

AFR

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WRIT PETITION (CIVIL) No.5491 of 2009**

*(An Application under Articles 226 & 227 of the Constitution of India)*

*M/s. Protection Manufacturers Pvt. Ltd.* .... *Petitioner*

*-versus-*

*State of Orissa and others* .... *Opposite Parties*

**Advocates appeared in the case by Video Conferencing mode:**

*For Petitioner* : Mr. S. P. Misra,  
Senior Advocate,  
along with Miss. S. Mishra,  
Mr. B. Mohanty, Mr. B. S.  
Panigrahi and Mr. S. K. Sahoo,  
Advocates

*-versus-*

*For Opposite Parties* : Mr. P. K. Muduli,  
Additional Government Advocate  
for the State

**CORAM:**

**THE CHIEF JUSTICE  
JUSTICE B. P. ROUTRAY**

**JUDGMENT  
31<sup>st</sup> May, 2021**

**Dr. S. Muralidhar, CJ.**

1. The Petitioner challenges the decision dated 18<sup>th</sup> January 2008 of the Director of Industries, Orissa (DoI) (Opposite Party No.2), holding that the Petitioner is not a new unit under the Industrial Policy Resolution 1996 (IPR 1996); not entitled to priority industry

status and is also not entitled to claim sales tax incentives under Clause 5.6 (Part-II) of IPR 1996, thereby upholding the cancellation of the Sales Tax Eligibility Certificate issued in favour of the Petitioner on 15<sup>th</sup> October, 2005.

2. The background facts are that the Petitioner was initially a Small Scale Industry (SSI) having been registered as such on 21<sup>st</sup> December 1996, with the District Industries Center, Bhubaneswar (DIC) (Opposite Party No.4). The Petitioner's unit was initially set up for manufacturing air coolers. It started commercial production with effect from 10<sup>th</sup> April, 1994. The Petitioner had earlier availed of the benefit under IPR-1989. The said benefit stood withdrawn with effect from 1<sup>st</sup> July, 1999.

3. The Petitioner states that in order to expand its business, it undertook a diversification programme under IPR 1996 for manufacturing emergency lights, moulded furniture, TV sets (both black and white and colour) apart from the existing products being manufactured by it. It accordingly invested Rs.4,08,35,710/- and communicated this fact of diversification/modernization to the DIC, Bhubaneswar stating that it had in the process qualified as a Medium Scale Industry (MSI). The DIC, Bhubaneswar by its letter dated 29<sup>th</sup> December 2001, recommended to the DoI i.e. Opposite Party No.2 that the Petitioner's unit should be issued a Priority Industries Certificate (PIC) indicating the project cost in the aforementioned sum, after due verification.

4. At this stage, it requires to be noticed that Clause 2.7 of IPR 1996 defines 'priority industry' to mean an industrial unit in certain

specified categories having a project cost of not less than Rupees 1 crore.

5. By communication dated 8<sup>th</sup> January, 2002 the DoI issued a production certificate in favour of the Petitioner stating *inter alia* that after the expansion and modernization drive the unit had come under the purview of "Large and Medium sector" and its date of commercial production is determined as 12<sup>th</sup> November, 2001. By another communication dated 24<sup>th</sup> January 2002, the DoI certified the Petitioner's unit to be a priority industry as defined in Para-2.7 (i) and (xii) Part-II of the IPR 1996. In the said certificate it was noted that the unit was "eligible to avail sales tax exemption/deferment as applicable under IPR 1996 subject to fulfillment of all other conditions as laid down, if any."

6. On 7<sup>th</sup> March, 2002, the DoI further issued in favour of the Petitioner, under Form II-A, a certificate of eligibility for sales tax concession "on sale of finished products." Para 5 of the said certificate noted the annual installed capacity of production in respect of various products as under:

No.	Particulars of the finished products	Installed capacity of production before E/M/D (quantity)	Installed capacity of production after E/M/D (quantity)
1.	Emergency light UPS	-	15000 pcs. P.A.
2.	T. V. Sets (B/w)	-	18000 pcs. P.A.
3.	T. V. Sets (Colour)	-	6000 pcs. P.A.
4.	Moulded furniture, household particular		

	and air coolers cabinet of assorted sizes	-	2400 pcs. P.A.
5.	Air Cooler	8000 pcs.	(This is qty of existing unit)"

7. The aforementioned certificate was valid from 12<sup>th</sup> November, 2001 to 11<sup>th</sup> November, 2006.

8. The Petitioner contended that on the basis of the Eligibility Certificate issued to it in terms of Clause 5.6 (ii) and Clause 5.7 of IPR 1996, it was to be given the benefit of sales tax concession not only for five years but for two additional years. However, the Joint Director of Industries (SS), Orissa (Opposite Party No.3) in a communication dated 3<sup>rd</sup> July 2002, addressed to the Petitioner took the view that there was no provision under IPR 1996 to extend the sales tax benefit for an additional two years. The Petitioner contended that this was contrary to a notification dated 2<sup>nd</sup> February 1999, issued by the State Government, which clarified that all priority industries would be entitled to an additional two years of sales tax exemption.

9. The Petitioner also refers to a Notification No. SRO 141/2000 dated 17<sup>th</sup> February, 2000 issued by the Finance Department, Government of Odisha, in terms of which, existing industrial units already in receipt of incentives under an earlier notification dated 23<sup>rd</sup> April 1976, as amended from time to time "immediately before the 1<sup>st</sup> January, 2000" would continue to avail incentives for the period of their eligibility under the notification. This notification further stipulated that where an industrial unit was 'in the pipeline'

as on 1<sup>st</sup> January 2000, it would be entitled to the incentive under the notification on same terms and conditions if it fulfilled the following criteria as on 1<sup>st</sup> January, 2000:

- "i. Industrial unit which is regd. under the Orissa Sale Tax, 1947.
- ii. Industrial Unit which has been allotted land for the factory.
- iii. The industrial unit which has applied for finance from regular financial institution.
- iv. Industrial unit which will start commercial production before the 1<sup>st</sup> January, 2000."

10. The Petitioner contended that it fulfilled each of the above criteria spelt out in SRO 141/2000. The Petitioner pointed out that Opposite Party No.3 by its letter dated 24<sup>th</sup> March, 2003 had put out a list of industries that were 'in the pipeline' as on 1<sup>st</sup> January 2000. The name of the Petitioner's unit was at Serial No. 24 of the said list. Further, it was pointed out by the Petitioner that in exercise of powers conferred on it under Section 6 of the Orissa Sales Tax Act (the OST Act), the Government of Orissa had brought out an amendment to Notification No. 206 dated 23<sup>rd</sup> April 1996 stipulating that for priority industries, the period of exemption from payment of sales tax shall be extended by two additional years and that "there shall be no maximum limit on such exemption during the eligibility period."

11. On the above basis, the Petitioner contended that it was not justified for the Opposite Party No.3, by communication dated 3<sup>rd</sup> July 2002, to hold that there was no provision to extend the sales tax benefit to the Petitioner for an additional two years. The

Petitioner is stated to have made several representations. By communication dated 15<sup>th</sup> September 2004, the Commissioner-cum-DoI, Orissa requested the Special Secretary to Government, the Government to examine whether an existing SSI unit, having graduated to Medium Scale could still avail the sales tax exemption available to the priority sector.

12. When thereafter the Government did not take any decision, the Petitioner filed W.P. (C) No.5679 of 2005 in this Court. While the said writ petition was pending, Opposite Party No.3 by a communication dated 15<sup>th</sup> October 2005, informed the Petitioner that the Department of Industries had reviewed the Petitioner's case and had come to the conclusion that the Petitioner unit could not be treated as an "industry in pipeline" as on 1<sup>st</sup> January, 2000 and, was therefore, not entitled to any exemption in the capacity. It was indicated therein that the Petitioner had not satisfied the eligibility criteria since the item "moulded manufacturer" incorporated under the OST Act on 17<sup>th</sup> January, 2000 i.e. after 1<sup>st</sup> January, 2000. Accordingly, the sales tax exemption certificate issued on 11<sup>th</sup> March, 2002 was sought to be revoked and cancelled.

13. This led the Petitioner to file another W.P. (C) No.13181 of 2005 in this Court challenging the order of cancellation. Both the above writ petitions were disposed of by this Court by an order dated 16<sup>th</sup> November, 2005 the operative portion of which reads thus:

"Under the aforesaid premises without expressing any opinion on the merit of both the cases we quash the order dt. 15.10.2005 passed by the Director of Industries, Orissa-Opposite Party No.2 under Annexure-7 and direct Opposite

Party No.2 to take a decision afresh after giving a notice of show cause to the petitioner within a period of 4 weeks from today. The Petitioner shall file reply to the show cause within a period of one month from the date of receipt of the same. Thereafter Opposite Party No.2 shall decide the matter on its own merit with accordance with the law.

The claims of the Petitioner is that the Industry is a priority Industry and entitled to get the benefit of sales tax exemption for seven years or otherwise shall also be decided by the Authorities dealing with the representation. In the meantime, no coercive action shall be taken against the Petitioner till a decision is taken.

The writ petitions are disposed of accordingly."

14. Thereafter, a show cause notice (SCN) dated 5<sup>th</sup> December, 2005 was issued by the DoI to the Petitioner recording the *prima facie* view that the eligibility certificate granted to the Petitioner on 7<sup>th</sup>/11<sup>th</sup> March, 2002 was erroneous and contrary to the various notifications issued by the Government of Odisha. The Petitioner replied to the SCN on 12<sup>th</sup> January 2006 explaining why it was entitled to the exemption. Thereafter, by the impugned order dated 18<sup>th</sup> January 2008, the DoI held that the Petitioner's unit was not a new unit in terms of IPR 1996 and, therefore, not entitled to priority industry status thereby upholding the cancellation of the sales tax eligibility certificate issued on 15<sup>th</sup> October, 1995.

15. In response to the notice issued in the present petition, a counter affidavit has been filed on behalf of the Opposite Parties reiterating the impugned order and contesting the claim of the Petitioner to avail sales tax incentives under Clauses 5, 6 (Part-II) of IPR 1996. According to the Opposite Parties, the said exemption was meant for 'new' SSI/ Medium /Large Industry. Accordingly

the Petitioner's reply to the SCN was found to be without merit. The DoI upheld the cancellation of sales tax eligibility certificate issued vide order No.13193 dated 15<sup>th</sup> October, 2005 in favour of the Petitioner.

16. The running theme of the counter affidavit is that the Petitioner's unit was not a 'new' one under IPR 1996 and, therefore, was not eligible for the benefit of the sales tax exemption. It is stated by the Opposite Parties that the Petitioner's industry had executed an agreement with M/s. Nilkamal Plastic Private Limited, Nasik, Maharashtra on 14<sup>th</sup> May 2001, with a view to undertake manufacture and sale of its own product i.e. moulded furniture to avail sales tax exemption "giving the wrong representation." The item of moulded furniture was inserted by an amendment in the registration certificate with effect from 17<sup>th</sup> July, 2001. There was no indication that the Petitioner was a registered dealer of moulded furniture on 1<sup>st</sup> January, 2000. This led to review of the eligibility certificate issued earlier and its consequent cancellation.

17. The Petitioner filed a rejoinder, pointing out that there were two notifications i.e. SRO 141/2000, which applied to existing units that had expanded and SRO 140 /2000, which applied to new units and that both were dated 17<sup>th</sup> February, 2000. It was pointed out how since the Petitioner had graduated to a Medium Scale Industry, and was an industry in the pipeline it was covered under SRO 141/2000. It was further pointed out that the tax exemption certificate dated 11<sup>th</sup> March, 2002 was issued in terms of a Finance Department's notification No. SRO 475 dated 20<sup>th</sup> July 1996, which

became effective on 1<sup>st</sup> February, 1996. In the aforementioned notification dated 20<sup>th</sup> July 1996, a new serial number 44 was introduced, which stated thus:

"State of finished products of an existing industrial unit, where fixed capital investment has been commenced (for an E/M/D unit) after 1<sup>st</sup> day of March, 1996."

18. The Petitioner also pointed out in its rejoinder that it was a unit 'in the pipeline' as it satisfied all the conditions stipulated in SRO 141/2000 dated 17<sup>th</sup> February, 2000 and in fact, the Petitioner figured at Serial No. 24 of a list of such industries prepared by the DoI on 24<sup>th</sup> March, 2003.

19. This Court has heard submissions of Mr. S. P. Misra, learned Senior Counsel appearing for the Petitioner and Mr. P. K. Muduli, learned Additional Government Advocate for the State.

20. There appears to be a factual misconception on the part of the DoI about the status of the Petitioner, which admittedly graduated from an SSI unit to a Medium Scale unit having undertaken the expansion and modernization drive. There also appears to be a misconception as regards the eligibility of the Petitioner for sales tax exemption for an additional two years since it is recognized as a "priority industry."

21. While it is true that the Petitioner as a new unit was in the SSI category, it graduated to a Medium Scale industry after the expansion and modernization drive. It satisfied the description of an "existing unit" that had undertaken expansion and modernization. It is the Opposite Parties themselves that had

recognized the Petitioner as a "priority industry" by the order issued on 24<sup>th</sup> October, 2002.

22. Once the Petitioner has been declared as a priority industry in terms of IPR 1996 Clause 2.7 (i) and (xii) Part-II, the Petitioner's unit was eligible to get an additional two years of sales tax exemption. The Petitioner is right in its contention that the Opposite Parties are mistaken in their stand that IPR 1996 was meant only for a New/SSI/Medium/Large industry. The notification issued by the Opposite Parties themselves belies this contention. SRO 475/96 dated 26<sup>th</sup> July 1996, referred to hereinbefore, envisages an existing industrial unit undertaking "fixed capital investment" and having commenced after 1<sup>st</sup> March, 1996. Clearly, this would include an existing unit, which undertakes expansion and modernization after 1<sup>st</sup> March, 1996. The certificate issued by the DoI on 7<sup>th</sup> March, 2002, in Form II-A, granting the Petitioner eligibility for sales tax concession "on sale of finished products" acknowledges both the new products as well as the existing product viz., 'air coolers'.

23. The Petitioner has also pointed out how it satisfied all the requirements of being declared as a unit 'in the pipeline' in terms of SRO 141/2000. This has not been able to be countered by the Opposite Parties. In particular, they have been unable to dispute that the Petitioner was first registered as an SSI under the OST Act on 30<sup>th</sup> January 1997, which registration was kept renewed from time to time. The Petitioner, for the purpose of its expansion, purchased a land on 20<sup>th</sup> July, 1998 i.e. prior to 1<sup>st</sup> January, 2000. In other words, the expansion drive was undertaken by an

investment made after 1<sup>st</sup> March, 1996. The Petitioner also applied to the State Bank of India on 8<sup>th</sup> December, 1999 for finance i.e. prior to 1<sup>st</sup> January, 2000. It was to commence its production before 1<sup>st</sup> January, 2002. In fact, it commenced its commercial production on 12<sup>th</sup> November, 2001.

24. Further, the Petitioner is a multiproduct industry. The dates of production of its various products, as modified by a letter dated 15<sup>th</sup> September, 2004 of the DoI reads thus:

	<u>“Product</u>		<u>Date of production</u>
a.	Emergency light	-	03.01.2001
b.	UPS	-	03.01.2001
c.	Moulded Furniture & other household goods	-	03.01.2001
d.	TV sets (B/W & CTV)	-	12.11.2001”

25. Indeed, the Opposite Parties have no answer to the above contention of the Petitioner that it was a unit ‘in the pipeline’ in terms of SRO 141/2000. The Petitioner has also clarified how its agreement with M/s. Nilkamal Plastic Private Limited had no relevance to its claim for sales tax exemption. The machineries for the manufacture of moulded plastic furniture were purchased from M/s. Nilkamal Plastic Private Limited under proper invoices, challans and excise gate passes. It was the Petitioner that produced the finished products. That it was an industry in the pipeline as on 1<sup>st</sup> January, 2000 has been admitted by the Opposite Parties themselves as its figures at Serial No. 24 of the list dated prepared by the DoI on 24<sup>th</sup> March, 2003. With the Petitioner satisfying all the requirements of the applicable notifications, there appears to be no justification in the Opposite Parties seeking to revoke the sales

tax exemption thereby cancelling the certificate issued for that purpose.

26. For all the aforementioned reasons, the Court sets aside the impugned decision dated 18<sup>th</sup> January, 2008 of the DoI, Opposite Party No.2, and revives the sales tax exemption certificate dated 15<sup>th</sup> October, 2005 granted in its favour. In other words, it is held that the Petitioner, as a priority industry, is eligible to avail sales tax benefit as contemplated under IPR 1996 in terms of notification dated 2<sup>nd</sup> February, 1999 and, therefore, is entitled to sales tax exemption for an additional two years as claimed by the Petitioner.

27. The writ petition is allowed in the above terms but in the circumstances, with no order as to costs.

28. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25<sup>th</sup> March, 2020 as modified by Court's Notice No.4798, dated 15<sup>th</sup> April, 2021.

**( Dr. S. Muralidhar )**  
**Chief Justice**

**( B.P. Routray )**  
**Judge**

*M. Panda*