



2, The dealer M/s. Western Bitumen Industries (P) limited is a manufacturer of Coaltar, Pitch and Blown bitumen. For the assessment period 2004-05, it was assessed under Section-12(4) of the OST Act but in a latter period on the basis of A.G. Audit report the assessment was re-opened as per Section 12(8) of the OST Act by the Sales Tax Officer, Sambalpur as assessing officer. The A.G. Audit has disputed the rate of tax collected by the dealer on sale of coaltar pitch as raw material. It is claimed that the dealer has collected rate of tax @4% instead of 12%. Before the assessing authority, the dealer's plea was since the sale was made against declaration Form-IV issued by purchasing dealer the tax rate should be at 4%. Other plea of the dealer before the assessing authority was, re-opening of the assessment in the case in hand is nothing but a mere change of opinion by the assessing authority on mechanical acceptance of the A.G. Audit report so the entire proceeding is not maintainable in law. The learned assessing authority vide its order dated 20.07.2007 accepted the A.G. Audit report and levied tax @12% on the goods like coaltar sold by the dealer resulting thereby the demand raised against the dealer towards at Rs.62,12,608.10 and penalty for the said amount of Rs.62,12,608.10.

3. In appeal at the instance of the dealer, learned ACST (Appeal), Sambalpur Range as first appellate authority accepted the plea of the dealer to the extent that, since the purchaser had purchased the goods as inputs for manufacture of their finished products the sale by the instant dealer against Form-IV comes under the ambit of concession in rate of tax. As a result, the demand was deleted and the dealer was determined to get refund of Rs.1,65,868.00.

4. Felt aggrieved by the order of the first appellate authority as such, the revenue has preferred this appeal. It is

contended that, since the goods like coaltar is a finished goods by itself the dealer is not entitled to get concession in rate of tax as claimed for. It is also contended that set off should be allowed as per Note 1 and 2 of the Schedule List-C of OST Rate Chart.

5. The appeal is heard without cross objection raised by the dealer. The dealer has supported the findings of the first appellate authority in its cross objection. The only question raised for decision in this appeal is whether-

The dealer's claim of concession in rate of tax against Form-IV issued by the purchasing dealer on sale of finished product like Coaltar the case in hand in particular is correct.

6. In the case in hand, the dealer was originally assessed under Section 12(4) of the OST Act. The dealer's claim relating to the tax rate was duly accepted but in latter period the A.G. Audit team reported that the dealer should have collected tax @12% on sale of Coaltar, a finished product. The assessing authority re-opened the assessment by accepting the suggestion of the audit team and levied tax @12%, conversely the first appellate authority has accepted the plea of the dealer with the finding that the purchasing dealer in its RC containing therein the goods like coaltar as input. The purchasing dealer is a manufacturer it had purchased coaltar from the instant dealer as input for the purpose of his manufacturing process. The first appellate authority has held that once the goods had purchased as input by using Form-IV the instant dealer cannot be asked to pay tax at higher rate, then what had collected on sale. The view taken by the first appellate authority is based on a sound principle. The purchasing dealer has not been held guilty by

paying less tax on purchase. His purchase at a concession rate using declaration Form IV is accepted by the taxing authority. He has RC containing therein the particular goods as input to be used in the manufacturing process of the end product. In that event, it is not understood how and why the instant dealer who has sold the inputs is to pay the tax at a higher rate than collected. If that be, there is no reason to take a departure from the findings of first appellate authority that the tax rate should be in accordance to Section-5 fifth proviso read with Sl.81 of the taxable lists. Accordingly, it is held that the impugned order calls for no interference.

It is ordered.

7. The appeal is dismissed as of no merit.

Dictated and Corrected by me,

**(Sri Subrat Mohanty)**  
**Judicial Member.**

**(Sri Subrat Mohanty)**  
**Judicial Member.**

**I agree,**

**(Suchismita Mishra)**  
**Chairman.**

**I agree,**

**(Sri P.C.Pathy)**  
**Accounts Member-I.**