entitlement of the dealer for tax exemption as per the benefit extended under IPR, 1989. He had also verified the registration record of the dealer extensively and found out the goods which were to be manufactured by the dealer as per the certificate issued by the DIC, Bhubaneswar in its favour. On examination of all the relevant documents, as reflected in the impugned order, quite elaborately the first appellate authority could notice that the dealer intended to avail sales tax exemption in respect of its transactions undertaken in the year 1995 indicating the date of production as 28.09.1994 at which time it manufactured/produced PVC Galvanized insulated M.S. wire - 5000 Kms., Telecom overhead cables - 2000 Kms., PVC insulated copper quoted steel conductors - 2000 Kms. and PVC Jumber wire - 2000 Kms. after its first expansion undertaken w.e.f. 07.11.1992 for production of the additional goods i.e. drop wire accessories only. Therefore, he held

that out of all these aforesaid five categories of articles (as described above) only drop wire accessories were covered by the tax exemption benefit whereas for remaining other four products of the dealer's Unit including C.I. bracket telephone he concluded that those were exigible to tax as the dealer-assessee had sold those articles to the agencies outside the State of Odisha.

6. Admittedly the dealer's establishment being an SSI Unit was entitled to the benefit of tax exemption under IPR, 1989 till completion of seven years from the date it started its production which in this case was w.e.f. 06.10.1990. Therefore, the period for availing such tax exemption by the dealer expired on 05.10.1997. The assessment in the instant case was done for the tax period 1998-99. Under such circumstances the first appellate authority has rightly concluded that the dealer was not eligible to get exemption under Serial 30-FFF(ii) of the OST Rate Chart. Then regarding the claim of the dealer to avail exemption on account of its expansion, the position of prevailing law then was that existing Small Scale Industrial Units which had undertaken expansion, modernization, diversification after 1<sup>st</sup> December, 1989 on the basis of a separate project report which had been duly apprised by the Financial Institution and started increasing commercial production thereafter inside the State as certified by the General Manager of the concerned DIC were entitled to get exemption

to the extent of increased commercial production over and above the existing capacity only for once within the entire effective period.

7. In the instant case the first appellate authority who had examined all the documents furnished by the dealer could find that the dealer had made expansion of its business concern twice i.e. for the first time on 07.11.1992 adding manufacture of goods such as drop wire accessories in its Unit thereby making it eligible for availing the tax exemption for the said goods till 06.11.1999. The dealer then effected expansion of its Unit for the second time w.e.f. 28.09.1994 for manufacturing and production of four more articles such as PVC Galvanized insulated M.S. wire - 5000 Kms., Telecom overhead cables - 2000 Kms., PVC insulated copper quoted steel conductors - 2000 Kms. and PVC Jumber wire - 2000 Kms., not in continuation with its original existing project report but with another subsequent project report for which the first appellate authority was constrained to hold that this subsequent business activity which started from 28.09.1994 in the Unit of the dealer-assessee had to be treated as second expansion of the dealer since as per the production certificate issued by the DIC, Bhubaneswar earlier these items were not covered and further those items were also not included for production in the certificate for expansion issued with effect from 07.11.1992. Therefore, it was held by him (the first appellate authority) that the dealer was not entitled to

avail the benefit of IPR, 1989 for those subsequent products manufactured in its Unit.

8. On a careful scrutiny of the impugned order it could be gathered that the first appellate authority has elaborately and explicitly described as to why he disallowed the claim of the dealer to have the benefit of tax exemption on certain goods on the pretext of its entitlement to get the benefit extended under IPR, 1989. The dealer being the appellant before this forum neither appeared nor explained through its Counsel or representative as to how and under what circumstances the impugned order suffers from illegality. On the other hand in the facts and circumstances of the case, we found absolutely no reason to interfere with the impugned order which remained virtually uncontroverted and unchallenged by the appellant itself.

9. In the result, the appeal is dismissed. The cross-objection is disposed of accordingly.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Smt. Sweta Mishra)**  
**2<sup>nd</sup> Judicial Member**

I agree,

**Sd/-**  
**(Prabhat Ch. Pathy)**  
**Accounts Member-I**