

For sake of propriety, convenience and to avoid conflicting opinion if any, all three appeals are heard and decide vide this common order.

Factual Matrix:

2. The respondent dealer M/s.Prinik Steels (P) Limited is a manufacturer and seller of MS ingots, MS angles, Flat Channel, MS plane round etc. It was assessed under Rule 12(4) of the CST (O) Rules for the assessment periods 2002-03, 2003-04 and 2004-05. Balance tax due determined for three periods above were duly realised from the dealer. But in a subsequent period, the assessment for these three periods were re-opened invoking Rule-10 of the CST (O) Rules on the basis of audit objection. The audit team suggested for re-opening with the allegation that, the dealer is not entitled to avail the benefit of concession in rate of tax against CST sale with declaration Form-C as a SSI Unit because, its fixed capital investment on plant and machinery had exceeded the upper limit of three hundred lakhs as restricted under Notification No.857(E) dated 10.12.1997 of Ministry of Industry, Department of Industrial Policy and Promotion, Govt. of India. The dealer was found to have affected purchase of plant and machinery worth of Rs.6.36,78,029.00.

In the re-assessment proceedings, the learned assessing authority found the dealer had disclosed the purchases on the strength of declaration form as follows:

I.	Cost of Plant and Machinery	Rs.1,47,65,846.00
II.	Cost of Electrical fittings and equipments	Rs.62,43,156.48
III.	Cost of Spares and Stores	Rs.79,20,335.52
IV.	Cost of moulds and rolls	Rs.2,47,37,047.00

In Consideration of the goods under different categories mentioned above, the assessing authority rejected the claim of the dealer and held dealers capital investment has exceeded the limit of 300 lakhs. Denying the benefit under SSI unit to dealers unit, he levied tax at full rate on CST sale. The dealer was asked to pay a sum of Rs.4011895.02 as tax due and of Rs.4011895.00 as penalty for the assessment period 2002-03, Rs.1,41,92,647.00 towards tax with same amount as penalty for tax period 2003-04 and similarly Rs.1,12,67,053.00 as tax due add to the same amount towards penalty.

3. Felt aggrieved by such demand the dealer carried the matter before Hon'ble Court in W.P(C) No.1466,1467 and 1468 of 2007. In the writ applications as per the direction of the Hon'ble Court, the Zonal Manager, DIC, Bhubaneswar had submitted joint verification report dated 7.4.2007 stating therein the dealers capital investment is below the upper limit of 300 lakhs. On this Hon'ble Court disposed off the writ application with direction to the dealer to take recourse in regular forum of appeal. Thereafter, the dealer preferred three number of appeals against assessment or demands for three assessment periods before the first appellate

authority. Learned JCST, Puri Range as first appellate authority vide its common order dated 28,12,2009 allowed all these three appeals by treating the dealer as a SSI Unit eligible for concession rate of tax as per Section 8(5) of the CST Act.

4. Being aggrieved, the revenue has preferred these three appeals with the contentions like the first appellate authority is wrong in treating the dealers unit as SSI unit. The fixed assets towards plant and machinery of the dealer had exceeded the limit of three crores so the dealer is not covered under the notification No.857(E) dated 10.12.1997.

5. All the appeals are heard with cross objections raised by the dealer wherein and whereby the dealer has taken a specific plea that the joint verification committee headed by representative of the DIC and tax authority on due physical verification of the dealers unit with relevant documents has submitted report before Hon'ble Court with their opinion that, the capital investment towards plant and machinery by the dealer is within three crores covered under the Government of India order dated 10th Dec. 1997 fixed for SSI Unit. So order of first appellate authority calls for no interference and the appeals are not maintainable.

6. As per the rival contentions, the questions framed for decision in these appeals are:

- (i) Whether, the dealer's unit should be treated as a SSI Unit, eligible for concession in rate

of tax as per Section 8(5) of the CST (O) Rules?

- (ii) Whether, the appeals by the dealer is not maintainable, keeping in view the direction of the Hon'ble Court in W.P(C) No.1466,1467 and 1468 of 2007?

7. Learned Addl. Standing Counsel, Mr. Raman advanced two fold arguments first is, the calculation of value of plant and machinery as per report of the joint verification committee submitted before Hon'ble Court is not binding, as the same is in lower side and the 2nd is, the upper limit towards plant and machinery is not three crores but one crore in accordance to subsequent notification No.S.O. 1288 (E) dated 24.12.1999 of Central Government. It is strenuously argued that the subsequent notification was not taken into consideration by the authorities below. Further, for sake of argument if it is accepted that the report of joint verification committee towards the value of capital investment is accepted i.e at Rs.2,34,81,269.00. In that event also the dealer cannot be treated as a SSI unit since it exceeds one crore.

8. At the cost of repetition, it is stated that the dealer had claimed itself a SSI unit entitled to benefit under Section 8(5) of the CST Act. In the regular assessment under Section 12(4) of the CST (O) Rules the taxing authority has treated the dealer as SSI Unit and extended the benefit. In a latter period, on the basis of A.G. Audit with the allegation like the capital investment

towards plant and machinery being more than three hundred lakhs the dealer should not be treated as SSI Unit the assessments were re-opened. In the re-assessment proceeding, the learned assessing authority calculated the cost of the plant and machinery which became found more than three hundred lakhs. Thus, the assessing authority dis-entitled the dealer from the benefit of a SSI unit.

9. When the matter stood thus, the dealer challenged the re-assessment before Hon'ble Court in W.P.(C) No.1466,1467 and 1468 of 2007. The Hon'ble Court asked for a joint verification team from the Director of Industries and in accordance to that one joint verification team comprising representative of taxing authority, DIC and Dealer submitted report the effect that the dealer's capital investment is less than three hundred crores. Thereafter, while disposing the writ applications, the Hon'ble Court directed the dealer to take recourse of the regular appellate forum for relief. At this, the dealer preferred appeal before the first appellate authority challenging the sustainability of assessment who in turn vide impugned order relied upon the report of the joint verification committee and treated the dealer's unit as SSI unit. Against the said reversing order of the first appellate authority, the present appeals are preferred by the revenue. The claim of the revenue is that, report submitted by the joint verification committee is not

conclusive the first appellate authority has not made any independent enquiry whereas, the assessing authority has duly enquired the fact of capital investment towards plant and machinery and its value. In the argument additional ground raised to treat the unit as a SSI unit as per the notification No.S.O. 1288 (E) dated 24.12.1999 by which the upper limit reduced to one crore.

10. Per contra, the plea of the dealer is, the report submitted before the Hon'ble Court by the joint verification committee is conclusive proof no scope left there after before the taxing authority for any further investigation. So the order of the first appellate authority is just and proper. It is also contended that the notification dated 24.12.1999 limiting the SSI Unit cost of investigation upon one crore is not applicable in case of the instant dealer as the instant dealer is covered under notification dated 10th Dec.1997.

11. At the outset, we are not agree with the contention of the learned Counsel for the dealer that, after the report of the joint verification committee no scope is left for the taxing authority to enquire into or to examine the value of capital goods purchased as plant and machinery, whether it exceeds three hundred lakhs or not? It is a fact that, as per the direction of the Hon'ble Court joint verification committee had submitted a report in favour of the dealer but at the same time it is found that the Hon'ble Court has not finally decided the dispute

rather left the dealer upon to choose the appellate forum. This view of the Hon'ble Court indicates, the appellate forum is independent to form its opinion. However, it is a fact that the report by joint verification committee is a valuable piece of evidence prepared by experts. First appellate authority should not or cannot mechanically relied upon the report. To this extent, we are agree with the argument advanced by the learned Addl. Standing Counsel, Mr. Raman.

12. Delving into the impugned order, here in this case, it is found that the first appellate authority has just accepted the joint verification report. It has not analysed the details of the goods purchased by the dealer which are claimed towards fixed capital. The first appellate authority has committed a wrong.

13. In such view of the fact two options are left with us. Either the matter needs to be remitted back to the first appellate authority for disposal afresh on merit or the matter can be taken up by us being the fact finding authority. Looking at the protato of the proceedings and the facts available before us when it is said that no further evidence will be adduced by the dealer we felt it just and proper to decide up the question at this level for the interest of justice.

14. The claim of the revenue is two fold. One is, keeping in view the subsequent notification dated 24.12.1999 when the upper limit of expanses towards

fixed assets is one crore the instant dealer should be treated as a Medium Scale Industry what should be the upper limit more to say one hundred lakhs or three hundred lakhs is the question.

15. To counter it, learned Counsel for the dealer argued that this aspect was taken care of by the joint verification committee as reflected in the report submitted before Hon'ble Court. Learned Counsel has drawn the attention to the bench to the clarificatory Press Note No.3 dated 14.03.2000 and for press Note No.4 dated 23.3.2000. The press note No.4 dated 23.03.2000 reproduce here for better appreciation:

“It is now clarified that the units that have obtained provisional registration on the basis of the Notification dated 10th December, 1997 and have taken concrete steps for implementation of the project such as; preparation of project report, sanction of loan, purchase of land, civil construction, placement of orders for Plant and Machinery, etc. prior to 24th December, 1999 would continue to enjoy the SSI status so long as the investment on Plant and Machinery does not exceed Rs.300 lakhs notwithstanding the revised investment limit of Rs.100 lakhs notified on 24th December, 1999.”

Learned Counsel also furnished the provisional registration certificate issued by the DIC in favour of the dealer on 11.8.1999. It is submitted that, the dealer being covered under the press note No.4 dated 23.03.2000 and as held by the joint verification committee the only conclusion should be in favour of dealer. The argument on the basis of the provisional certificate issued on 18.11.1999 and from the Government of India

Notification Press Note mentioned above, it is held that, the plea and argument advanced by the revenue is not conceivable hence, rejected.

16. Now next question before us is, what is the value of purchase of fixed assets towards plant and machinery. The assessing authority has calculated the same as more than three hundred lakhs. As it was not believed to be final the Hon'ble Court had asked for a report on joint verification. The joint verification report prepared by the representative of the taxing authorities, District Industrial Centre, Bhubaneswar and the dealer. On a detail verification the committee prepared and submitted a report with the opinion that, the capital investment towards plant and machinery by the dealer was below three hundred lakhs. The report was prepared in presence of the taxing authority as well as with the Assistant of the Taxing Authority. It was STO, Jatni Circle was a member of the joint verification committee. In absence of any rebuttal from the side of the revenue there is no reason before us as to reject the opinion of the joint verification committee. They are the people expert in the particular area. They have made verification of the goods with necessary documents and there after they arrived at a conclusion objectively. The revenue has not advanced any scrap of paper save and except the assessment order to rebut the presumption arised out of the joint verification committee.

When a unit can be treated as SSI unit **Section 2 (ff)** of the OST Act, 1947 reads as follows:

“ Small scale industry means an industry which is certified as such by the Director of Industries, Orissa, or the General Manager or Project Manager of the concerned District Industries Centre, Orissa or by any other authority as the State Government may be notification, specify from time to time.”

The provision above as it mandates the competent authority to certify any unit as SSI unit is the DIC. In case of the dealer it is the DIC which had certified the dealer a SSI unit and it is the DIC which has submitted report on verification stating that the investment by the dealer falls short of three hundred lakhs. In the case it will be prudent to accept the joint verification report and the certificate issued by the DIC. In the wake of above it can safely be said that, the dealer should be treated as a SSI Unit under Section 8(5) of the CST Act. Another aspect of the case in hand such as maintainability of the re-assessment without any new material being brought to the notice of the assessing authority but mechanical relying on the A.G. Audit report indicates mere change of opinion by the assessing authority which is not permissible. However, this question being not raised by the dealer is of no avail.

In the result it is ordered.

All the three appeals are dismissed on contest as of no merit.

Dictated and Corrected by me,

(Sri Subrat Mohanty)
Judicial Member.

(Sri Subrat Mohanty)
Judicial Member.

I agree,

(Suchismita Mishra)
Chairman.

I agree,

(Sri R.K.Pattnaik)
Accounts Member-III.