

A COMMISSIONER OF SALES TAX, ORISSA AND ANR.

v.

JAGANNATH COTTON COMPANY AND ANR.

JULY 28, 1995

B [B.P. JEEVAN REDDY AND S.C. SEN, JJ.]

C *State of Orissa—Industrial Policy Resolution of 1986 and 1989—Concession to Industries—Exemption from Sales Tax—Corresponding amendment in Sales Tax Act—Claim for concessions—Held concessions were meant only for units which were engaged in manufacture—Woeful lack of material as to whether process employed by claimant was manufactured—Matter remitted to High Court.*

*Orissa Sales Tax Act, 1947: Entry 39(ff).*

D *Sales Tax—Exemption to new industries—Exemption in tune with Industrial Policy Resolution—Applicability of exemption—Difference in provisions of—Act and Industrial Policy Resolution and effect of difference should be examined.*

E *Words and Phrases: 'Manufacture'—Meaning of.*

F In its Industrial Policy Resolution 1986, the State of Orissa announced certain sales tax concession to those establishing new industries in the State and also to those who expanded their existing capacities. Further in case of village, cottage and small scale industries, exemption from tax was provided on the purchase of raw material as well as the sale of finished product. Besides the provisions of Orissa Sales Tax Act were also amended in tune with the said policy resolution.

G The respondent-company filed writ petitions in the High Court claiming benefit of exemption from the sales tax asserting that the process undertaken by it in obtaining cotton waste from cotton was manufacturing activity. The High Court allowed the writ petitions holding that (i) for obtaining benefits of sales tax exemption it was not necessary that the industry should be engaged in the manufacture or production of goods; (ii) the process adopted by the respondent-company amounted to  
H manufacture. Revenue preferred appeals before this Court.

Allowing the appeals and setting aside the judgment of the High Court, this Court A

**HELD : 1.** A reading of the provisions of the Industrial Policy Resolution relating to sales tax concessions shows that the incentives are meant only for those units which are engaged in the manufacture or production of goods. Indeed clause (2)(a) speaks of "concerned manufacturing units". Furthermore, the use of the expression "purchase of raw material" itself shows that what is ultimately produced is different goods than the raw material used. Similarly the repeated use of the expression "finished products" and the grant of exemption in case of small scale industries both in respect of raw materials as well as finished products indicates that these concessions at substantial cost to public exchequer were being provided with a view to encourage units engaged in the manufacture or production of goods and not to help those units which merely engaged themselves in some sort of processing whereunder the goods remain essentially the same goods even after the said process. [394-C-F] B  
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**2.** The High Court seems to have proceeded on the assumption that the Industrial Policy Resolution by itself is enough to provide the exemption from the sales tax. But where the provisions of the Sales Tax Act are also amended providing for exemption, then the court has to see whether they are the same as the Industrial Policy Resolution or are they different - and if different, what is the effect of such difference. [394-G] E

**3.** Before the Court can express itself on the question whether a particular process amounts to manufacture or not, it must know what is the precise process that is gone through. In this case there is a woeful lack of material on record. Accordingly the matters are remitted to the High Court for a fresh decision. [395-C; B; E] F

**CIVIL APPELLATE JURISDICTION :** Civil Appeal Nos. 6627-6631 of 1995.

From the Judgment and Order dated 29.7.94 of the Orissa High Court in O.J.C. No. 1166/92 & 6, 162, 181, 1982 of 1993. G

B.A. Mohanty and Ms. Kirti Mishra for the Appellants.

Badar Durrez Ahmad and Parijat Singh for the Respondents. H

A The Judgment of the Court was delivered by  
**B.P. JEEVAN REDDY, J.** Leave granted.

B The appeals are preferred against a common judgment of the Orissa High Court in five writ petitions. All the five Writ Petitions were filed by the respondent herein, Jagannath Cotton Company, wherein the question is whether the respondent is entitled to the benefit of exemption from sales tax under the Industrial Policy Resolution of 1986 as well as of 1989. It also involves the question whether the process undertaken by the respondent, applying which he obtains cotton from waste cotton, can be called 'manufacturing' activity.

C With a view to encourage the industrialisation of the State, the Government of Orissa published the Industrial Policy Resolution (dated May 13, 1986) in the Gazette of June 11, 1986. It provided several incentives to those establishing new industries in the State and also those who expanded their existing capacities. Inter alia, it provided for certain concessions in the matter of sales tax. In the case of village, cottage and small scale industries, exemption from tax was provided on the purchase of raw material as well as the sale of finished product whereas in the case of new medium and large scale industrial units, the facility of deferment of payment of sales tax for a particular period was provided. The State was divided into three zones having regard to their level of industrialisation. Zone-A which was supposed to be the least industrialised area provided more incentives than Zones-B and C. District Sambhalpur, wherein the respondent-industry is located, falls in Zone-C. The provisions of Orissa Sales Tax Act also appear to have been amended in true with the said policy resolution as would be evident from Entry 30(ff) referred to in the counter filed by the respondent in this Court - but this is one of the aspects requiring clarification. Entry 30(ff) seems to provide exemption from sales tax of the products of a small scale industry set up on or after 1st April, 1986 and starting commercial production thereafter inside the State subject to certain further conditions.

G The High Court has allowed the writ petitions on two grounds, viz., (1) that the industrial policy resolution does not require that for obtaining the benefit of exemption of sales tax, a small scale industry should necessarily be engaged in the manufacture or production of goods and (2) that the process adopted by the respondent by which he obtains cotton from

waste cotton does amount to manufacture. So far as the first ground given by the High Court is concerned, we find it difficult to accept. A reading of the Industrial Policy Resolution (I.P.R.) of 1986 as well as of 1989 clearly shows that several concessions at substantial cost to public exchequer were provided only with a view to accelerate the pace of industrialisation in the State. Para 3 of the I.P.R. states, "(T)herefore, the major thrust should be on development of sophisticated industries including electronics, upgradation of technology, modernisation of the existing units and development of functional (?) industrial areas in the fields of electronics and computers, electrical and domestic appliances, plastic and polymers, leather, textiles, ceramics, chemicals, drugs and pharmaceutical industries." Even the provisions of the I.P.R. relating to sales tax concessions bear out the said object. The relevant provisions read thus:

"(d) *Concessions Relating to Sales Tax* -

(i) Exemption of Sales Tax on *raw materials* - All new village, cottage and small industries will be exempted from Sales Tax on purchase of spare parts of Machinery, raw materials and packing materials of a period of 5 years from the date of their commercial production. All new medium and large industries will be eligible for similar facility for 3 years in Zone B and C and for 5 years in Zone A.

(ii) Exemption of Sales Tax on *finished products* -

(a) Products of all existing and new Khadi, village cottage industries and Handicrafts will be exempted from sales tax when sold by the *concerned manufacturing units* or sales outlets of authorised co-operative/Govt. agencies. *Finished products* of all existing and new electronics industries so declared by the State Electronics Development Corporation will also be exempted from Sales tax.

(b) Products of new small scale industries will be exempted from Sales Tax for a period of 5 years from the date of their commercial production.

(iii) Sales Tax Deferment Scheme - New medium and large industrial units will be eligible to defer payment of Sales Tax collected on their finished products for a period of 5 years in Zone-'B'

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A and 'C and 7 years in Zone-'A' from the date of their commercial production. Deferred amount in respect of each year would be paid in full after the expiry of the period of deferment annually.

(iv) Exemption of Sales Tax on finished products in lieu of deferment :- In lieu of the Sales Tax Deferment Scheme, new medium and large industrial units can opt for exemption of Sales Tax on their finished products for a period of 5 years if located in Zone-A from the date of their commercial production."

(emphasis supplied)

C A reading of the above provisions in the context of the I.P.R. shows that the incentives are meant only for those units which are engaged in the manufacture or production of goods. Indeed, clause (2) (a) in the above extract speaks of "concerned manufacturing units". Manufacture, in its ordinary connotation, signifies emergence of new and different goods as understood in relevant commercial circles. Furthermore, the use of the expression "purchase of raw material" itself shows that what is ultimately produced is different goods than the raw material used. Similarly, the repeated use of the expression "finished products" and the grant of exemption in the case of small scale industries *both in respect of* raw material as well as finished products indicates that these concessions at substantial cost to public exchequer were being provided with a view to encourage units engaged in the manufacture or production of goods and not to help those units which merely engaged themselves in some sort of processing whereunder the goods remain essentially the same goods even after the said process. Even if a process is adopted, the test is the same, viz., whether different goods emerge as a result of application of such process.

G Apart from the above consideration, we must also see what are the provisions, if any, in the Orissa Sales Tax Act providing exemption from sales tax in the case of new industries and whether they are consistent with the provisions of I.P.R. or are they different. The High Court seems to have proceeded on the assumption that the I.P.R. by itself is enough to provide the exemption from the sales tax. But where the provisions of the Sales Tax Act are also amended providing for exemption, then the court has to see whether they are the same as the I.P.R. or are they different - and if different, what is the effect of such difference. It is, therefore, necessary to ascertain the relevant provisions in the Sales Tax Act, rules and notifica-

tions, if any, issued thereunder before expressing a final opinion in the matter. A

There is yet another important aspect upon which there is a woeful lack of material. While the respondent asserts that he obtains cotton from the waste cotton by employing machinery, the exact process employed by him is not set out or clarified in the counter-affidavit filed in these matters. B  
 The process adopted by the respondent has also not been noted in the judgment. We do not know whether this aspect was gone into at all. Even the order of the Sales Tax officer does not clearly set out the process. Before the Court can express itself on the question whether a particular process amounts to manufacture/production or not, it must know what is the precise process that is gone through. It is necessary to have this material. As a matter of fact, there are a number of decisions both under the Central Excise Act as well as under the several State Sales Tax enactments where similar questions have arisen. The principles emerging therefrom may have to be kept in mind. The dealers and assessee normally contend that the process undertaken by them does not involve manufacture, that no new goods have come into existence and that, therefore, no tax or duty is leviable. But here the respondent is adopting a converse position because it is beneficial to him under the I.P.R. C  
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We are of the opinion that in the above state of affairs, the proper course would be to remit the matter to the High Court for a decision afresh in the light of the observations made herein. E

Accordingly, the appeals are allowed, the judgment of the High Court is set aside and the matters remitted to the High Court for a fresh decision in the light of this judgment. No costs. F

T.N.A.

Appeals allowed.