

V

SLP(C)No. 26002 OF 2004
ITEM No.47 & 48

Court No. 5

SECTION III
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.26002/2004

(From the judgement and order dated 14/09/2004 in OJC 9967/99
of The HIGH COURT OF ORISSA AT CUTTACK)

M/S. SHREE JAGANNATH PACKERS

Petitioner (s)

VERSUS

STATE OF ORISSA & ORS.
(With Appln(s). for intervention and with prayer for
interim relief and office report)

Respondent (s)

With

SLP(C)No.25980/2004
(With prayer for interim relief)

SLP(C)No.26004/2004
(With prayer for interim relief)

SLP(C)No.26005/2004
(With prayer for interim relief)

SLP(C)No.26007/2004
(With prayer for interim relief)

SLP(C)No.26008/2004
(With prayer for interim relief)

SLP(C)No.26010/2004
(With prayer for interim relief)

SLP(C)No.25979/2004
(With prayer for interim relief)

SLP(C)No.26021/2004
(With prayer for interim relief)

SLP(C)No.862/2005
(With prayer for interim relief and office report)

SLP(C)No.866/2005
(With prayer for interim relief and office report)

SLP(C)No.724/2005
(With prayer for interim relief and office report)

SLP(C)No.725/2005
(With prayer for interim relief and office report)

SLP(C)No.816/2005
(With prayer for interim relief and office report)

SLP(C)No.851/2005
(With prayer for interim relief and office report)

SLP(C)No.1024/2005
(With prayer for interim relief)

SLP(C)No.940/2005
(With prayer for interim relief and office report)

SLP(C)No.824/2005
(With prayer for interim relief and office report)

SLP(C)No.1788/2005
(With appln.(s) for permission to place addl. Documents on record and with prayer for interim relief and office report)

SLP(C)No.2035/2005
(With appln.(s) for permission to place addl. Documents on record and office report)

SLP(C)No.3189/2005
(With appln.(s) for c/delay in filing SLP and exemption from filing c/c of the impugned Judgment and with prayer for interim relief and office report)

SLP(C)No.3940/2005
(With prayer for interim relief and office report)

SLP(C)No.4985/2005
(With prayer for interim relief and office report)

Date : 04/03/2005 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE H.K. SEMA

For Petitioner (s)Mr. Anil K. Ganguli, Sr. Adv.
Mr. T.R. Andhyarujina, Sr. Adv.
Ms. Ginny Jaitley Rautray, Adv.
Mr. V.K. Munshi, Adv.
Mr. Dharmendra Rautray, Adv.
Ms. Praveen Gautam, Adv.

Mr. Rajiv Roy, Adv.
Mr. N.K. Sahid, Adv.
Mr. Pranab Kumar Mullick, Adv.

Mr. Bharat Sangal, Adv.

Mr. Raj Kumar Mehta, Adv.

Dr. Sumant Bhardwaj, Adv.
Ms. Mridula Ray Bhardwaj, Adv.
Mr. B. Adhikari, Adv.

Mr. S.V. Deshpande, Adv.

For Respondent (s)Mr. Mukul Rohtagi, Sr. Adv.
Mrs. Kirti Renu Mishra, Adv.

For intervenors inDr. Sumant Bhardwaj, Adv.
in SLP 26002/04 Ms. Mridula Ray Bharadwaj, Adv.
Mr. B. Adhikari, Adv.

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.

The Special Leave Petitions are dismissed in terms of the signed order.
In view of the dismissal of the Special Leave Petitions, application for intervention does not

survive and is dismissed as such.

(K.K. Chawla)
Court Master

(Jasbir Singh)
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.26002 OF 2004

M/S. SHREE JAGANNATH PACKERS

Petitioner (s)

VERSUS

STATE OF ORISSA & ORS.

Respondent (s)

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.25980 OF 2004

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.26004 OF 2004

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.26005 OF 2004

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.26007 OF 2004

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.26008 OF 2004

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.26010 OF 2004

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.25979 OF 2004

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.26021 OF 2004

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.862 OF 2005

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SPECIAL LEAVE PETITION (CIVIL) NO.866 OF 2005

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WITH

SPECIAL LEAVE PETITION (CIVIL) NO.1788 OF 2005

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.2035 OF 2005

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.3189 OF 2005

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.3940 OF 2005

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.4985 OF 2005

O R D E R

Delay condoned.

In these matters, notice was issued limited to question whether or not the Petitioners are entitled to the benefit of the Notification S.R.O. No.141 of 2000.

The proviso, which is sought to be relied upon, reads as follows:

"Provided that the existing industrial unit already in receipt of incentives under the notification of Government of Orissa in the Finance Department No.2026-CTA-14/76-F dated the 23rd April, 1976 as amended from time to time immediately before the 1st January, 2000 shall continue to avail the incentives for the period of their eligibility under the said notification:"

Thus, the proviso only protects those existing industrial units who are in receipt of incentives under the Notification of the Government of Orissa dated 23rd April, 1976 as amended from time to time. It is only those industrial units who shall continue to avail the incentives for the period of their eligibility.

It is an admitted position that, amongst others, one of the amendments was by Notification dated 30th July, 1999. By this amendment tax concessions granted to certain commodities were withdrawn. Once the incentives/concessions were withdrawn those industrial units did not continue to enjoy the incentives/concessions under the Notification dated 23rd April, 1976. Therefore the proviso would not apply to those industrial units.

An attempt was made to re-argue that the Notification dated 30th July, 1999 was not valid. Tha

t argument was not permitted in view of the fact that a limited notice was issued. Such an argument has already been rejected on earlier occasion.

It was also sought to be submitted that the Notification dated 30th July, 1999 did not take away incentives or concessions which were already granted by the earlier Notification. It was submitted that this Notification only operated prospectively and only applied to new industries who would now not get any incentive or concessions after the date of this Notification. In our view such an interpretation is contrary to a plain reading of the Notification dated 30th July, 1999 which amongst other things provides as follows:-

"AND WHEREAS, keeping in view the loss of revenue on account of sales tax incentives and concessions granted under various Industrial Policies, it is considered necessary to withdraw some of these incentives;"

Even otherwise, we find that no such contention had been raised before the High Court. When we are asked if any such contention was raised before the High Court, all that could be pointed out is the following paragraph from the impugned Judgement of the High Court.

"In O.J.C. No.4297 of 2000 Mr. N. Paikray, learned counsel for the Petitioner, submitted that although the Petitioner being a new small-scale industrial unit established pursuant to the IP R 1989 was entitled to sales tax incentives for the full period of 7 years from the date of its commercial production, the Government of Orissa in the Finance Department has by the impugned notifications dated 30th July, 1999 withdrawn the said sales tax incentives on unreasonable and erroneous grounds and that the impugned notification S.R.O. No.622/99 dated 30th July, 1999 deleting entries 26-F, 30-FFF and other entries from the Tax Free List with effect from 1st August, 1999 are not sustainable in the eye of law. Alternatively, Mr. Paikray submitted that by a fresh notification dated 17.2.2000 issued by the Government of Orissa in the Finance Department and in particular under the first proviso thereof new small-scale industrial units who are in receipt of sales tax incentives immediately before 1st January, 2000 under the Finance Department notification No.20206-CTA-14/76-F dated 16.8.1990 shall continue to avail the incentives for the full period of 7 years as per the said notification dated 16.8.1980."

In our view, these submissions do not cover what is now being argued for the first time. Such a contention cannot be allowed to be raised for the first time in this Court.

We, therefore, see no reason to interfere. The Special Leave Petitions are dismissed. In view of the dismissal of the Special Leave Petitions, application for intervention does not survive and is dismissed as such.

.....J.
(S.N. Variava)

.....J.
(H.K. Sema)
New Delhi;
March 04, 2005.

ITEM No.47

Court No. 5

SECTION III
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.3188/2005

(From the judgement and order dated 16/09/2004 in OJC 12182/99
of The HIGH COURT OF ORISSA AT CUTTACK)

J.K. PAPER LTD.

Petitioner (s)

VERSUS

STATE OF ORISSA & ORS.

Respondent (s)

(With appln.(s) or c/delay in filing SLP and with prayer for interim relief and office report)

Date : 04/03/2005 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE H.K. SEMA

For Petitioner (s)Mr. Suchit Mohanty, Adv.
Mr. S. Misra, Adv.
Mr. Abhijat Sengupta, Adv.

For Respondent (s)Mr. Altaf Ahmad, Sr. Adv.
Mrs. Kirti Renu Mishra, Adv.

UPON hearing counsel the Court made the following
O R D E R

List next week.

(K.K. Chawla)(Jasbir Singh)
Court MasterCourt Master