

2. The facts as revealed from the case record are as follows :

The dealer-assessee M/s. Sidhivinayak Ferro Ispat Ltd. bearing R.C. No. RLIC-2685 was assessed u/R. 12(4) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') for the tax period 2004-05 and that order of assessment was passed on 21.07.2006. Consequent upon receipt of information of escapement of turnover reassessment proceeding was initiated by issuing a notice u/R. 10 of the CST (O) Rules to the dealer for production of its books of account for verification. In course of proceeding the Sales Tax Officer, Rourkela-I Circle, Uditnagar (in short, 'assessing officer' received a report from STO (I) and confronted the allegations made therein to the dealer. It was alleged in the report that the dealer-assessee had received ₹1,51,65,491.00 from two parties outside the State namely M/s. Mahindra Sponge & Power Ltd. and M/s. N.R. Sponge Pvt. Ltd. as advance as per the bank transaction. After verification it was found that the dealer-assessee had sold goods worth ₹35,98,340.00 and thus the balance amount of ₹1,15,67,151.00 was treated as sales suppression under the CST Act. Accordingly the assessing officer added an amount of ₹1,15,67,151.00.00 to the GTO already determined at the time of its original assessment which ultimately came to ₹1,51,65,491.00. After allowing deduction of ₹1,38,398.00 therefrom towards sales tax

collected the NTO of the dealer was determined afresh at ₹1,50,27,093.00. On computation of tax at the appropriate rate the total tax due came to ₹11,56,715.00 and then penalty of ₹17,35,072.00 was imposed on the dealer u/R. 10(2) of the CST (O) Rules and as such the assessing officer determined its tax liability at ₹28,91,787.00 and issued a demand notice accordingly.

Being aggrieved by this order of assessment the dealer-assessee preferred an appeal before the first appellate authority on the grounds that the evidence produced regarding advance payment were not considered both by the investigating officer as well as the assessing officer which amounted to denial of natural justice. It was further submitted that in absence of any proof with regard to movement of goods from one State to another in pursuance of contract for sale, taxing of such advance receipt during the material period in the reassessment proceeding was liable to be quashed. The first appellate authority having considered the order of assessment vis-à-vis the grounds advanced by the dealer-assessee came to a conclusion that the statutory conditions as laid down u/S. 3(a) of the CST Act i.e. to tax a sale of goods in course of inter-State trade and commerce were lacking in the order of assessment since there was no verification on the fate of such balance amount of advance from the books of account in order to prove the occurrence of sale during the year under appeal or otherwise.

Accordingly the first appellate authority remitted the matter to the assessing officer for examination of books of account of the dealer- assessee on the disputed advance payment and to complete the reassessment within three months from the date of receipt of the order after allowing reasonable opportunity to the dealer.

3. Now the State has brought this appeal before the Tribunal challenging the order of the first appellate authority on the grounds that the same is unjust and improper. With his remark "without establishing the fact whether the goods were actually moved to other States against such advance payment" the first appellate authority has deleted the huge demand of ₹28,91,787.00 whereas the reporting authority has clearly ascertained the same. No further evidence was required in this matter since the same was duly confronted to the dealer by the assessing officer. In the abovesaid circumstances the State urged before the Tribunal to set aside the impugned order while restoring the order of the STO.

No cross-objection has been filed on behalf of the dealer- assessee in this second appeal.

4. In course of hearing of the appeal it was found that none appeared on behalf of the dealer- assessee to participate in this proceeding before the Tribunal despite service of notice on the dealer by way of affixture as reported by the Dy. Commissioner of CT & GST,

Rourkela-I Circle, Uditnagar which is kept on record. Hence, the matter was heard exparte to be disposed of on merit as per Rule 60(2) of the OST Rules.

5. Learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that the assessing officer had properly assessed the dealer-assessee u/R. 10 of the CST (O) Rules when it came to their notice regarding out of account sale as per bank transactions but the first appellate authority discarded all these allegations against the dealer-assessee and remitted the case to the assessing officer for fresh assessment. He therefore, urged before this forum to set aside the order of first appellate authority and restore the order of assessment in the instant case.

6. Admittedly in this case the reassessment was completed basing on an information of advance payment received by the dealer through Bank account from outside parties. Against the total advance payment of ₹1,51,65,491.00 the dealer-assessee had disclosed inter-State sale worth ₹35,98,340.00 and as such the assessing officer opined that there was sale suppression in course of inter-State trade and commerce for ₹1,15,67,151.00 and proceeded for reassessment. In the impugned order the first appellate authority after due examination of the materials on record has observed that reassessment in the instant case was done by the assessing officer without establishing the

fact whether the goods were actually moved to other State against such advance payment and the same should have been done after verification of the books of account to prove the occurrence of sale during the relevant period. Therefore, the reassessment done by the assessing officer in the instant case was not in consonance with the provision of Sec. 3(a) of the CST Act. Accordingly the first appellate authority remitted the matter to the assessing officer for fresh assessment. We find there is absolute no illegality in the order passed by the first appellate authority and as such the impugned order appears to be just and proper in the facts and circumstances of the case.

7. In the result, as per the discussion made above the appeal preferred by the State is dismissed and the impugned order of the first appellate authority is hereby confirmed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Smt. Sweta Mishra)
2nd Judicial Member

I agree,

Sd/-
(Prabhat Ch. Pathy)
Accounts Member-I