STATE OF ORISSA AND ORS.

v.

VIJAY LAXMI OIL INDUSTRIES

SEPTEMBER 18, 1998

[S.P. BHARUCHA AND V.N. KHARE, JJ.]

Orissa Industrial Policy Resolution, 1989, Part II Clauses 7.2.3, 2.17 and 2.18.

Sales Tax—Exemption—Small-scale industrial units—Set up under 1986 policy but not eligible for sales tax exemption—Eligibility under 1989 policy—Held : Only those small scale continuing units of 1986 policy which were eligible and received concessions/incentives, entitled to sales tax exemption on finished products for an additional period of two years—Hence, the said units not entitled for sales tax exemption under Cl. 7.2.3 of 1989 Policy—Said units are not continuing industry under Cl. 2.18 of 1989 policy—Therefore, High Court erred in holding otherwise—Orissa Industrial Policy Resolution, 1986 Part B. definition (f).

Sales Tax—Clause 7.1.1—Exemption under—Small-scale industrial units—Set up under IPR 1986 but commenced production under IPR 1989—Eligibility—Held : Only those new Units set up under IPR 1989 eligible for exemption under Pt. I Cl. 7.1.1—Hence, said units not eligible for sales tax exemption.

Sales tax—Exemption—Small-scale industrial units—Set up under IPR 1986 but commenced production under IPR 1989—Entitlement to—State Government Notification dated 23.4.1976—Item 30-FF (as amended by notification dated 16.8.1990)—Provided for exemption for a period of seven years from date of commencement of production for industries having a capacity of more than 10 MT—Held : The said notification has to be read along with IPR 1989—Therefore, only those units having capacity and of more than 10 MT which were set up under IPR 1989 eligible for sales tax exemption under item 30-FF—Hence, units set up under IPR 1986 not entitled to sales tax exemption.

Industrial Policy Resolutions—Object and purpose—Held : To maintain and enhance the growth of industrialization in the State by giving incen-

A *tives/concessions to the industries set up within the State.*

The respondent set up an industry and made the first investment in fixed capital (land, building, plant and machinery) on 17.7.1989 when the Industrial Policy Resolution (IPR), 1986 was operative. The respondent commenced commercial production on 9.6.1990 with an input capacity of
B **more than 10 MT when IPR 1989 was operative.**

The respondent's application for concessions/incentives in the form of sales tax exemption under IPR 1989 was rejected. The respondent filed a writ application before the High Court challenging the aforesaid rejec-
C **tion. The High Court held that the respondent was eligible for sales tax exemption under Part II (Clause 7.2) of IPR 1989 as the respondent-unit was a continuing industry as it was covered by Clause 2.18 of IPR 1989 and directed the appellants to issue sales tax exemption certificate to the respondent. Hence this appeal.**

D **On behalf of the appellant it was contended that the continuing small-scale industrial units of IPR 1986 which were otherwise eligible for sales tax exemption for a period of five years were only allowed to avail of the concessions for additional 2 years i.e. in all 7 years under Clause 7.2.2 of IPR 1989 and since the respondent-unit was not eligible for sales tax**
E **exemption under IPR 1986 it was not entitled for sales tax exemption under IPR 1989.**

On behalf of the respondent it was contended that since respondent-unit commenced commercial production on 9.6.1990, it was entitled to sales tax exemption under Part-I Clause 7.1.1 of IPR 1989; and that in view
F **of the notification dated 16.8.1990 amending Item 30-FF under the exemption notification dated 23.4.1976, the respondent-unit was entitled to have exemption from sales tax for a period of seven years from the date of commercial production under the said amended notification.**

G **Allowing the appeal, the Court**

HELD : 1.1. The High Court's finding that the respondent- unit is a continuing unit under Clause 2.18 of the Industrial Policy Resolution (IPR), 1989 is factually incorrect. Clause 2.18 of IPR 1989 provides that any industrial unit where fixed capital investment commenced on or after
H **1.8.1980 and prior to 1.4.1986 could be given the status of "Continuing**

industry of 1980 Policy". In the present case, the respondent made the first A investment in fixed capital (land, building, plant and machinery) on 17.7.1989 and as such it would be governed by the provisions of IPR 1986 and would fall within the definition of "Continuing industry of 1986 Policy" as defined in Clause 2.17 of IPR 1989 if it fulfilled the eligibility criteria. [664-C-D]

B

1.2. A plain reading of Clause 7.2.3 of IPR 1989 shows that only those Small-scale Continuing Units of 1986 Policy which were eligible to get concession/incentive and further have received such concession for five years would be given exemption of sales tax on finished product for an additional period of two years. Although the respondent set up its unit on C 17.7.1989, it was not eligible to get incentives/concessions in the form of sales tax exemption under IPR 1986 as it was in the "ineligible list" for grant of incentive/concession irrespective of input capacity according to the provision of Part B definition (f) of IPR 1986. Thus, in view of Clause 7.2.3, the respondent-unit was not entitled to the benefit of incentives/concessions in the form of sales tax exemption under IPR 1989 as a continuing D unit of 1986 policy. [665-B-C]

2.1. Under Part-I Clause 7.1.1 of IPR 1989 only those new industries which were set up under IPR 1989 were entitled to incentives/concessions. Hence, the respondent-unit, which was set up under IPR 1986 but commenced production on 9.6.1990 when IPR 1989 was operative, is not E entitled to sales tax exemption. [665-D]

2.2. The notification referred to by the respondent has to be read along with the IPR 1989 Policy because the State Government's notification on sales tax exemption is amended from time to time with reference to F changes in the Industrial Policy of the State Government, described in the Industrial Policy Resolutions. No doubt, Oil Mills of more than 10 MT capacity were shown in the list of industries eligible to get exemption of sales tax in the notification dated 16.8.1990, but this amendment related to the industries which have commenced investment after 1.12.1989 which is the effective date of IPR 1989. Admittedly, respondent-unit was set up G prior to 1.12.1989 when the IPR 1986 was operative. The respondent-unit, therefore, cannot be treated as a new unit under IPR 1989 and notification dated 16.8.1990 granting sales tax exemption to Oil Mills having output of more than 10 MT, was not applicable to the respondent-unit which is an unit under IPR of 1986. [666-A-C] H

3. The basic purpose for issuing Industrial Policy Resolutions by the State is to maintain and enhance the growth of industrialization in the State by giving incentives/concessions to the industries, which are set up, within its State. [662-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 364 of 1994 Etc.

From the Judgment and Order dated 15.4.93 of the Orissa High Court in O.J.C. No. 7377 of 1992.

P.N. Misra, R.B. Masodkar, A.K. Gupta and Farrukh Rasheed for the Appellants.

Dushyant A. Dave, Ms. Bina Gupta, Rakhi Ray and Ramesh Singh for the Respondents.

The Judgment of the Court was delivered by

V.N. KHARE, J. Leave granted.

This group of Civil Appeals is directed against the separate judgments and orders passed by the High Court of Orissa whereby the High Court has allowed the Writ Applications filed by the respondents, and further directed the appellants herein to issue necessary sales tax exemption certificate in favour of the respondents under Industrial Policy Resolution 1989 (in short IPR 1989), issued by the State of Orissa. Since common questions of facts and law are involved in this group of appeals, we propose to decide these appeals by a common judgment, noticing the facts of leading case Civil Appeal No. 364/94.

The State of Orissa, appellant No.1, herein, had been issuing IPRs from time to time and for the purpose of the present case we are concerned with IPR 1986 and IPR 1989. The basic purpose for issuing IPRs by the State of Orissa was to maintain and enhance the growth of industrialization in the State by giving incentives/concessions to the industries which were set up within its State. Each one of these Policy Resolutions has a cut off date called "effective date" and it remained valid till the announcement of next policy Resolution, except to the extent the new IPR allowed continuance of the provisions of the earlier Policy Resolutions. In such Resolutions, certain categories of industries were kept outside the purview of incentives/concessions provided in the IPR. Only those industries were entitled to incentives/concessions in the form of sales tax exemption which were set up within the framework of the provisions of IPR. The industries which did not come under the purview of the aforesaid IPR were not entitled to incentives/concessions in the form of sales tax exemption during the operative period of one IPR and thereby could not avail themselves of the benefits under subsequent IPR.

In the present case, the respondent, M/s. Vijay Laxmi Oil Industries made the first investment on fixed capital (Land, building, plant and machinery) on 17.7.89 when IPR 1986 was operative. The IPR 1989 came into effect on 1.12.89. The respondent herein commenced commercial production on 9.6.90 when IPR 1989 was operative. The respondent filed an application for incentives/concessions in the form of sales tax exemption under IPR 1989 but the same was rejected by the General Manager, District Industries Centre, Balasore (appellant No.3) by an order dated 29.9.92. Under such circumstances, the respondent was informed that its unit was of IPR 1986 and that under the said IPR its unit was not eligible to get sales tax exemption either on purchase of raw material or on sale of its finished products and hence the respondent was not entitled to sales tax concession under IPR 1989.

This led the respondent filing a Writ Application before the Orissa High Court challenging the order whereby the General Manager, District Industries Centre, Balasore had refused to extend sales tax exemption to it under IPR 1989. The High Court while allowing the Writ Application filed by the respondent, issued directions to the appellants herein, to issue sales tax exemption certificate in favour of the respondent. Aggrieved, the appellants have come to this Court by filing Special Leave Petition.

Learned counsel for the appellants urged that the respondent which is an Oil Mill, irrespective of input capacity, was ineligible for IPR incentives/concessions in the form of sales tax exemption under IPR 1986 vide item B-Definition (f) of IPR 1986 and as such was not entitled to have any incentives/concessions under IPR 1989. Elaborating his arguments, learned counsel further argued that the continuing small scale industrial units of 1986 Policy which were otherwise eligible for sales tax exemption on finished product for a period of 5 years, were only allowed to avail of the concessions for additional 2 years i.e. in all 7 years under 1989 Policy vide clause 7.2.2 of IPR 1989 and the view taken by the High Court in allowing the Writ Applications is erroneous.

Before we advert to the arguments of learned counsel for the appellant, it is necessary to examine the reasoning given by the High Court in allowing the Writ Application as the arguments advanced before us were not advanced strictly in this form before the High Court. The High Court has held that the respondent was eligible for sales tax exemption under Part II (clause 7.2) of IPR 1989 in view of the fact that the respondent's unit was a continuing industry as it was covered by clause 2.18 of IPR 1989 and secondly, that the input capacity of the unit being more than 10 M.T. per day/per 8 hrs. shift, the respondent Unit was entitled to sales tax exemption. The finding recorded by the High Court that the respondent Unit is a continuing Unit under clause 2.18 of IPR 1989 is factually incorrect. Clause 2.18 of IPR 1989 provides that any industrial unit where fixed capital investment commenced on or after 1.8.80 and prior to 1.4.86 could be given the status of "continuing industry of 1980 Policy". In the present case, the respondent made the first investment in fixed capital (Land, Building, Plant or machinery) on 17.7.89 and as such it would be governed by the provisions of IPR 1986 and would fall within the definition of "Continuing industry of 1986 Policy" as defined in clause 2.17 of IPR 1989 if it fulfilled the eligibility criteria.

Coming to the arguments of learned counsel for the appellant, it is necessary to examine the relevant provisions of IPR 1989. IPR 1989 is in two parts. While Part I deals with concessions/incentives in the form of sales tax exemption to the new industries which were set up under 1989 Policy, Part II deals with concessions/incentives to continuing industries of 1986 policy. Clause 7.2.3 falling under Part II of IPR 1989 provides that Small Scale Continuing Units of 1986 Policy will be allowed exemption of sales tax on finished product for an additional period of two years over and above five years allowed under 1986 Policy, i.e., in all seven years. Clause 7.2.3 of 1989 Policy runs as under:

> "*7.2.3. Exemption/Deferment of Sales Tax on finished products.* Small scale continuing units of 1986 Policy will be allowed exemption of Sales Tax on finished products for an additional period of 2 years over and above 5 years allowed in 1986 Policy i.e. in all 7 years. Medium and large-scale continuing units of 1986 Policy shall, in lieu of incentive relating to Sales Tax on finished products under 1986 Policy, be allowed such incentive as is applicable to corresponding new industrial units under Part-I after the

effective date."

A plain reading of above-said clause shows that only those small scale continuing Units of 1986 Policy which were eligible to get concession/incentive and further has received such concession for five years would be given exemption of sales tax on finished product for additional period of two years. As stated above, although the respondent set up its unit on 17.7.89, but it was not eligible to get incentives/concessions in the form of sales tax exemption under IPR 1986 as it was in the "ineligible list" for grant of incentive/concessions irrespective of input capacity according to the provision of Part B definition (f) of IPR 1986. Thus, in view of clause 7.2.3, the respondent's unit was not entitled to the benefit of incentives/concessions in the form of sales tax exemption under IPR 1989 as a continuing unit of 1986 Policy and it is here that the High Court fell in error in treating the respondent's unit as entitled to the benefit of sales tax exemption under IPR 1989.

It was argued on behalf of the respondent that since the respondent's unit commenced commercial production on 9.6.90, it was entitled to sales tax exemption under Part-I clause 7.1.1 of IPR 1989. This argument of learned counsel is totally misplaced. Under Part-I clause 7.1.1. of IPR 1989 only those new industries which were set up under IPR 1989 were entitled to incentives/concessions. This implies that under Part II, only eligible continuing industries of 1986 Policy were entitled to sales tax exemption for further period of two years. The respondent Unit being ineligible to receive sales tax exemptions under 1986 Policy was precluded to entitlement of sales tax exemption under IPR 1989.

Learned counsel for the respondent then urged that in view of the notification dated 16.8.90 amending the exemption notification dated 23.4.76, the respondent's unit was entitled to have exemption from sales tax for a period of seven years from the date of commercial production and further, respondent industry was entitled to sales tax exemptions, as per proviso of column iii of item No. 30 FF, oil mills having input capacity of more than 10 M.T. were also included in the list of industries entitled for sales tax exemption which were not entitled for such exemption before. Learned counsel also referred to Annexure-I to IPR 1989 as the respondent's unit having more than 10 M.T. input capacity, was entitled to sales tax exemption. The notification referred to by learned counsel for the

A respondent has to be read along with the IPR 1989 Policy because the State
Government's notification on sales tax exemption is amended from time to
time with reference to change in the Industrial Policy of the State Govt.,
described in the Industrial Policy Resolutions. No doubt, Oil Mills of more
than 10 M.T. were shown in the list of industries eligible to get exemption
B of sales tax in the notification dated 16.8.1990, but this amendment related
to the industries which have commenced investment after 1.12.1989 which
is effective date of IPR 1989. Admittedly, respondent Unit was set up prior
to 1.12.1989 when the IPR 1986 was operative, the respondent Unit therefore
cannot be treated as new Unit under IPR 1989 and notification dated
16.8.90 granting sales tax exemption to Oil Mills having output of more
C than 10 M.T. was not applicable to the respondent Unit which is a Unit
under IPR of 1986. Since the respondent Unit was not eligible to get
concession in the form of sales tax exemption under IPR 1986 it was not a
continuing Unit of 1986 Policy under Part II of IPR 1989 and further was
not a new industry under IPR 1989, as such was not entitled to sales tax
D exemption under Notification dated 16.8.1990.

For the foregoing reasons, we are of the opinion that the judgment
and order of the High Court in allowing the Writ Application of the
respondent is not sustainable in law. We, accordingly set aside the impugned
judgments and allow the appeals. All the three Writ Applications
E filed by the respondents shall stand dismissed. There shall be no order as
to costs.

V.S.S. Appeals allowed.