

u/R. 10(2) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') for the period 2001-02.

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

The dealer-assessee i.e. M/s. Shree Jagannath Cotton Ginning & Pressing (Pvt.) Ltd., Komotalapeta carries on business in ginning of cotton with seed and pressing of cotton lint bales which are obtained after ginning. This dealer was registered by the District Industries Centre, Rayagada and had filed returns for the relevant period while availing benefits under IPR, 1996. However, on receipt of a Fraud Case Report (FCR) against the dealer-assessee the assessment of its establishment was reopened in respect of that relevant period. On being confronted the dealer took a plea that the industry in question had been allowed tax benefits on account of its being accepted as a priority industry and as such was allowed exemption for a period of seven years from the date of commercial production as Agro and Food Processing Industry under IPR, 1996. The Sales Tax Officer, however, detected some anomalies in the business transactions of the dealer-assessee and held it liable to pay balance amount of tax amounting to ₹7,28,772.00 as per the terms and conditions of the demand notice issued to it.

Being aggrieved with the said order the dealer-assessee preferred an appeal before the first appellate authority while

contending that as per Notification and DIC Certificate the dealer had not collected any sales tax either under OST or CST from its customers since it was entitled for exemption in terms of the Government Notification. The assessment for the year 2001-02 was completed with nil demand. Subsequently the assessment was reopened on the basis of the Audit objection raising the demand and at that time no communication was made to the dealer with regard to the reasons which prompted such reopening of assessment. The dealer-assessee, before the first appellate authority, also pointed out that the industry in question was allowed as priority industry by order of the Director of Industries and as such was exempted for a period of seven years from the date of commercial production since Agro and Food Proceeding Unit is a priority industry under IPR, 1996. However, the Sales Tax Officer could not appreciate properly Sec. 8(5) of the CST Act and mentioned that sale of cowdy cotton for the relevant period treating the same as rejected raw materials and taxing the same at 4% was wrong. The dealer thus urged that the original order of assessment passed by the Sales Tax Officer u/R. 12(5) of the CST (O) Rules should have been restored.

3. The first appellate authority while considering the aforesaid contentions advanced by the dealer-assessee dealt with the matter elaborately in his order. He accordingly held that imposition of

tax by the assessing officer on sale of cowdy cotton was quite justified and further the claim of dealer-assessee for exemption under IPR, 1996 notified u/S. 8(5) of the CST Act could not be availed by it. In such circumstances he also held that the dealer-assessee was eligible for sales tax exemption benefit on purchase of raw materials and on sale of finished products as an Agro and Food Processing Industry under IPR, 1996 for a period of seven years from the date of commercial production i.e. from 25.01.2000 to 24.01.2007 with no limitation. Thus he did not alter the GTO as well as the TTO of the dealer-assessee as determined by the assessing officer and further he also confirmed the tax amount to be paid by the dealer-assessee which was assessed at ₹14,80,213.00 by the assessing officer, but allowed exemption at ₹14,36,361.00 instead of ₹7,51,441.00 which was allowed in the assessment and then finally held that the dealer-assessee was to pay the balance amount of ₹43,852.00 i.e. imposing tax @ 4% on sale of cowdy cotton worth ₹7,04,543.00 against Form-C and imposing tax @ 8% on such sale worth ₹1,95,880.00 without 'C' form.

4. Being aggrieved with the said order the State preferred this appeal on the grounds that the impugned order is illegal and arbitrary since the first appellate authority committed gross error in law as well as on facts by accepting the Director of Industries Certificate with regard to the fixed capital investment as well as with regard to its

status as priority industry. The dealer-assessee had neither expanded its firm nor acquired more land and further it had not purchased extra machinery for the firm. Therefore, there was absolutely no reason for the Director of Industries to enhance the fixed capital investment as well as production capacity of the firm for cotton lint and cotton seed. The General Manager, DIC had issued a certificate for capital investment of ₹40,95,174.00 but the Director of Industries enhanced the said capital investment to ₹1,00,41,000.00 in respect of the said firm without any addition, alteration or modification and for this the first appellate authority allowed tax exemption of ₹14,36,361.00 instead of ₹7,51,441.00 without examining the provisions of IPR, 1996. Under such circumstances, the State urged for restoration of the assessment order.

5. The dealer-assessee in the instant case filed its cross-objection mentioning therein that the first appellate authority had examined the provision of IPR, 1996 and then concluded that the Unit of the dealer being determined as priority industry in view of the certificate issued by the Director of Industries, Cuttack, Odisha came to the conclusion that the dealer's Unit was entitled for sales tax exemption for seven years without having any maximum limit of exemption as priority industries in supersession of earlier certificate issued by the General Manager, DIC, Rayagada. The dealer-assessee (respondent-Company)

invested fixed capital of ₹1 crore and since its loan sanction was delayed by OSFC it showed fixed capital investment at ₹40.95 lakhs at the time of starting commercial production from 25.01.2000 and then after sanction of the loan by the OSFC its capital went upto ₹1 crore. The Director of Industries, Odisha, Cuttack after going through the details pertaining to the dealer's Unit had rightly treated the same as priority industry and issued certificate to the said Unit for sales tax exemption for seven years without any maximum limit.

6. In course of hearing learned Addl. Standing Counsel (CT) for the State reiterated the same grounds which were submitted by the State in its memorandum of appeal. Learned Counsel for the dealer, however, cited a decision of Hon'ble High Court of Orissa rendered in the case of Shree Annapurna Conductors Ltd. Vs. Sales Tax Officer, Balasore Circle, Balasore and others, reported in [2009] 20 VST 736 (Ori.), to apprise this Tribunal that the Finance Department, Government of Odisha had taken a stand that priority industry had never been treated by the State Government as separate industries or a class of industries in the sense of classification of small/medium/large scale and since the minimum investment limit for priority industries was ₹1 crore and above which was the threshold for medium and large scale industries during the framing of IPR, 1996 and further as the intention of the Government was to give concession to priority industries falling

within the category of medium and large scale, such industrial units would, therefore, come under the purview of entry 43A of the notification dated July 26, 1996 issued by the Finance Department.

7. In the instant case following the above decision of the Hon'ble Court rendered in the case of Shree Annapurna Conductors Ltd. Vs. Sales Tax Officer, Balasore Circle, Balasore and others learned Standing Counsel for the State fairly conceded that under such circumstance the present dealer's industry has to be treated as a priority industry under IPR, 1996 so as to make it eligible for availing the incentives of exemption of sales tax in terms of entry 43A of the notification dated July 26, 1996 issued by the Finance Department.

8. On a thorough scrutiny of the impugned order it can be gathered that the Managing Director of Agricultural Promotion and Investment Corporation of Odisha Ltd. (a wholly owned Corporation of the Government of Odisha), Bhubaneswar in his letter No. 4457/Ag. Dated 13.08.2004 had clarified with reference to the notification No. 34879/Ag. dated 17.12.1999 of Government of Odisha, Agriculture Department that under State Agriculture Policy 1996, Cotton Ginning & Pressing Mills are coming under Agro Based Industries and under IPR, 1996 processing facilities on cotton is coming under Agro and Food Processing Industries list vide para 5.2.1 of IPR, 1996. For this reason, the first appellate authority discarded the interpretation of the assessing

officer in respect of Agro and Food Processing Industries and as such held the dealer-assessee entitled for the benefit under IPR, 1996.

The first appellate authority, however, held that the claim of dealer-assessee for exemption of sales tax on cowdy cotton as per eligibility certificate is not correct because non-collection of tax on sale of cowdy cotton is optional for the dealer and the liability to pay tax does not depend upon non-collection of such tax from the buyers. Therefore, on proper calculation and keeping in view the 'C' form submitted by the dealer-assessee the first appellate authority while allowing the dealer-assessee to be eligible for sales tax exemption benefit on purchase of raw materials and on sale of finished products as an Agro and Food Proceeding Industry under IPR, 1996 for a period of seven years from the date of commercial production i.e. from 25.01.2000 to 24.01.2007 with no limitation accepted the GTO as well as the TTO of the dealer as determined by the assessing officer. He then allowed the exemption amount at ₹14,36,361.00 and asked the dealer to pay the balance amount of ₹43,852.00 only on sale of cowdy cotton while charging @ 4% on sale worth ₹7,04,543.00 against Form-C and @ 8% on sale worth ₹1,95,880.00 without 'C' form. The dealer-assessee has not produced any further document or declaration in Form-C for its transaction relating to sale of cowdy cotton. Under such circumstances,

we find absolutely no reason to interfere with the order passed by the first appellate authority.

9. In the result, as discussed in the foregoing paragraphs, we hereby confirm the order passed by the first appellate authority. The appeal preferred by the State is thus dismissed. 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)
2nd Judicial Member

I agree,

Sd/-
(Rabindra Ku. Pattnaik)
Accounts Member-III