

same into rice. During the period under appeal the dealer-appellant has effected sale of 17604.40 qntls. of rice valued at Rs.1,45,85,408.00 to the dealers of outside the State in course of export sale and claimed exemption from payment of Central Sales Tax as per provision contained under sub section- 3 of section-5 of the CST Act. This apart, the dealer-assessee ha also effected sale of 3805.00 qntls. of first point tax paid rice worth Rs.33,87,308.90 in course of interstate trade and commerce. The dealer-assessee could furnish requisite certificate in Form 'H' and other related documents in connection with export sale in support of 2300 qntls. of rice valued Rs.17,38,300.00 for which the same was allowed by the ld. STO. The dealer-assessee could neither produce certificate in form 'H' nor could produce evidence of export sale of 15304.40 qntls. of rice valued Rs.1,28,47,108.00. The ld. STO excluded the amount from the category of claimed exempted export sale and made it exigible to tax at the appropriate rate under the CST Act. Resultantly, the ld. STO raised demand of Rs.80,293.00 under the CST Act for the relevant period. This led the dealer-appellant to prefer first appeal before the ld. ACST.

The ld. ACST after careful consideration of the grounds of appeal filed by the dealer-assessee dismiss the appeal and confirmed the assessment order with the findings that the instant dealer could not produce wanting certificate in form 'H' even before hearing in course of first appeal despite availing enough opportunity extended to submit the same. Further, it is also held by the ld. ACST that the contention of the dealer that the ld. STO has not allowed adjustment of purchase tax paid on corresponding paddy from which rice has been obtained is not a fact inasmuch as the ld. STO has allowed adjustment of Rs.4,33,591.65 from the total tax due towards purchase tax paid on equivalent paddy, out of which rice was obtained and sold.

3. Being aggrieved with the order of the ld. ACST the dealer-assessee approached this Tribunal with the followings grounds of appeal:-

- a) The order of assessment so imposed and confirmed by the ld. ACST is bad in law and against the weight and contrary to the facts in the circumstances of the facts.
- b) The ld. AO as well as the ld. ACST, Sambalpur Range, Sambalpur is wrong in disallowing the claim of sales of rice made to the tune of Rs.1,28,47,108.00 on the strength of "H" Form inasmuch as no proper opportunity has been extended. As such the order is liable to be set aside.
- c) The disallowance of sales of rice so made without considering the appellant's practical difficulties in obtaining the "H" Form from outside party, hence the order so passed is illegal & improper.
- d) No proper opportunity has been extended before such disallowance of sales, hence violates the principle of natural justice. As such the assessment so passed is liable to be set-aside in the particular circumstances of the case.
- e) The tax rebate in equivalent paddy so allowed is less which should be more.

4. Shri M.L. Agarwal, the ld. Standing Counsel (C.T.) appeared on the date of hearing and supported the appeal order of the ld. ACST as just and proper and argued that the same need not be interfered with. Shri Agarwal took the contention that as the dealer-appellant could not adduce certificate in Form 'H' after availing opportunities, the confirmation of the assessment order by the ld. ACST is just and in accordance with the provisions under the law. He further stated that the ld. ACST, in his speaking appeal order has amply justified the reasons for confirmation of the assessment order. The demand raised by the ld. STO is justified in absence of submission of requisite certificate in Form 'H'. The ld. ACST has

also indicated the fact of allowance of adjustment of tax on sale of rice so far as purchase tax paid on equivalent paddy is concerned. No cross objection was filed by the respondent-State.

There is no response from the side of the dealer-appellant. The dealer-appellant neither appeared for hearing nor caused production of documentary evidence in question for consideration of grounds at Sl. No. 2 & 3 of the grounds of appeal filed by the appellant and indicated at Sl. No. b & c above. No evidence could be adduced to prove that the tax rebate in equivalent paddy allowed by the ld. STO is less which should be more. As the dealer-appellant is failed to defend his case with production of relevant documentary evidences along with books of accounts and the period of assessment dates back to 1998-99 and the appeal is pending for a period more than a decade, the appeal is disposed of *ex parte* on merit basing on the materials available in the record in absence of the participation of the dealer-appellant in the hearing of appeal.

5. Heard the ld. Standing Counsel (C.T.) on behalf of the Revenue and gone through the impugned orders of appeal as well as assessment and the grounds of appeal filed by the dealer-appellant. The question now for consideration is whether the order passed by the ld. ACST violates the principle of natural justice as no proper opportunity has been extended to submit certificate in Form 'H'? It is evident from the assessment record as well as the appeal record even though the transaction was effected during the period of assessment of 1998-99 the dealer-appellant could neither produce the requisite declaration Form before the ld. STO in his assessment completed on 30.03.2002 nor before the ld. FAA nor before the Bench on the date of hearing fixed on 16.08.2018. Hence it is not convincing that there is violation of principle of natural justice. As the dealer-appellant failed to adduce any evidence in support of the grounds of appeal filed and as we found no incongruity in the

impugned appeal order we are not inclined to interfere with the findings of the ld. ACST.

6. In the result, the appeal is dismissed.
The order of the ld. ACST is confirmed.

Dictated and Corrected by me,

Sd/-
(P.C. Pathy)
Accounts Member-I

I agree,

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I

Sd/-
(Suchismita Misra)
Chairman.

Sd/-
(A .K. Panda)
Judicial Member-I