
(2006) 08 OHC CK 0050
In the Orissa High Court

Tata Sponge Iron Ltd.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Citation : (2007) 6 VST 461

Hon'ble Judges : I. Mahanty, J;A.K. Ganguly, J

Bench : Division Bench

Judgement

I. Mahanty, J.—M/s. Tata Sponge Iron Ltd. (in short, "TSIL") which has set up a sponge iron factory at Bileipada, Joda, in the district of Keonjhar, Orissa, the petitioner herein, has filed this writ application, challenging different orders passed by various authorities, more particularly:

(A) Restriction of the period of sales tax benefits as per IPR, 1992 as an "EMD" unit (annexure 1)

(B) Order of the Director of Industries in not amending the eligibility certificate to take into account the entire investment made by the petitioner on plant and machinery and for fixing the limit of sales tax concession below the amount that the petitioner was otherwise entitled to under the IPR, 1992, (annexure 2)

(C) Non-grant of capital investment subsidy by the Government as per IPR, 1992 (annexure 3).

2. Consequently, challenging the unlawful action/inaction of the State of Orissa in preventing the petitioner from obtaining all the benefits to which it claimed to be entitled under the Industrial Policy Resolution, 1992 (hereinafter referred to as "IPR, 1992"), the petitioner in support of the challenges noted hereinabove, submitted as follows:

(a) The petitioner set up a large scale industrial unit for manufacture of sponge iron at Bileipada, Joda in the district of Keonjhar and was classified as a large scale industry under IPR, 1980. It availed sales tax loans as benefits under IPR,

1980.

(b) The Government of Orissa published IPR, 1989 wherein it granted benefits for existing industries classified under IPR, 1980 wherein benefits of exemption from payment of sales tax on finished products was available subject to the loans availed under IPR, 1980 policy being repaid. The petitioner repaid the loans and applied for necessary eligibility certificates so that it could avail the benefits of exemption from payment of sales tax on finished products for a period of five years from the effective date of IPR, 1989, i.e., December 1, 1989.

(c) However, in absence of an operation guideline, the petitioner could not avail the benefits and it came up in a writ petition before this honourable court being O.J.C. No. 6198 of 1994. This honourable court disposed of the aforesaid writ petition on May 5, 1995, wherein it directed that the petitioner would be entitled to the benefit of exemption from payment of sales tax under IPR, 1989 as a continuing industry of 1980 policy and the said benefit would accrue for a period of five years with effect from June 10, 1992.

(d) In the meantime the Government of Orissa brought out the "Industrial Policy Resolution of 1992" wherein it was stated that if any existing industrial unit goes for an expansion/modernisation/diversification (hereinafter for short mentioned as, "EMD") then certain benefits will be available to the said industry.

(e) The definition of "EMD" unit as per Clause 2.4 of the IPR, 1992 is as follows:

2.4 Expansion/modernisation/diversification of an existing industrial unit" means additional investment of 50 per cent or more of the undepreciated book value of fixed capital investment of an existing unit in acquisition of plant and machinery for expanding/modernising/ diversifying the production of the said unit.

(f) Clause 7.5 of the IPR, 1992 is quoted below:

Expansion/modernisation/diversification : The incentive by way of exemption or deferment of sales tax on finished products shall be available for expansion/modernisation/diversification of existing units taken up after the effective date subject to a limit of 60 per cent of the additional capital investment in plant and machinery only in Zone C, 75 per cent in Zone B and 100 per cent in Zone A, provided that such expansion/modernisation/diversification has been undertaken on the basis of separate project report duly appraised by the financial institutions and provided further that, subject to the provisions of the Sales Tax Act, the benefit of exemption/deferment shall not have the effect of reducing the sales tax paid by the unit prior to commencement of the expansion/modernisation/diversification programmes. In other words, the benefit shall be applicable to incremental sales.

(g) Under Clause 7.5 an "EMD" unit was eligible to avail the benefit of exemption or deferment of sales tax on finished products taken up after the effective date, i.e., August 1, 1992 subject to a limit of 75 per cent of the additional capital investment in plant and machinery only. (75 per cent in Zone B and the

petitioner's unit falls in Champua subdivision under Zone B). The proviso to the said Clause 7.5 was that "provided further that the benefit of exemption/deferment shall not have the effect of reducing the sales tax paid by the unit prior to the commencing of the expansion/modernisation/diversification programmes. In other words, the benefits shall be applicable to "incremental sales"."

(h) The corresponding Finance Department notification was published vide Notification No. 41261-CAT-106/92-F on September 23, 1992 with effect from August 1, 1992 wherein entry 44 of the Tax Free Schedule List (A) was inserted.

(i) That in pursuance to the said promises and/or notifications published by the Government of Orissa, both in the Industries Department as well as in the Finance Department as far as "EMD" of existing large scale industries was concerned, the petitioner made an additional investment of Rs. 70.48 crores by way of expansion on the basis of a separate project report duly appraised by the financial institutions. The expanded unit went into commercial production with effect from September 7, 1988. Therefore, the petitioner claimed that it was entitled to the benefit of exemption from payment of sales tax on finished goods for an amount of Rs. 49.45 crores (being 75 per cent of Rs. 65.93 crores invested in plant and machinery as per the IPR, 1992) and the corresponding notifications of the Industries Department and Finance Department read with entry 44 of the Tax Free Schedule of the Orissa Sales Tax Act. There was no limit of the period within which the benefit was to be availed. It was only the amount of sales tax on finished goods calculated at 75 per cent of the investment in plant and machinery for expansion that was the relevant factor for availing the benefit of exemption from payment of sales tax.

(j) The petitioner approached the Director of Industries for the concerned eligibility certificate and the Director of Industries granted a certificate which limited the period of benefit to five years from the date of commercial production, i.e., from September 7, 1998 till September 6, 2003. The petitioner was therefore constrained to challenge the aforesaid eligibility certificate and the corresponding denial of benefits beyond September 6, 2003 in this writ petition.

(k) The petitioner vide its application dated November 17, 1999 in annexure 5 series requested the Director of Industries to amend the certificate of eligibility bearing No. 6948 dated May 26, 1999 in annexure 4 issued by the Director of Industries by amending the correct figures of investment in the said certificate to include Rs. 70.48 crores as the total value of fixed capital investment and Rs. 65.92 crores as the total value of fixed capital investment in plant and machinery including pollution control machinery. The petitioner enclosed a certificate of a chartered accountant. However, the Director of Industries vide its letter dated May 24, 2000 in annexure 2 has rejected the petitioner's application for amendment of eligibility certificate on the ground that the operational guidelines of IPR, 1992 framed by the Government do not contain a provision to reassess the eligibility certificate due to frequent change of fixed capital investment after

starting production.

(l) The petitioner as an expansion/modernisation/diversification project is entitled to capital investment subsidy as per para 5.1 of the IPR, 1992 for a sum of Rs. 20 lakhs and the said subsidy was to be released within thirty days after the petitioner's expanded unit completed trial production. Since the petitioner's expanded unit has completed trial production in the year 1998, the petitioner was entitled to capital investment subsidy in the year 1998 and since the same was not granted, the petitioner has challenged the said non-grant of subsidy in this petition.

(m) The provisions of para 7.5 of the IPR, 1992, the corresponding operational guidelines for availing the benefits and the entry 44 of the Tax Free Schedule of the Orissa Sales Tax Act, 1947 do not prescribe of a period by which the exemption is to be availed. They only prescribe the ceiling limit, i.e., 75 per cent of the fixed capital investment of plant and machinery. Therefore, up to the said limit, the petitioner can avail the exemption from payment of sales tax on finished goods and only on incremental sales. Therefore, it can be seen that it is a clear cut provision and the Government of Orissa while making the provision have applied its mind and the said decision not to impose a time period is a conscious decision of the Government.

(n) Para 7 of the IPR, 1992 deals with the benefits to be given to different classes of industries both new as well as existing, on exemption from payment of sales tax on raw materials and packing materials as well as on sale of finished products. The Government has also classified the percentage of the investment which different categories of industries will avail and the period for which they will avail it. Para 7.1 is a general declaration that the incentives under IPR, 1992 are available to both existing as well as new industries of different categories from the effective date, i.e., August" 1, 1992.

(o) Para 7.2 relates to exemption of sales tax on raw materials and spare parts for all new khadi, village and cottage industries, i.e., the exemption will be for a period of seven years from the date of commercial production.

(p) Para 7.3 relates to exemption of sales tax on finished products of existing and new khadi and village industries in perpetuity.

(q) Under the Orissa Sales Tax Act, 1947 entry 30-F of List A of the Tax Free Schedule grants benefit on sale of finished products of existing and new khadi and village industries till perpetuity. The said notification was inserted on September 23, 1992 and is still in force.

(r) This clearly shows that the authorities in Government, before formulating the policy, have applied their mind and a conscious distinction and decision has been made in case of different categories of industries and the benefits they are entitled to, and the period for which they may be entitled.

(s) A similar situation arises with regard to paras 7.4 and 7.5. Under para 7.4

incentives have been given to new small, medium and large scale industrial units including pioneer units. The exemption/ deferment of sales tax in both on raw materials, spare parts and finished products for a limited period of 5/7 years respectively. The other condition laid down is a percentage of whole of capital investment in different zones. The fixing of period of 5/7 years and zonal classification are two different conditions; one relating to time and another relating to location of industries. They are two independent conditions.

(t) Para 7.5 deals with only EMD industries, irrespective of whether they are small, medium or large scale. While ordaining such incentives, Government of Orissa in its wisdom laid down only modalities for availing percentage of incentives on the additional investment on plant and machinery taking into consideration the Zones "A", "B" and "C". It may be mentioned here that no time-limit has been fixed for availing such exemptions. The condition of period of exemption made for new small, medium and large scale industries in para 7.4 is in no way similar or comparable to the exemptions/deferment allowed to EMD industries in para 7.5.

(u) The objectives of the IPR, 1992 under para 7.4 and 7.5 are different. They are as follows:

7.4 New industries	7.5 Expansion of existing industries
(a) Exemption/deferment of sales tax for (a) Expansion, modernisation, diversi- new industries. fication of existing units. (b) Eligibility for exemption of sales tax (b) Eligibility for exemption of sales on raw materials, spare parts and tax on finished products only. finished products. (c) Percentages fixed for different zones. (c) Percentages fixed for different zones. (d) Ceiling of certain percentage of fixed (d) Ceiling of certain percentage of capital investment. additional capital investment in plant and machinery. (e) Exemption period 5 + 2 years. Defer- (e) Exemption period is still percent- ment period 7 years. ages of investment in serial (d) is exhausted. (f) Exemption from payment of sales (f) Exemption from payment of sales tax on finished products for entire tax on finished products for incre- sales. mental sales only. (g) Government does not get any reve (g) Government gets revenue by way nue by way of sales tax on finished of sales tax on finished products of products. existing turnover before expansion. Hence, Clauses 7.4 and 7.5 are distinct and different from each other. The averment of the Industries Department in annexure 1 that paras 7.4 and 7.5 of the IPR, 1992 are co-related, is not correct.	

(v) The Director of Industries is authorised to issue the eligibility certificate but as per the conditions envisaged under the IPR, 1992, as the IPR was silent on the "period", the Director of Industries acted beyond his powers by limiting the period of eligibility to "five years". Hence, it was not permissible for the Director of Industries to insist for a period of five years for grant of exemption.

(w) Entry 44 of the tax-free entry is still valid and has not been modified or withdrawn. Reasonable time concept can be introduced only when there is

ambiguity in the statute or subordinate legislation. In the present case the petitioner submits that there is no ambiguity in the provisions of the IPR or in the entries under the Orissa Sales Tax Act, 1947. Hence, a question of reading down the provision to include a "time-limit" does not arise.

(x) Therefore, in view of para 7.5 of the IPR, 1992, operational guidelines issued by the Government of Orissa, Industries Department Letter No. 4068/1 dated February 8, 1993 para 7 and entry No. 44 of List A of the Tax Free Schedule issued vide Notification No. 41261-CTA-106/92-F dated September 23, 1992 with effect from August 1, 1992 issued vide SRO No. 1091/92, the petitioner is entitled to the benefit of exemption from payment of sales tax on finished products in respect of incremental sales over and above the sale of the immediate preceding year as it existed prior to expansion of the industrial unit up to a ceiling limit of Rs. 49.44 crores (being 75 per cent of the fixed capital investment in plant and machinery).

(y) The petitioner is also eligible for capital investment subsidy as per para 5 of IPR, 1992. The relevant provision is quoted below:

5. Capital investment subsidy:

5.1 New industrial units as well as expansion/modernisation/diversification projects as defined earlier, shall be allowed capital investment subsidy in the following manner:

Zone "A" 30 per cent of the fixed capital investment subject to a limit of Rs. 30 lakhs.

Zone "B" 20 per cent of the fixed capital investment subject to a limit of Rs. 20 lakhs.

Zone "C" 10 per cent of the fixed capital investment subject to a limit of Rs. 10 lakhs.

(z) The definition of "EMD" unit as per Clause 2.4 of the IPR, 1992 is as follows:

2.4 "Expansion/modernisation/diversification of an existing industrial unit" means additional investment of 50 per cent or more of the undepreciated book value of fixed capital investment of an existing unit in acquisition of plant and machinery for expanding/modernising/diversifying the production of the said unit.

(z). 1. The petitioner's expansion project being located in Zone B is entitled to a capital investment subsidy of 20 per cent of the fixed capital investment of Rs. 70.48 crores amounting to Rs. 14.096 crores and subject to a limit of Rs. 20 lakhs. The petitioner is, therefore, entitled to subsidy of Rs. 20 lakhs.

3. The State of Orissa have filed a counter-affidavit through the Assistant Director of Industries (RR) taking the following contentions:

(A) The writ petition is not maintainable inasmuch as the petitioner has been provided with the necessary benefits, i.e., tax benefit for a period of five years as

per the terms of the guidelines of the Industries Department as well as Industrial Policy Resolution framed by the Government and is not entitled to any extra benefit as claimed by him.

(B) M/s. IPITATA Sponge Iron Ltd., located at Joda under the subdivision of Champua, District Keonjhar is a large/medium industrial unit has changed its title to M/s. Tata Sponge and Iron Ltd., after obtaining approval from the Government of India. The original project was governed under the IPR, 1980 and it availed the sales tax incentives under the IPR, 1989 vide Clause 7.3.1, part III as a continuing unit of IPR, 1980. Subsequently, the unit undertaken EMD during the operative period of IPR, 1992 being the date of first investment in fixed assets on September 7, 1996 and commenced production on September 7, 1998.

The petitioner-company had applied to avail the sales tax incentives for its EMD under the provisions of the IPR, 1996. But after careful evaluation and consideration, the company was allowed to avail the said benefit for the EMD under the IPR, 1992 for a period of five years with effect from September 7, 1998 to September 6, 2003. The industries department is the nodal agency to decide or resolve any doubt or difficulty in interpretation of any item as per Clause 23.2 of the IPR, 1992. Accordingly, the claim of the petitioner's company for availing unlimited years of tax holiday was clarified by the industries department as under "That the operational guideline issued by the Industries Department dated February 8, 1993 stipulated to allow exemption/ deferment for EMD under the IPR, 1992 for five years" vide annexure I of the writ petition. As such, the petitioner-company was allowed to avail the sales tax benefits for a period of five years as per IPR, 1992.

Thus the averments of the petitioner that the incentives enshrined under the IPR have been denied are not correct. The petitioner-company has been granted incentives as per the policy of the State and there is no question of any denial.

(C) The petitioner-company though established under the IPR 1980, had availed the sales tax exemption as per the provisions of IPR 1989 (vide Clause 7.3.2, part III), as a continuing unit of IPR 1989. The claim of the petitioner-company for grant of pioneer status and grant of exemption for additional two years was considered by the State Level Empowered Committee in their meeting held on November 17, 1997 and after detailed examination, it was rejected since the unit was not a new industrial unit as stipulated under Clause 2.98 of the IPR, 1989.

(D) Pursuant to the orders dated May 5, 1995 of the High Court in O.J.C. No. 6198 of 1994 representation of the company was examined and placed before the 9th State Level Empowered Committee (SLEC) meeting held on November 17, 1997. The committee after considering all aspects of the case with reference to the provisions of the IPR, 1989 came to the conclusion that the company was not eligible to get incentives as a pioneer unit under the IPR, 1989 as it was not a new unit under the said IPR. Government have accepted the above findings of the SLEC. The unit was allowed sales tax exemption for a period of five years

accordingly as per the provisions of the IPR.

(E) In the case of M/s. Tata Sponge Iron Ltd., the first fixed capital investment for its expansion was made on February 7, 1996 by way of purchase of plant and machinery (second kilns) valued at Rs. 56,55,000 for its EMD. The IPR, 1996 became effective from March 1, 1996. Therefore, though General Manager, District Industries Centre, Keonjhar recommended entitlement of benefit under IPR, 1996, determination of IPR by the Director of Industries, Orissa correcting it to IPR, 1992 was done basing on the first investment made by the unit on February 7, 1996. According to the general provisions of the incentives on sales tax as per Clause 6.1 of IPR, 1992 "subject to operational guidelines instructions and procedures, sales tax incentives shall be allowed after the unit has gone into commercial production and from the date of commercial production". As per Clause 7.5 under the same provision, the incentives under EMD shall be available for finished products of expansion unit limited to 75 per cent of the additional capital investment in plant and machinery only in zone B. Therefore, the total value of expansion has no relevance for determination of financial limit towards sales tax incentives. However, the value of expansion amount of Rs. 6,135.61 lakhs was arrived at taking into consideration the fixed capital only, i.e., civil construction and plant and machinery.

(F) That for evaluation of financial limit on exemption of sales tax, the cost of additional capital investment in plant and machinery has been taken as per provisions made in Clause 7.5, part II of the IPR, 1992. Accordingly, the evaluation in case of the petitioner's company was made. Further, there is no such provision in the operational guidelines of IPR, 1992 to reassess the eligibility certificate on further investment in plant and machinery after the unit commenced its production. This fact was intimated by the Director of Industries, Orissa opposite party No. 2 to the petitioner vide annexure 2 of the writ petition.

(G) As per the provision, Clause 6.1 of the IPR, 1992 industrial units shall be allowed sales tax incentives after going into commercial production and from the date of commercial production. The date of commercial production for the expansion unit had been indicated as September 7, 1998 by the petitioner which was accepted by the Director of Industries, Orissa and production certificate was issued for expansion unit determining the date of production as September 7, 1998. Therefore, no mistake has been committed, allowing the sales tax benefit on the EMD to the petitioner unit from September 7, 1998 as per the provisions of the rules under the IPR, 1992. According to the Clause 7.5 permissible limit of sales tax incentives under Zone B is 75 per cent of the additional capital investment in plant and machinery and the exemption/deferment for EMD was granted to the petitioner's company for five years with effect from September 7, 1998 as per the operational guidelines issued by the Industries Department under the IPR, 1992. The aforesaid matter was also clarified to the petitioner by the Industries Department vide letter dated May 17, 2000 as per annexure I of the writ petition. The present industrial unit is an industry of IPR, 1980 and not a

new industrial unit of IPR, 1992. As such, the petitioner's unit is not a "pioneer unit" as per the provision of Clause 2.14 of IPR, 1992.

(H) According to Clause 5 of the operational guidelines vide L. No. 11068/1 dated February 8, 1993 of Industries Department, sales tax incentive is restricted for a period of five years in case of all new and EMD units and seven years for pioneer industries.

(I) It is submitted that:

(i) the fixed capital investment (FCI) of the unit of EMD was assessed basing on the chartered accountant certificate produced dated March 10, 1999 by the unit as on February 28, 1999 to Rs. 6,135.61 lakhs. The petitioner-unit again vide its letter dated November 17, 1999 requested to reassess the fixed capital investment (FCI) basing on the another chartered accountant certificate dated July 29, 1999 taking into account the closure of financial year ended as on March 31, 1999. It is submitted that the exemption certificate was issued in favour of the petitioner unit on May 26, 1999, i.e., prior to receipt of the letter dated November 17, 1999. It was clarified to the petitioner that there is no provision in the operational guidelines of IPR, 1992 framed by Government to reassess the eligibility certificate due to frequent change of fixed capital investment after starting production.

(ii) The said matter was also intimated to the petitioner's company by Industries Department vide annexure I.

(iii) Since the captioned unit already availed maximum limit of capital investment subsidy (CIS) under IPR, 1980, the further subsidy was denied by the sub-committee of State Level Committee (SLC) in their meeting held on May 22, 2000 following G.O. No. 24953/1 dated October 28, 1994 of Industries Department. The reason was also intimated to the petitioner's unit by the General Manager, District Industries Centre, Keonjhar vide annexure 3 of the writ petition.

(J) The petitioner seems to have overlooked the last para of the letter dated May 17, 2000 (annexure I) Industries Department wherein it has clearly been mentioned that the period of exemption/ deferment for EMD is restricted to five years in the operational guidelines issued by the Industries Department vide letter dated February 8, 1993.

(K) As per provision 7.5, the benefit of exemption/deferment shall not have effect of reducing sales tax paid by the unit prior to commencement of EMD programme and that benefit shall be applicable to incremental sales only. In other words, in case of EMD, the concessions are available only in respect of the incremental sales over and above the immediate preceding year as it existed prior to EMD of any industrial unit.

(L) The contention of the petitioner on doubts has been clarified in the operational guidelines issued by the Industries Department dated February 8,

1993.

(M) As per Clause 5 of the operational guidelines issued vide letter No. 11068 dated February 8, 1993 by the Industries Department, sales tax exemption/deferment for finished goods is to be issued for a period of five years only. Therefore, the sales tax benefit allowed to the petitioner unit is restricted to five years from the date of commercial production after E/M/D up to the ceiling limit of 75 per cent of additional capital investment in plant and machinery only as per Clause 7.5 of part II of IPR, 1992.

(N) The facts laid by the petitioner-unit that once the ceiling is fixed, benefit will continue irrespective of the years till the ceiling is reached, is not correct; rather, it is misconceived and irrelevant. On combined reading of the provisions under IPR at Clause 6.7.5 and Clause 5 of operational guidelines for IPR, 1992 issued vide L. No. 11068 dated February 8, 1993, the benefit to the tune of 75 per cent of the additional capital investment in plant and machinery under EMD is restricted to five years only after the unit had gone into commercial production after EMD is valid for the incremental sales only.

(O) As per provisions of IPR, 1992 Clause 7.5, industrial units taking up EMD are entitled for sales tax incentives limited to 60 per cent for Zone C, 75 per cent for Zone B and 100 per cent for Zone A of the additional capital investment in plant and machinery only. The petitioner unit has invested Rs. 4,601.36 lakhs in plant and machinery, the unit being located at Champua sub-division which is under Zone B, as per provisions 3 of IPR, 1992 (classification of area) is entitled for incentives limited to 75 per cent of capital investment in plant and machinery. Therefore, the unit is entitled to 75 per cent of Rs. 4,601.36 lakhs (investment under plant and machinery), i.e., Rs. 3,451 lakhs. Thus, the claim of the petitioner unit for entitlement of Rs. 4,944.57 lakhs has no merit. As regards number of years as per Clause 5 of operational guidelines issued vide letter No. 11068 dated February 8, 1993, the unit is eligible for tax exemption/deferment for a period of five years only, which has been issued by the Industries Department prior to commencement of venture by the petitioner.

(P) The averments made by the petitioner that the notification and IPR do not fix time-limit for availing the incentives under sales tax is not correct in view of the submission made in the preceding paragraph and operational guidelines issued vide letter No. 11068/1 dated February 8, 1993.

(Q) As per provisions of IPR, 1992, Clause 7.5 for sales tax incentives, only the value of plant and machinery is to be taken into consideration. Therefore, the Director of Industries, Orissa, has very aptly issued the eligibility certificate taking into consideration the investment on plant and machinery only.

(R) It is reiterated that the Fixed Capital Investment (FCI) of the unit on EMD was assessed basing on the chartered accountant certificate produced on March 10, 1999 by the unit as on February 28, 1999 to Rs. 6,135.61 lakhs. The petitioner unit again vide its letter dated November 17, 1999 requested to

reassess the FCI basing on the another chartered accountant certificate dated July 29, 1999 taking into account the closure of financial year ended as on March 31, 1999. But the exemption certificate was issued in favour of the petitioner unit on May 26, 1999, i.e., prior to receipt of the letter dated November 17, 1999. Moreover, there is no provision in the guidelines for reassessment after commencement of production by the unit.

(S) The unit has furnished the chartered accountant's certificate up to February 28, 1999 indicating the investment in plant and machinery as Rs. 4,601.36 lakhs certified by the chartered accountant on dated March 10, 1999. Again the unit has represented to the Director of Industries, Orissa, to amend the investment in plant and machinery to Rs. 5,983.62 lakhs enclosing the chartered accountant certificate indicating that the expenditure incurred up to March 31, 1999 wherein the investment in plant and machinery was indicated to be Rs. 5,983.62 lakhs. Thereby, it is understood that the additional investment has been made in-between the dates February 28, 1999 and March 31, 1999. As per provisions, expenditure incurred after the unit goes into commercial production cannot be taken into consideration for evaluating the financial limit for sales tax exemption/deferment. Therefore, Director of Industries has rightly rejected the claim for amending the eligibility certificate in disallowing the petitioner's claim for modification of investment.

(T) It is submitted that by no way the legitimate benefit as per IPR, 1992 has either been denied to the unit or prevented by executive declaration as claimed by the unit.

(U) It is, therefore, contended that the points raised by the petitioner have no merit as per IPR, 1992 along with the operational guidelines and other instructions and the Director of Industries, Orissa has not made anything wrong by not revising the petitioner unit's sales tax exemption/deferment eligibility certificate and in assessing its fixed capital investment.

4. Before proceeding any further, it would be appropriate to take note of the relevant Industrial Policy Resolution, 1992, which arises for consideration in the present case.

(I) The IPR, 1992 dated August 1, 1992 was published in the Orissa Gazette on August 14, 1992 contains the following objectives:

1. Introduction

The Industrial Policy of Orissa, 1992 has been formulated in this background and keeping in mind the State's unique assets as well as special problems. The State has vast mineral resources-iron ore, manganese ore, chromite, coal, bauxite, gemstones and granite used for decorative purposes-to mention only a few. Barring a few areas, the State is blessed with fertile land and adequate rainfall. Perennial rivers, large tracts of forests, lakes, backwaters and a long coastline rich in marine life are its other natural advantages. The State also has a long

tradition of meticulous and sophisticated craftsmanship. The policy outlined in the following paragraphs are intended at encouraging the flow of investment and development of entrepreneurship in the State of Orissa. While financial assistance to potential entrepreneurs in the form of subsidies and post-production benefits is envisaged, the main thrust of the policy is on creating an environment conducive to the smooth setting up and successful functioning of industries. Beginning with identification of suitable investment proposals, all steps will be taken to provide expeditious clearances for setting up industries, through a single window. A separate dispensation is envisaged for foreign and NRI investors, whose proposals will receive special attention and "fast track" treatment.

2. Thrust Areas

The following have been identified as thrust areas which would be imparted special care, attention and help from the Government:

...

(4) Industries producing pig iron, sponge iron, ferro-alloys and steel (including special steels).

(5) Electronics (hardware and software) excluding entertainment electronics.

2. Definitions:

2.4 "Expansion/modernisation/diversification of an existing industrial unit means additional investment of 50 per cent or more of the undepreciated book value of fixed capital investment of an existing unit in acquisition of plant and machinery for expanding/modernising/diversifying the production of the said unit.

3. Classification of areas:

ZONE-B. - Bhadrak, Nayagarh, Koraput, Rayagada, Jeypore, Baripada, Keonjhar, Anandpur, Champua Sundargarh, Chhatrapur, Bhanjnagar, Banki, Atahgarh, Jagatsinghpur, Kendrapara, Jajpur, Titilagarh, Puri and Bolangir sub-divisions.

4. Eligibility for incentives:

4.3 Expansion/modernisation and diversification will be eligible for specific incentives as mentioned against the concerned incentive. However, defaulters of OSFC/IPICOL dues shall be eligible only after they have cleared such dues.

INCENTIVES

5. Capital investment subsidy:

5.1 New industrial units as well as expansion/modernisation/diversification projects as defined earlier, shall be allowed capital investment subsidy in the following manner:

...

Zone "B".-20 per cent of the fixed capital investment subject to a limit of Rs. 20 lakhs.

...

5.3. Capital investment subsidy will be released within 30 days after the unit completes trial production.

6. Incentive sales tax-General provisions:

6.1 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.

6.2 Deemed payment of deferred sales tax:

Whenever payment of sales tax on finished product is allowed to be deferred, such deferment shall, for the purpose of payment of Income Tax by the concerned industrial unit, at the option of the industrial unit and, subject to conversion of deferred amount into interest-free loan, be deemed in public interest, to have been paid. Actual payment of deferred amount in such cases shall be done in accordance with the terms and conditions of loan. The option once exercised shall be final.

7. Sales tax incentives:

7.1 Eligibility. - The incentives under this part are available to existing and new khadi, village, cottage and handicraft industries, new small, medium and large industrial units; and expansion/modernisation/diversification of industrial units after the effective date.

7.2 Exemption of sales tax on raw materials and spare parts. - All new khadi, village cottage industrial units will be exempted from payment of sales tax on purchase of spare parts of machineries and raw materials for a period of seven years from the date of commercial production.

7.3 Exemption of sales tax on finished products of khadi and village industries.- Finished products of all existing and new khadi, village, cottage industries and handicrafts will be exempted from sales tax when sold at sales outlets of authorised co-operatives/Government agencies, and agencies recognised by Khadi and Village Industries Commission/Board, Coir Board, Handicraft Corporation, etc.

7.4 Exemption/deferment of sales tax on raw material, spare parts and finished products of small, medium, large scale and pioneer industrial units. - New small, medium and large scale industrial units including pioneer units will be eligible for exemption of sales tax on raw materials, spare parts, and finished products for a period of five years subject to a ceiling of 100 per cent of fixed capital investment if the unit is located in Zone A, 75 per cent if located in Zone B and 60 per cent if located in Zone C. New medium and large industrial units may also

opt to defer payment of sales tax on their finished products for a period of five years subject to a maximum of 100 per cent of fixed capital investment if the units is located in Zone A, 75 per cent if located in Zone B and 60 per cent if located in Zone C from the date of commercial production. Deferred amounts in respect of each year will be repaid in full after the expiry of the period of deferment annually. Period of exemption/deferment allowed for different zones shall be extended by two years for pioneer units. However, defaulters of OSFC/ IPICOL dues shall be eligible only after they clear such dues.