
(2002) 02 OHC CK 0030
In the Orissa High Court
Case No : O.J.C. No. 8545 of 2000

Devi Dal and Flour Industries, A Proprietorship Firm and Others APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Sales tax Act, 1947 — Section 6

Citation : (2002) 93 CLT 472 : (2002) OLR 794 Supp

Hon'ble Judges : P.K. Balasubramanyan, C.J.;A.S. Naidu, J

Bench : Division Bench

Advocate : B.K. Mohanti and Bibek Mahanti, S.K. Mishra, S.K. Jena, S.S. Patra, G.C. Sahoo and N.R. Mohanty, for the Appellant; Addl. Standing Counsel (Commercial Taxes), for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—The prayers in this original petition filed under Articles 226 and 227 of the Constitution of India are :

"(a) issue a writ in the nature of certiorari or any other appropriate order and/or direction directing the opposite party Nos. 1 and 2 to give effect the promise held out in IPR-92.

(b) and calling upon the opposite party No. 1 to certify and send upto this Hon"ble Court the documents and files showing the object and purpose of granting benefits inter alia for Sales Tax exemption for establishing a modern Dal Mill.

(c) issue such other order and/or orders as this Hon"ble Court may deem fit and proper."

The petitioner set up an industry for processing of pulses (mug dal) as seen from the permanent registration certificate issued to the petitioner. The certificate was

amended under an expansion programme with effect from 1.12.1998 by which Mug dal, Biri dal, Masura dal, Buta dal and Harad dal were added. The certificate of eligibility for sales tax concession on finished products dated 10.4.1997 issued by the District Industries Centre, Jagatpur marked Annexure-5 also describes the industrial unit as a new small scale industry which has been accorded PMT Registration bearing No. 15/16/00207/ PMT., dated 21.1.1994/13.3.1997 for manufacturing/processing of pulses. In describing the name of finished products the unit is described as processing of pulses. The raw materials shown, are pulses (Mug, Biri, Masoor, Arahar etc.). The certificate adds that being a new small scale industrial unit as defined in the I.P.R. 92, it is eligible for exemption on sales tax from the date of commercial production, subject to such restrictions and conditions as laid down in Finance Department Notification No. SR-1091-1092 dated 23.9.1992, as amended from time to time upto a coiling amount of 60% of the fixed capital investment.

2. The petitioner claimed exemption under the Orissa Sales Tax Act, 1947 (in short, the "Act") on the basis that it was entitled to the exemption under the notification issued u/s 6 of the said Act and to the benefits of IPR-92. The assessing authority by order dated 14.3.2000 negated the claim of the petitioner-assessee and assessed the tax payable as indicated in that order of assessment. The assessee, obviously has an efficacious alternate remedy by way of appeal against that order and it is understood that an appeal is pending.

3. According to learned counsel for the writ petitioner, the industry started by the petitioner is a modern Dal mill. It is an agro-based industry, and it is entitled to concession under IPR-92. According to the petitioner the assessing authority was not justified in rejecting the claim of the assessee for exemption under IPR-92 as per the notification issued u/s 6 of the Act. It is clear, after the decision of the Supreme Court, in Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, that for obtaining the benefit under the Sales Tax Act, the assessee must show that it comes under the notification issued u/s 6 of the Act and it is not sufficient merely to show that the assessee owns an industry and is entitled to the benefit of the concerned Industrial Policy Resolution.

4. According to the learned Additional Standing Counsel for the Commercial Taxes Department, there is no notification u/s 6 of the Act which would enable the assessee to claim the benefit or exemption and that even otherwise, the industrial unit of the assessee is excluded from the benefit conferred under IPR-92.

5. We do not think that it is appropriate for us to decide this question in this writ petition. The petitioner has been assessed to tax under the Orissa Sales Tax Act after over-ruling its objections. The petitioner has filed an appeal challenging the decision of the assessing authority. It is for the petitioner to put forward its contentions before the appellate authority. The appellate authority created under the Orissa Sales Tax Act is entitled to decide an appeal both on questions of fact and on questions of law. It is a forum for rehearing. Therefore, the petitioner, in

our view has an efficacious alternate remedy and it has rightly invoked that remedy. We do not think that it is proper or necessary to consider the merits of the contentions of the petitioner at this stage in this proceeding. It is open to the petitioner to substantiate its claim before the appellate authority that the petitioner's industry is one which is covered by an exemption notification issued u/s 6 of the Act.

6. In view of this position, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution of India at this stage. Hence, we decline to go into the questions sought to be raised and dismiss this writ petition, without prejudice to the rights of the petitioner to agitate all its contentions in the appeal pending before the appellate authority. In the circumstances, we make no order as to costs.

A.S. Naidu, J.

7. I agree.