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**(1991) 08 OHC CK 0030**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No''s. 3169 and 3448 of 1991

Mangalam Timber Products Ltd. APPELLANT

Vs

State of Orissa and Others RESPONDENT

**Date of Decision :** 02-08-1991

**Acts Referred:**
Orissa Sales Tax Act, 1947 — Section 7

**Citation :** (1991) 2 OLR 453

**Hon'ble Judges :** S.K. Mohanty, J;S.C. Mohapatra, J

**Bench :** Division Bench

**Advocate :** B. Agrawal, M. Agarwalla and S.P. Dalai, for the Appellant; Standing Counsel, for the Respondent

**Final Decision :** Allowed

## Judgement

S.C. Mohapatra, J.—This is an application under Art. 226 of the Constitution of India.

2. For development of industries in the State incentive is declared to be given. A person liale to pay Sales Tax, may either defer to pay the same or get exemption both under the Orissa Sales Tax Act as well as under the Central Sales Tax Act. For working out the industrial policy of 1989, a notification has been issued by the State Government u/s 7 of the O. S. T. Act and rules have been made by the Orissa State under the Central Sales Tax Act wherein mutatis mutandis, the provisions of the notification u/s 7 of the O. S. T. Act have been made applicable.

3. The petitioner owns a medium scale industry. He made applications for exemption for payment of sales tax both under the O S. T. Act as well as under the O. S. T. Act. Prayer for exemption having been refused, the petitioner has approached this- Court. There is a stipulated time for filing application in the notification u/s 7 of the O. S. T. Act The petitioner made the application a few days later. Another pre condition for grant of exemption is that the petitioner is to produce a certificate from the Director of Industries. The petitioner produced a

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certificate much later on 23-5-1991. They also did not contain all the details Since the applications were filed later and the certificates granted by the Director were not in full compliance as required by the Sales Tax Officer, both the applications were rejected. Against this rejection, the petitioner has approached this Court in these two writ applications.

4. Two grounds for refusal of the prayer are; (i) delay in making the application and (ii) non-receipt of certificates of the Director of Industries Mr. B. Agrawal, learned counsel for the petitioner, submitted that delay of a few days only ought not to have been a ground to reject the petition Mr. Anang Patnaik, learned Standing Counsel of the Commercial Taxes Department, submitted that a person seeking exemption should approach the authority within the time stipulated and delay causes many administrative inconveniences. While we appreciate the submission of Mr. Patnaik, we are inclined to hold that the delay by itself should not be a ground to reject an application. In case the officer is of the opinion that such delay is such that benefit if given to the dealer is likely to be misutilised, he should call upon the dealer to explain the same. Too rigid a view faustrates the policy itself.

5. As regards certificate from the Director of Industries, Mr. Agarwal submitted that Industrial Registration Certificate for medium and large scale industries are issued by Central Government and there is no scope for the Director of Industries of the State to give a certificate to be produced along with the application. Mr. Patnark on the other hand submitted that such a certificate being a precondition for grant of exemption provided in the notification and the rules which have force of law, Sales Tax Officer has no discretion in the matter. Besides, a certificate would rule out the possibility of evasion of tax by persons who do not come within the scope of the Industrial Policy.

6. In this case a certificate from the Director of Industries has been filed on 23-5-1991 thoug much later than the applications. Such certificate, however, does not contain the details. We find that the Sales Tax Officer has not given adequate opportunity to petitioner to produce the certificate. Whenever an application does not comply with the requirements for grant of exemption the Sales Tax Officer should first call upon the applicant to remove the deficiencies before rejecting it. In case after opportunities are given an applicant fails to remove the deficiencies pointed out, the Sales Tax Officer may reject the same. It would not be proper to reject the application without giving sufficient opportunity.

7. The Sales Tax Officer ought to have appreciated the difficulties of the petitioner in respect of certificate from the Director of Industries. There is no guideline of the State Government how the Director of Industries can grant a certificate in respect of large scale and medium scale industries. When it is not the intention of the State Government that medium and large scale industries should be deprived of the benefits, in the absence of any guideline, we may indicate that on verification of the registration certificate granted by the Central

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Government, the Director of Industries can grant a certificate with details for the purpose of getting the benefit of deferring payment or exemption of payment of Sales Tax. Commissioner of Sales Tax should instruct the Sales Tax Officer to accept those certificates to be in compliance with the requirement of the notification u/s 7 of the Orissa Sales Tax Act or rules under the the Central Sales Tax Act, as the case may be.

8. In the circumstances, orders rejecting the applications of the petitioner for exemption from paying sales tax both under the O. S. T. Act as well as under the C. S. T. Act to avail of the benefits in the Industrial Policy Resolution, 1969 of the State, are quashed. Sales Tax Officer is directed to reconsider the applications afresh after giving the petitioner opportunity of removing the defects as are pointed out by him.

9. Mr. A. Patnaik, learned Standing Counsel (S. T.) stated that Sales Tax Officer have some difficulty in view of the language of the notification and he would request the Commissioner to instruct the Sales Tax Officer so that in respect of the medium scale industries and large scale industries, certificates of Director of Industries on the basis of the certificate granted by the Central Government would be accepted.

10. In the result, writ applications are allowed. No, costs.

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