(1995) 05 OHC CK 0021

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6198 of 1994

Ipitata Sponge Iron Ltd. and Another APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:

Citation : (1995) 2 OLR 237 : (2001) 122 STC 259

Hon'ble Judges : P. Ray, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : Bibek Mohanty, G.N. Padhi, H.K. Mohanty, S.S. Barat, B.K. Sahoo, N. Das Burma, K. Kar and S. Pattnaik, for the Appellant; Govt. Advocate, for the Respondent

Judgement

P. Ray, J.—In order to accelerate the pace of industrial growth in the State and to attract industrialists to set up industries in industrially backward areas, the State of Orissa adopted a new industrial policy in 1980 (hereinafter described as "the Policy of 1980"). One of the incentives provided for the said Policy of 1980 was regarding sales tax.

2. For large/medium industries it was provided in the Policy of 1980 that :

"Large and medium industries whether new or intending to expand or diversify shall be eligible for interest-free sales tax loan equivalent to the sales tax paid within the State by the units during the first five years subject to an annual maximum limit of 10 per cent of the capital invested, but not exceeding Rs. 25 lakhs per year. The loan shall be repaid after 10 years of each year''s drawal."

3. In pursuance of the said Policy of 1980 the State Government framed Orissa Sales Tax Loan Rules, 1980 laying down the method and procedure for claim, determination, sanction, disbursement, repayment and recovery of the said sales tax loan.

4. The petitioner-company is a medium industry situated in a panchayat area. It

started commercial production on and from April 1, 1986. The benefit under the 1980 policy and scheme was allowed to the petitioner-company.

5. The petitioner-company has claimed that as a medium industry it was entitled to enjoy the said benefit of sales tax loan for a period of five years from the date of commencement of commercial production, i.e., up to March 31, 1991.

6. Upon a review of the success of the Policy of 1980 the State Government introduced a revised industrial policy in 1986 on and from April 1, 1986 (hereinafter referred to as "the Policy of 1986"). The Policy of 1986 was not made applicable to continuing industries which were defined as those industries, which had made any kind of investment before April 1, 1986 (the effective date) or/and availed of themselves of any incentive or facility under the Policy of 1980. In other words, the benefits under the Policy of 1986 were made available only to those new industrial units for which investments were made after April 1, 1986.

7. The petitioner-company, which made investment prior to April 1, 1986 was thus not entitled to the benefits of 1986 Policy, and it was allowed the benefit of sales tax loan in accordance with the Policy of 1980.

8. In 1989 the State Government again revised its industrial Policy introducing further liberalised package of incentives "with the twin objective of encouraging new industries and providing support to industries which have come up in the State during the last few years". Under the said Industrial Policy of 1989 (hereinafter referred to as "the Policy of 1989") the continuing units of 1980 policy have been provided sales tax incentive under Part III. The relevant paragraphs of the said Policy of 1989 are reproduced below :

"7.1.5. Deferment I Exemption of sales tax on finished products of medium and large scale industrial units.--New medium and large industrial units will be allowed to defer payment of sales tax collected on their finished products for a period of 7 years in Zones ''B'' and ''C'' and 9 years in Zone ''A'' from the date of commercial production. Deferred amount in respect of each year will be repaid in full after the expiry of the period of deferment annually. In lieu of deferment new medium and large scale industrial units can opt for exemption of sales tax on finished products for a period of five years if the unit is located in Zones ''B'' and ''C'' and for 7 years in Zone ''A''.

7.1.6. Deferment /Exemption of sales tax on finished products of pioneer units.--Pioneer units will be allowed to defer payment of sales tax collected on finished product for a period of 9 years in Zones ''B'' and ''C'' and 11 years in Zone ''A''. Deferred amount of sales tax in respect of each year will be repaid in full after the expiry of the period of deferment annually. In lieu of deferment such an industrial unit can opt for exemption of sales tax on finished product for a period of 7 years in Zones ''B'' and ''C'' and 9 years in Zone ''A''.

7.3.1. Eligibility.--The incentive under this part shall be applicable to ''continuing units of 1980 policy''.

7.3.2. Exemption/Deferment on sales tax on finished products.-- The sales tax incentive on finished products as is applicable to new industrial units under Part I shall be applicable to continuing units of 1980 policy, after the effective date, provided that sales tax loan, if any, availed of under the Orissa Sales Tax Loan Scheme Rules, 1980 is surrendered within the time-limit prescribed in the operational guidelines/instructions.

7.3.3. The incentive under Part III shall also be available to the extent of increased production over and above the installed capacity to an existing industrial unit which has undertaken expansion, modernisation, diversification between August 1, 1980 and March 31, 1986 and has gone into commercial production after April 1, 1986, provided that such expansion/modernisation/ diversification has been undertaken on the basis of an exclusive project report duly appraised by financing institutions."

9. Continuing unit of 1980 policy has been defined as "any industrial unit where capital investment commenced on or after August 1, 1980 and prior to April 1, 1986 and the unit has gone or goes into commercial production on or after April 1, 1986".

10. The operational guidelines as envisaged by para 7.3.2. of the 1989 policy were framed on June 10, 1992.

11. The petitioner-company, being a continuing unit of 1980 Policy was/is entitled to the new sales tax incentives under Part III. It claims that it was entitled to deferment/exemption of sales tax on and from the effective date, i.e., December 1, 1989. However, as the operational guidelines were not framed till June 10, 1992, the company could not apply for the benefit of the said incentive. The company started paying sales tax and in fact paid about Rs. 1,03,710.54 paise on account of sales tax between December 1, 1989 and March 31, 1991.

12. After the operational guidelines were framed the company applied and obtained required certificate from the office of the Director of Industries on July 31, 1992 declaring it eligible for exemption of sales tax under the 1989 policy for a period of five years from December, 1989.

13. In spite of the 1989 policy and the petitioner-company''s entitlement to sales tax exemption/deferment the sales tax authorities raised demands for payment of sales tax and passed assessment orders making the company liable to pay sales tax. The company filed an application claiming refund of the amount paid on account of sales tax between December I, 1989 and March 31, 1991. The refund application was rejected and the sales tax authorities are persisting in raising demands for sales tax. The petitioner-company moved the court thrice earlier against such unreasonable and arbitrary orders issued by the concerned authorities from time to time.

14. The petitioner-company has moved the present writ application for quashing

the assessment orders for the assessment years 1989-90 and 1990-91, for direction to refund of all sales tax paid by it between December 1, 1989 and March 31, 1991 or alternatively for declaration that the benefit of 1989 policy is available from April 1, 1991 to March 31, 1998.

15. The petitioner-company has contended that exemption period should be counted from the date of framing of the operational guidelines inasmuch as it could not apply and get the exemption due to non-framing of the operational guidelines. It has been claimed that no sales tax can be demanded from it till March 31, 1991 and that the impugned assessment orders are illegal and unsustainable.

16. Mr. Mohanty, learned advocate appearing for the sales tax authorities, has sought to contend that the petitioner-company not being a new industrial unit, is not entitled to the benefits of deferment/exemption of sales tax provided for in paras 7.1.5 and 7.1.6 under Part I. He has further contended that the benefit period of five years under the 1980 policy was to be counted from August 7, 1980, the date of declaration of policy and there was no question for the petitioner-company to get the benefit of 1980 policy from April 1, 1986. According to him, as the petitioner-company was not entitled to any benefit under the 1980 policy, it is also not entitled to any benefit under the 1989 policy. He, however, has not been able to contest the contention of the petitioner-company that the period of benefit under the 1989 policy is to be counted from June 10, 1992 when the operational guidelines were framed and published.

17. A careful glance through the concerned industrial policies shows that none of the contentions raised on behalf of the sales tax authorities can be accepted. The State Government itself has extended the benefit of 1980 policy to the petitioner-company. The Policy of 1980 and the Orissa Sales Tax Loan Rules, 1980 make it abundantly clear that the period of five years was to be counted from the date when the benefit was in fact made available. The petitioner-company was given the benefit from April 1, 1986 and accordingly it was entitled to the said benefit up to March 31, 1991. Moreover, in view of the definition of "continuing units of 1980" as contained in para 2.18 of the 1989 policy it is not at all relevant whether the petitioner-company was entitled to the benefits of sales tax loan under the 1980 policy. Only condition for obtaining the benefit of sales tax incentives under Part III of the 1989 policy is that if the continuing units of 1980 policy have availed of the sales tax loan under the policy of 1980 they would have to surrender that sales tax loan within the time-limit prescribed in the operational guidelines/ instructions. All continuing units of 1980 policy as defined in the 1989 policy are entitled to the benefits of 1989 policy irrespective of the fact whether they got the benefits of sales tax loan under the 1980 policy or not.

18. The contention that industrial units covered under Part III of 1989 policy are not entitled to the benefits envisaged by paragraph 7.1.5 or 7.1.6 is clearly contrary to the language of paragraph 7.3 and its sub-paragraphs. Paragraph 7.3.2. makes it quite clear that the relevant benefits described under Part I will

also be available to continuing units of 1980 policy covered under Part III. The sales tax authorities have completely misread the relevant provisions of 1989 policy and are seeking to give an interpretation which makes the incentives under Part III meaningless and defeats the very purpose and objects for introducing the 1989 policy.

19. We are satisfied that the petitioner-company being industrial unit covered under Part III is entitled to the benefit of deferment/exemption of sales tax under the Policy of 1989 with effect from June 10, 1992.

20. The petitioner-company has claimed that it is entitled to exemption of sales tax not only on finished products but also on purchase of machineries, spares and raw materials. It has also claimed that it is a pioneer industry located in Zone "B" and accordingly entitled to the benefit of deferment/exemption for a period of 7 years. Both the claims are disputed by the sales tax authorities. According to them, if the petitioner-company is at all entitled, it is entitled to get exemption/deferment only on the finished products. We are not deciding the said claims. It is for the petitioner-company to raise such claims before the appropriate authority for granting exemption/deferment and if such claims are made, the concerned authority will determine the said claims on the basis of the provisions of 1989 policy.

21. Under the 1980 policy the petitioner-company was entitled to get interest-free sales tax loan provided, but it was liable to pay the sales tax. The petitioner-company is liable to pay sales tax till June 9, 1992. The period from April 1, 1991 to June 9, 1992 is not covered either by 1980 policy or by 1989 policy.

22. The petitioner-company has submitted an application before the assessing officer for refund of sales tax, inter alia, on the ground that no sales tax was leviable in view of the benefits extended to the petitioner-company under the 1989 policy. On behalf of the sales tax authorities it has been submitted that the petitioner-company having realised sales tax from the dealers it cannot claim refund of the same inasmuch as such refund to the company will be hit by the doctrine of "unjust enrichment". Reliance has been placed on a division Bench decision of this Court reported in [1993] 90 STC 481 (Tangudu Gopalan & Sons v. State of Orissa). The petitioner-company is required to satisfy the concerned authorities that the refund as claimed will not enrich the company in any way or manner and that the sales tax realised from the dealers will be paid back to them. This is again a question of fact which is to be ascertained on the basis of relevant documentary evidence. The appropriate authority will decide the claim for refund and will consider the said question also.

23. In view of the foregoing reasons we direct the sales tax authorities to reconsider and revise the impugned assessment orders being annexures 1 and 2 to the writ petition taking the benefits of 1980 policy and 1989 policy as available to the petitioner-company. If the petitioner-company raises any claim about the period of entitlement under the 1989 policy and the items on which exemption/

deferment is available, such claim will also be considered and disposed of at the time of passing revised assessment orders. The concerned authorities will also dispose of the refund application in the light of the observations made in this judgment. The authorities will give due opportunity of hearing to the assessee-company and complete the entire exercise within a period of six weeks from the date of communication of this order.

24. The writ petition is thus disposed of. No order as to costs.

D.P. Mohapatra, J.

25. I agree.

