



Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the tax period 2000-01.

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

The dealer in the instant case M/s. Priti Bricks, Bomikhal, Bhubaneswar was assessed u/S. 12(5) of the OST Act for the year 2000-01 basing on the audit report of the A.G., Odisha. For this the proprietor of the dealer-assessee was asked through a notice to produce the books of account before the assessing officer. However, the dealer refused to receive the notice and as such the assessment in its respect was completed exparte to the best judgment of the assessing officer as per the report of A.G. (Audit) party. Accordingly its tax due was calculated at ₹4,38,372.00 and a sum of ₹6,57,558.00 was imposed on the dealer as penalty u/S. 12(5) of the OST Act. Both taken together a sum of ₹10,95,930.00 was demanded from the dealer towards its tax liability for the relevant period.

Being aggrieved by this order of assessment the dealer preferred an appeal before the first appellate authority challenging justifiability and legality of the same. It was also contended on behalf of the dealer that the assessment done in the instant case is void since the principle of natural justice had not been followed by the assessing officer. Further question of its selling bricks at that relevant

time did not arise at all since the dealer was not manufacturing bricks then. The dealer had applied for his registration with Bhubaneswar-I Circle and as such was granted Registration Certificate w.e.f. 12.12.2000. The dealer had not made any saleable bricks and as such had not received any sale amount. Therefore, the assessment held u/S. 12(5) of the OST Act in its respect was illegal.

The first appellate authority considered the points advanced on behalf of the dealer and perused the relevant documents pertaining to the case as well as the audit report. He could find that the dealer had paid certain royalty to the Government which was much less than the amount as alleged against it in the report of the A.G. (Audit). The first appellate authority also came to know that the dealer had not obtained permission from the Tahasildar concerned to lift earth for manufacturing of bricks during the year 2000-01. For the confusion and dispute between the figures reported by the A.G. (Audit) towards payment of royalty and the figure reported by the Tahsildar, Bhubaneswar towards actual payment of royalty the estimation arrived at by the assessing officer pertaining to sale of bricks by the dealer was not accepted by the first appellate authority. So far as payment of royalty as admitted by the dealer is concerned the first appellate authority remanded the matter to the assessing officer to make necessary enquiry in order to bring material evidence to the record for

establishing that there was manufacturing and sale of bricks by the dealer during the relevant year on which tax could have been levied. The first appellate authority also thought it proper to direct the assessing officer that before completing the assessment any material found against the dealer has to be confronted to him following the principle of natural justice and then affording reasonable opportunity to the dealer of being heard in the matter he (the assessing officer) must do the reassessment in accordance with law. With these observations the first appellate authority remanded the case to the assessing officer for reassessment.

3. The dealer being dissatisfied with the aforesaid order brought this second appeal before the Tribunal on the ground that when the assessing officer failed to establish the sale of bricks by the dealer so also its manufacturing of bricks during the relevant period, the assessment against it should have been reduced to nil. No enquiry was conducted by the assessing officer to establish the facts as stated above against the dealer. In the said circumstances it is urged on behalf of the dealer to quash the assessment.

No cross-objection has been filed on behalf of the State in this appeal.

4. When the appeal was taken up for hearing it was noticed that none appeared on behalf of the dealer despite service of

notice on it by way of affixture as reported by the CT & GST Head, Bhubaneswar-I, Bhubaneswar which is kept in record. As this is a pretty year old matter the appeal was heard from the side of the State only to be disposed of exparte on merit as per Rule 60(1) of the OST Rules.

5. On a thorough scrutiny of the impugned order it is found that the first appellate authority has assigned enough reasons as to why the matter needs to be enquired further to establish actual sale effected by the dealer during the relevant year for coming to a just conclusion regarding its tax liability. The dealer rather did not appear before this forum to justify its contentions or to convince as to why it does not want for a fresh assessment by the authority concerned with proper enquiry into the matter. Under such circumstances we find no reason to disturb the impugned order. However, it is noticed from the impugned order that the first appellate authority has not specified the time line within which the reassessment by the assessing officer is to be completed. Further it is also not brought to the knowledge of this Bench as to whether fresh assessment as per the direction of the first appellate authority has already been completed or not in the meanwhile. Therefore we feel, it would be appropriate on our part to direct the assessing officer to complete the reassessment as per the direction of the first appellate authority in his order within three months from the date of receipt of this order, if it is not done as yet.

6. In the result, the appeal is dismissed.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(A.K. Dalbehera)**  
**1<sup>st</sup> Judicial Member**

I agree,

**Sd/-**  
**(Rabindra Ku. Pattnaik)**  
**Accounts Member-III**