(1998) 01 OHC CK 0027

In the Orissa High Court

Case No : Original Jurisdiction Case No. 7103 of 1993

Manishri Refractories and Ceramics Private Limited — APPELLANT

Vs

State of Orissa and Another — RESPONDENT

Date of Decision : 16-01-1998

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

Citation : (1998) 111 STC 61

Hon'ble Judges : Susanta Chatterji, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : D.K. Nanda, J.N. Sahoo, D.K. Misra and N.K. Dash, for the Appellant; Akhil Mohapatra, Additional Govt. Advocate for respondent No. 1 and Lal, Standing Counsel (C.T.), for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—The petitioner Manishri Refractories and Ceramics Private Limited has filed the present writ petition praying for the following reliefs :

"(a) to issue a writ in the nature of certiorari quashing the impugned orders dated July 21, 1993 (annexures III-A and III-B) holding them to be illegal ;

(b) to issue a writ in the nature of mandamus directing opposite party No. 2 to issue the certificate of deferment of payment of Orissa sales tax and Central sales tax for the expanded portion of the industrial unit in form ''C'' ;

(c) to issue a writ in the nature of mandamus to opposite party No. 2 to refund the sales tax already collected under duress since October 5, 1992 ;

(d) to pass/issue such other writ/order and/or direction as deemed just and proper in the interest of justice and equity ; and

(e) to allow the writ petition with costs."

2. The petitioner has in fact challenged the orders vide annexures III-A and III-B

to the writ petition made by the Sales Tax Officer, Cuttack-I, Central Circle, Cuttack. It transpires from the impugned orders that the petitioner-dealer is an industry which manufactures refractory bricks. It was set up on August 20, 1971 and it started its trial production with effect from April, 1972. It had applied for deferment of payment of tax under the Orissa Sales Tax Act with regard to its expanded part and submitted the following documents :

(i) Application in form "A" ;

(ii) Form "E" issued by the Director of Industries, Orissa, Cuttack ;

(iii) Certificate showing the date of commercial production issued by the Director of Industries ;

(iv) Certificate of eligibility in form IV-A issued by the Director of Industries, Orissa, Cuttack ; and

(v) Memorandum and articles of association of the dealer-firm.

3. After discussing all the points, the Sales Tax Officer has recorded in the order that the agreement in form "E" had been submitted by the dealer-firm on June 8, 1993. It took time to produce the project report and finally it did so on July 21, 1993. The guidelines of the Government of Orissa, Industries Department contained in their letter No. 17066/HIVHI/33/92 dated June 10, 1992 speak of allowing benefits under the I.P.R., 1989. As per para II of the letter, an S.S.I. unit when by expansion becomes a medium unit would be entitled to the I.P.R. benefits. In this regard the expanded part of the S.S.I. unit no doubt would be entitled to I.P.R. benefits, but deferment of payment of tax would not be permissible to such units as per the provisions laid down in S.R.O. No. 790/90 dated August 16, 1990, as amended from time to time.

4. From the impugned orders, it appears clearly that the petitioner-dealer by way of expansion had become a medium unit. The Sales Tax Officer has recorded in unequivocal terms that the expanded part of the S.S.I. unit no doubt would be entitled to I.P.R. benefits, but deferment of payment of tax by such unit is not permissible as per the provisions laid down in S.R.O., referred to above.

5. Mr. Lal for the commercial taxes as also Mr. Akhil Mohapatra, learned Additional Government Advocate for the State submit that by the above Government notification dated August 16, 1990, although there is indication that in exercise of powers conferred by Section 7 of the Orissa Sales Tax Act, 1947, the State Government directed that the classes of registered dealers as specified in column (2) of the Schedule to the notification which were certified by the Director of Industries, Orissa, as medium or large scale industrial units set-up in the State of Orissa on or after the date mentioned in column (3) thereof, would be allowed certain benefits. From the notification, we find that one of the benefits is deferred payment of sales tax on the sale of finished products manufactured by the said industrial units from the dates of their commencement of commercial production as certified by the said authority, or the dates specified

in the Schedule, as the case may be, for the period indicated against each in column (4) of the Schedule. It is submitted that in serial No. 4 it is described as follows :

"4. Medium/large industrial units set up on or after the 1st December, 1989 and undertaken expansion/modernisation/diversification on the basis of project report appraised by financial institutions."

6. In the present case, it is stated, the S.S.I. unit if by expansion has become a medium industrial unit, it is not entitled to the benefits as claimed. At the very inception, medium or large industrial units are not entitled to the benefits; We fail to appreciate this submission. If proper certificate has been given to the petitioner-dealer that it has become a medium industrial unit and the unit has been set up on or after December 1, 1989, the S.R.O. in question should not be read in such a narrow term that even after the scheduled period only the medium/large industrial units will be entitled to the benefit of deferment of payment of tax and not the S.S.I. units on expansion to medium units. This argument is not acceptable to this Court.

7. Regard being had to the materials on record, we are of the view that since the Sales Tax Officer has unequivocally held after taking into consideration all the necessary documents that by expansion the petitioner-dealer has become a medium industrial unit and thus entitled to the I.P.R. benefits, the said benefits include deferment of payment of tax. On this score, we quash the impugned orders and allow the writ petition directing the sales tax authorities to take steps to allow deferment of payment of tax as one of the benefits available to the petitioner.

D.M. Patnaik, J.

8. I agree.

