(2007) 12 OHC CK 0038

In the Orissa High Court

Shree Plastics (P) Ltd. APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 21-12-2007

Acts Referred:

ORISSA MUNICIPAL ACT, 1950 — Section 131A, 188A

Citation : (2008) 1 OLR 254 : (2008) 16 VST 122

Hon'ble Judges : A.K. Ganguly, C.J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.N. Mahapatra, J.—This writ petition has been filed by the petitioner challenging the inaction of Opp. parties 4, 5 and 6, who are the Executive Officer, Administrator and Octroi Superintendent of Berhampur Municipality respectively, in granting certificate of exemption from payment of octroi in terms of Indusirial Policy Resolution 1996, (hereinafter referred to as the I.P.R. 1996'') in respect of machineries and equipments which are required to set up new industrial unit under the said I.P.R. 1996.

2. The case of the petitioner in short is that it is a Private Limited Company and being encouraged by various incentives including the incentives in respect of octroi provided under IPR 1996, the petitioner proceeded to establish an industrial unit for manufacturing of Rigid PVC pipes. And for the said purpose, the petitioner obtained ''Provisional Certificate'' bearing Registration No. 150610289 dated 4.5.1996, ''No Objection Certificate'' dated 5.8.1996 and ''Sales Tax Registration Certificate'' both under Orissa Sales Tax Act, 1947 and Central Sales Tax Act, 1956, from the General Manager, District Industries Centre, Ganjam, State Pollution Control Board, Bhubaneswar and Sales Officer, Ganjam 1 Circle, Berhampur, respectively. The petitioner also obtained permission from Executive Officer, Berhampur Municipality for installation of 100 HP electric Motor. Thereafter the petitioner placed orders with the parties from outside the State of Orissa for supply of machineries and equipments which were required to set up industrial Unit for manufacturing of PVC pipe and made an

application to Opp.party No. 4 for grant of ''Exemption Certificate'' from payment of octroi oh the said machineries and equipments. The petitioner''s further case is that the opp. party No. 8, General Manager, District Industries Centre, Ganjam, Berhampur vide his letter under Annexure-8 requested the Executive Officer, Berhampur Municipality to exempt the petitioner from payment of octroi on machineries required to set up its unit. When this yielded no result, the petitioner approached this Court in the present writ petition challenging the inaction of the opposite parties.

This Court while issuing notice to the opp. parties, as an interim measure directed that any collection made shall be subject to the result of this writ application.

3. In the counter affidavit filed by Opp. parties 4 and 6, it is contended that under Sections 131-A or 188-A of the Orissa Municipal Act, 1950 (hereinafter referred to as ''Municipal Act'') the Government alone is empowered to abolish octroi or to exempt octroi by notification after prior consultation with Municipal Council and the petitioner has not annexed any such notification to the writ application. It is further stated that the condition of prior consultation with Municipality before issuing any notification u/s 188-A of Orissa Municipal Act is mandatory and Opp. party No. 8, General Manager, District Industries Centre, has not referred to in his letter dated 16.5.1997 (Annexure-8) that any such notification by the Government has been made and published according to law in consonance with the assurance given under I.P.R. 1996, in respect of exemption from payment of octroi. It is further stated that as the Municipality is not competent under law to give exemption from payment of octroi as claimed by the petitioner, neither Municipal Council nor its officer including the Executive Officer, Opp. party No. 4 or Superintendent Octroi, Opp. party No. 6, can issue certificate of exemption from payment of octroi in terms of I.P.R. 1996 and in compliance with the letter of the General Manager, District Industries Centre dated 16.5.1997 (Annexure-8).

4. The petitioner filed its rejoinder to the counter affidavit filed by opp. parties 4 and 6. In paragraph-2 of the rejoinder it is stated that the Government in the Department of Housing and Urban Development by exercising its power conferred under Clause (b) of Sub-section (1) of Section 188-A of the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950) and in consultation with the concerned Municipal Council and Notified Area Council issued notification dated 25.6.1997 to the effect that (i) machinery and equipment required for new industrial unit set up on or after the 1st March 1996 shall be exempted from payment of octroi levied by any Municipal Corporation/Municipality/NAC and; (ii) spare parts of machinery, raw materials and packing materials required for such new industrial units shall be exempted from payment of octroi levied by Municipal Corporation/Municipality/N.A.C. for a period of 5 (five) years from the date the industry first goes into commercial production. Relying on this notification it is stated that since the petitioner is an industrial unit and was set

up after 1st March, 1996 and went into commercial production on 26.8.1997 under the I.P.R. 1996 and was engaged in manufacturing PVC pipes and conduit, the petitioner''s case squarely falls under the above mentioned notification of the State Government. In support of his above contention, the petitioner has annexed Notification dated 25.6.1997 issued by the Government as Annexure-9 to the rejoinder. It is further stated that in view of the Government Notification dated 25.6.1997 (Annexure-9), the petitioner is entitled for octroi exemption and, accordingly Opp. parties 4 and 5 are liable for refund of the octroi amounting to Rs. 1,31,211.35 paise which has been collected from the petitioner as per details given in Annexure-10 series. It is also stated that the petitioner''s unit was granted a Permanent Registration Certificate bearing No. 15/06/02924 by the General Manager, District Industries Centre for manufacturing of Rigid PVC pipes of all varieties allowing sales tax exemption for a period of five years from the date of starting of its commercial production i.e., 26.8.1997 as provided under I.P.R. 1996.

The matter was listed on 5.12.2007 for hearing and the learned Counsel for the petitioner was present. Despite service of notice none appeared for Municipality. Learned Counsel for the State appeared and gave his parawise report on writ petition. The parawise report has been filed without being accompanied by affidavit. In the said report it is mentioned that the petitioner''s unit is entitled for exemption of octroi on the machineries and equipments required to set up the new industries as per provision-II of the I.P.R., 1996.

5. At the time of hearing the learned Counsel for the petitioner urged that the petitioner is entitled for exemption from payment of octroi as provided under I.P.R. 1996. He has also vehemently argued that the statement made in the counter affidavit by Opp. parties 4 and 6 that no notification u/s 188-A of the Orissa Municipal Act has been made by the Government is not correct. In fact, the Government of Orissa in the Department of Housing and Urban Development vide Notification dated 25.6.1997 as per Annexure-9 to the rejoinder. has notified in consultation with the concerned Municipal Councils and Notified Area Councils that the new industrial units set up on or after the 1st March, 1996 shall be exempted from payment of octroi on machinery, equipments, spare parts of machinery, raw materials and packing materials for a period of five years from the date the industry first goes into commercial production. And in view of the unambiguous notification issued by the State Government in prior consultation with the Councils of Municipality, it cannot be said that statutory provision was not followed subsequent to the assurance made by the Government under I.P.R. 1996. He also submits that the parawise statement filed on behalf of the State also supports petitioner''s claim.

6. On the above backdrop, now the question which falls for determination by this Court is whether the petitioner is entitled to get exemption from payment of octroi on machinery, equipments, spare parts of machinery, raw materials and packing materials as assured under I.P.R. 1996 and, if so, from which date. It is

not in dispute that being inspired by the I.P.R. 1996, the petitioner wanted to establish a new industrial unit under that I.P.R. 1996. I.P.R. 1996 so far incentive with regard to payment of octroi is concerned, provides as follows:

11. Exemption From Octroi:

Machinery and equipments required to set up new industrial units will be exempted from payment of Octroi. Similarly, spare parts of machinery, raw materials and packing materials used by an industrial unit for a period of 5 years from the date of its commercial production will be exempted from payment of octroi.

In the counter affidavit filed by Opp. parties 4 and 6, it is stated that u/s 188-A of the Orissa Municipal Act the Government alone after consultation with the Municipality may by notification exempt any class of commodity or any new industry established within the municipality from the levy of octroi provided that in the cases coming under Clause (b), the exemption shall be for such period not exceeding five years from the date the industry first goes into production as may be fixed by the State Government. According to the petitioner the Government in the Department of Housing and Urban Development has issued such notification on 25.6.1997. Now to decide the issue it is necessary to refer Section 188-A of the Orissa Municipal Act and the Notification dated 25.6.1997 issued by the State Government in the Department of Housing and Urban Development exercising the power conferred under Clause (b) of Section 188-A of Orissa Municipal Act, 1950.

Section 188-A of the Orissa Municipal Act, 1950, runs as follows:

188-A. Exemption from and compounding of octroi -

(1) The State Government after consultation with the Municipality may, by notification exempt-

(a) any class of commodities; or

(b) any new industry established within the Municipal area from levy of octroi:

Provided that in cases coming under Clause (b) the exemption shall be for such period, not exceeding five years from the date the industry first goes into production, as may be fixed by the State Government.

(2) The State Government may on their own motion or on application made in that behalf and after consulting the Municipality revise the rate of octroi.

(3) The Municipality may in such circumstances and subject to such conditions as may be prescribed, permit any person to compound the octroi payable by him by paying in lieu thereof a lump sum amount to be determined in the prescribed manner.

The notification dated 25.6.1997 issued by the State Government in the Department of Housing and Urban Development u/s 188-A is as follows:

Government of Orissa Housing & Urban Development Department Notification Bhubaneswar dated the 25.6.97

TAX-26/96 19162/HUD. In exercise of the powers conferred by Clause (b) of Sub-section (1) of Section 188-A of the O.M. Act, 1950 (Orissa Act 23 of 1950) and in consultation with the concerned Municipal Councils and Notified Areas Councils the State Government do hereby order that subject to such directions and control as the State Government may prescribe from time to time;

(i) Machinery and equipment required for new Industrial Units set up on or after the 1st March, 1996 shall be exempted from payment of octroi levied by any Municipal Corporation/Municipality/NAC; and

(ii) Spare parts of machinery, raw-materials and packing materials required for such new Industrial units shall be exempted from payment of octroi levied by Municipal Corporation/Municipality/N.A.C. for a period of 5 (five) years from the date the Industry first goes into commercial production.

By order of the Governor Sd/-P. Mohanty Director, Municipal Administration & Ex-officio Addl. Secretary to Government.

Now on the basis of Section 188-A of Municipal Act and notification dated 25.6.1997 cited above, three things are to be determined i.e., (i) who is entitled to get exemption from payment of octroi under I.P.R. 1996, (ii) what is the period of exemption and when it commences and; (iii) what are those goods which are exempted from payment of octroi.

A conjoint reading of Section 188-A of Municipal Act and Government Notification dated 25.6.1997 issued u/s 188-A quoted above, makes it amply clear that (i) only new industrial units set up on or after 1.3.1996 are entitled to get exemption from payment of octroi under I.P.R.1996, (ii) the period of exemption is five years from the date of commencement of commercial production and; (iii) the goods which qualify for exemption are machinery, equipments, spare parts of machinery, raw materials and packing-materials required for such new industrial units set up on or after 1.3.1996. Moreover the language used in the notification is ''set up'' and not for the purpose of ''set up''.

7. In view of the above, the exemption in terms of I.P.R. 1996 in respect of payment of octroi on machinery, equipment, spare parts of machinery, raw materials and packing materials is subject to notification to be issued by the Government u/s 188-A of the Municipal Act on which both the petitioner and opposite parties relied heavily.

Thus new industrial units set up on or after 1st March 1996, are eligible for exemption from payment of octroi on entry of machinery, equipments, spare parts of machinery, raw materials and packing materials into local area of municipality for a period of five years from the date of its commercial production. Incidence of payment of octroi arises at the time of entry of goods into the local area of the Municipality. The Full Bench of this Court in the Case of Puri Fish

Merchant Association and Ors. v. Purei Municipality Council and Ors. reported in (1988) 70 STC 65 SC held that Entry 52 of the Seventh Schedule to Constitution of India authorizes "Taxes on Entry of Goods" and the point for collection of octroi in the event at the point of entry. Since in the present case the commercial production of the petitioner''s unit started from 26.8.1997, the unit is entitled to exemption from payment of octroi, for a period of five years from the date of commercial production i.e., from 26.8.1997 on entry of machinery, equipments, spare parts of machinery, raw materials and packing materials into the local area of Municipality. Vide Annexure-10 the petitioner has given a list showing payment of octroi amounting to Rs. 1,31,211.35 paise starting from 10th June, 1997 and made a prayer for refund of the same. Since the petitioner started its commercial production from 26.8.1997 it is entitled to get exemption from payment of octroi for a period of five years from that date and not prior to that.

8. In view of the above, the petitioner is entitled to get exemption from payment of octroi on machinery, equipments, spare parts of machinery, raw materials and packing materials for a period of five years from the date of commercial production i.e., 26.8.1997 and octroi collected from the petitioner during the said period of five years from 26.8.1997 shall be refunded to it.

With the above observation, the writ petition is disposed of No costs.

A.K. Ganguly, C.J.

9. I agree.

