
(2007) 12 OHC CK 0041
In the Orissa High Court

Rishabh Electricals Pvt. Ltd.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 1 OLR 351 : (2008) 14 VST 391

Hon'ble Judges : B.P. Das, J;A.K. Samantaray, J

Bench : Division Bench

Judgement

B.P. Das, J.—The petitioner, M/s. Rishabh Electricals Pvt. Ltd., has filed this writ petition under Articles 226 & 227 of the Constitution of India with a prayer to (1) declare that the petitioner-industry is entitled to sales tax exemption in view of Entry 43-A of the Finance Department Notification dated 26.7.1996, (2) to direct the O.Ps. to grant sales tax exemption to the petitioner as per the specific provision made in this regard in the Industrial Policy Resolution 1996 and (c) to declare that the petitioner-industry being a priority industry is entitled to sales tax exemption.

The petitioner claims that it is a beneficiary under the Industrial Policy Resolution 1996 (herein after "IPR 1996") issued by the State Government, which provided for certain incentives to different categories of industries as indicated therein. According to the petitioner, the petitioner on being attracted by the incentives indicated in the IPR 1996 set up its industry in village Saura in the district of Khurda "for manufacturing aluminium wire rods and other aluminium products with a project cost of more than one crore in order to become a "Priority Industry". It commenced its commercial production from 12.6.1998. It is stated that the petitioner got the certificate from the Director of Industries, Orissa, vide Annexure-6, wherein its industry was given the status of Priority Industry. The Director also issued certificate of eligibility to the petitioner-industry for sales tax concession on raw materials, machinery, spare parts, packing materials and finished products under IPR 1996 (new units), vide Annexure-6A. Thereafter, the

Director of Industries by letter No. 3SS-256/99.14473/ Ind. Cuttack dated 30th November 1998/1/12, vide Annexure-6B, intimated the petitioner the amendment made to item No. 6 of the certificate of eligibility for sales tax concession which reads as follows:

Item 6:

This unit is located at Sarua under Begunia Sub-Division of Khurda is eligible for extension of exemption of Sales Tax on machinery, spare parts, raw-materials, packing materials and finished products by 2 additional years including eight years and there will be no maximum limit on such exemption during the eligibility period as amended vide Notification No.2184/1-XIV-HI-99/98 dtd. 2.2.99 of the State Government in Industries Department, Bhubaneswar, a photocopy of which is enclosed for reference.

The Industry Department by its notification No. 2184 dated 2.2.1999 by way of amendment substituted sub-para 5.6 (ii) (Part-II) of the IPR 1996 published in the Industry Department notification no.4863-XIV.HI 1/86 elated 2.3.1996 as follows:

For all priority industries entitled to incentive under the industrial policy the period of exemption/deferment made will be extended by 2 additional years and there will (sic) be no maximum limit on such exemption/deferment during the eligibility period.

According to the petitioner, the existing IPR and the amendment, which has been published, were approved under the Rules of Business by the Cabinet in which the Minister of Finance was a member. In order to give effect to the IPR, the State Government brought about amendments in different entries. Entry 42-A and Entry 43-A were introduced on 26.7.1996 to give effect from 1.3.1996. In Entries 42-A & 43-A, there are three columns and second column indicates what are exempted and to whom it shall be available. Entry 42-A relates to new small scale industrial units whose capital investment had commenced on or after 1.3.1996 and also extended retrospectively to such industrial units where fixed capital investment had commenced after 1.4.1995 but before 1.3.1996, also to be entitled, provided they surrendered/ refunded the sales tax incentives already availed, if any, under the Finance Department Notification. Entry 48-A was for a similar situation for new, medium and large scale industry certified, It also extended retrospectively as in Entry 42-A where the investment of the industries commenced after 1.4.1995 but before 1.4.1996 provided they disgorge any benefit obtained on an earlier notification, i.e., I.P.R.-1992. The third column of the same indicates the date from which the benefit shall be given for purchase of raw materials, machineries, spare parts and packing materials and on sale of finished products to be allowed from the date of commercial production to be certified by the General Manager for the purpose indicated in the I.P.R. The first proviso to column-3 of Entry 42-A stated that ceiling shall be 100% of the fixed (sic) during the eligibility period. Accordingly, along with other prayers, a prayer

is made by the petitioner to quash the orders of assessment as well as the confirming orders passed by the 1st appellate authority and 2nd appellate authority under Annexures-3A, 3B, 3C, 3D, 3E, 3F and 3G and to direct for fresh assessment.

2. This case was heard along with W.P.(C) No.5616/2003 and the counter affidavit filed by the Industries Department in the present case was adopted in W.P.(C) No.5616/2003. Ultimately, the aforesaid writ petition was allowed by this Court by judgment dated 8.2.2007, which has been reported in Hi-Tek Powercon Pvt. Ltd. Vs. The Asst. Commissioner of Commissioner Taxes, (TRS) and Others, .

In the present case the Industries Department has filed a counter affidavit taking a stand that since incentives under priority sector are envisaged for industries having investment over rupees one crore, the notification of the Finance Department takes into account such industries since an investment level of rupees one crore and above falls in the category of medium/large scale. Thus, a priority industry with rupees one crore and above investment which would be medium/ large scale industry and since the intention of IPR 1996 was to give incentives to industries in priority sector, such industries can get the benefit under Entry 43-A. So according to the Industries Department, the petitioner-Unit is not entitled to get such benefit.

In the counter affidavit filed by the Finance Department, a Stand has been taken that the priority industries have never been treated by the State Government as separate category or class of industries in the sense of classification of Small Scale, Medium and Large Scale and that since the minimum investment limit for priority Industry is rupees one crore and above, which is a threshold for medium and large scale industry during the framing of IPR 1996 and as the intention of the Government was to give concession to priority industries falling within the category of medium and large scale, such industrial units would, therefore, come under the purview of Entry 43-A. According to the Finance Department, there is no incongruity between the IPR 1996 of the Industries Department and the notification of the Finance Department giving sales tax exemption/deferment. The IPR 1996 envisages certain privileges/incentives for priority industries having investment over Rs. 1.00 crore. Industries having that level of investment fall within the category of medium scale, which is the basis for classification of industries in terms of the Industries (Development and Regulation) Act, 1951.

3. Now from the facts narrated above, the question that falls for determination of this Court is whether the petitioner industry is to be treated as a priority industry under IPR 1996 so as to be eligible to avail the incentives of exemption of sales tax.

In order to resolve the aforesaid issue, it is necessary to have a look at IPR 1996. Clause 2.4 in Part II of the IPR 1996 defines "Fixed Capital Investment" thus:

Fixed Capital Investment" means investment in land, building, plant and

machinery and other equipments of permanent nature.

Sales tax exemptions have been provided under the head "Sales tax" in Paragraphs 5.1 and 5.6, which are relevant for the present purpose, stipulate:

5.1 Subject to Operational guidelines instructions and procedure, sales tax incentives shall be allowed after the unit has gone into commercial production and from the date of commercial production.

5.6 All new small, medium and large scale industrial units will be eligible for exemption/deferment of sales tax on purchase of machineries, spare parts of machineries, raw-materials, packaging materials and finished products in the manner indicated below:

XXX XXX XXX(i) xxx xxx xxx (ii) For "priority industries" the maximum limit of exemption/ deferment of sales tax will be 200% of the fixed capital investment and the period of exemption/deferment will be extended by 2 additional years:

Provided that in respect of electronic/telecommunication (hardware and software) industrial units the maximum limit of exemption/ deferment of sales tax will be 250% of the fixed capital investment.

(iii) For small scale industrial units with fixed capital investment not exceeding Rs. 10.00 lakhs the maximum limit of exemption of sales tax will be 200% of the fixed capital investment and period of exemption will be extended by one additional year.

xxx xxx xxx

"Priority industries", as defined in paragraph 2.7 of the IPR 1996, are the categories of industrial units, as mentioned under sub-paragraphs (i) to (xvi) thereof and the project cost of each such industry shall not be less than Rs. 1.00 crore, which means any industry in the aforesaid sector, if it has a project cost of more than Rs.1.00 crore, in terms of IPR 1996 and, according to the petitioner, shall be entitled to the exemption as provided under paragraph 5.6 to the extent of 200% of the fixed capital investment. According to the petitioner, the I.P.R.-1996 itself has defined what is fixed capital investment and the Industries Department before declaring an industry to be a priority industry makes an enquiry into the application submitted by the industry before granting the eligibility certificate, as is done in the case of the petitioner.

4. Learned counsel for the petitioner submitted that the statement made in the counter affidavit filed by the Finance Department that all priority industries having project cost of more than Rs. 1.00 crore have been treated by the Finance Department either as medium or large scale industries, is wrong. It was argued that the Finance Department completely misunderstood in treating the project cost to be equivalent to fixed capital investment and as such treating the priority industries primarily as medium and large scale industrial unit, was erroneous and not in conformity with the I.P.R. 1996.

5. Learned counsel for the petitioner in this regard drew our attention to the decision rendered by this Court in M/s. Hi-Tek Powercon (supra), in which this Court relied upon the decision of the apex Court in Vadilal Chemicals Ltd. Vs. The State of Andhra Pradesh and Others, .

Mr. Ashok Mohanty, learned Senior Standing Counsel (C.T.) appearing for the Finance Department as well as the Commercial Taxes" Department, relied upon various decisions including the decision in Manickam and Co. v. State of Tamil Nadu (197) 39 STC 12 17 (SC) and submitted that the word "all" in clause (ii) of 3rd proviso to Entry 43-A includes only those "priority industries" which fall under clause (iii) and not under any other category of industries.

All these arguments advanced on behalf of the O.Ps. go futile in view of the decision rendered by this Court in M/s. Hi-Tek Powercon (supra), wherein it was held that

The expression "all" appearing before ""priority industries" in the proviso to Entry 43-A(1)(b) is significant. It is clear that all priority industries whether small, medium or large, would fall within the said entry. Nothing more read into it. In this regard we may reiterate the decision of the apex Court in MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others,

6. The points raised in the present case are similar to the point of law raised in M/s. Hi-Tek Powercon (supra). In the present case basing upon the IPR 1996 and the notification of the Finance Department dated 26.7.1996, the petitioner established its industry in village Saura in the district of Khurda, where M/s. Hi-Tek also set up its industry, for manufacture of aluminium wire rods and other aluminium products and started its commercial production on 12.6.1998 and Industries Department issued the notification dated 2.2.1999 providing that all priority industries, which are entitled to the incentives under the IPR 1996, will have exemption for two additional years without any maximum limit. The Director of Industries also issued eligibility certificate for sales tax concession to the petitioner industry, basing upon which the petitioner industry was getting sales tax exemption and the eligibility certificate granted by the Industries Department has not been cancelled as yet.

Following the ratio of the decision in M/s. Hi-Tek Powercon (supra), we allow this writ petition and quash the assessment orders and 1st appellate orders in Annexure-3A, 3B, 3C, 3D, 3E & 3F as well as the 2nd appellate order in Annexure-3G and declare that the petitioner is entitled to avail the sales tax exemption in accordance with the IPR 1996.

A.K. Samantaray, J.

7. I agree