



short, 'OST Act') in respect of the dealer-assessee 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. Aditya Udyog at Nayapalli is engaged in export of shrimps/prawns. In response to a notice received from the assessing officer authorized representative of the dealer had appeared before him for assessment their business establishment. He had produced the books of account consisting of purchase, sales and documents relating to export of goods before the assessing officer for his verification. The dealer had filed returns under the OST Act during the relevant period showing its gross turnover (GTO) and taxable turnover (TTO) as 'nil'. Further it (the dealer) had disclosed a processing loss of 1,41,457.230 Kgs. on processing of 6,18,553.430 Kgs. of prawn. Such processing loss was found around 23% of the gross quantity but from the size of the shrimps it could be gathered that the processing loss disclosed by the dealer would not be more than 10%. Therefore, the assessing officer estimated that the processing loss in the instant case would be 61,855.343 Kgs. only and as such he levied purchase tax on the rest quantity of 79,601.887 Kgs. on the purchase value of the same. He determined the purchase turnover in respect of 79,601.887 Kgs. of prawns/shrimps at

₹1,68,48,779.67 and completed the assessment to his best judgment by rejecting the books of account of the dealer. Accordingly the GTO and TTO of the dealer was determined at ₹1,68,48,779.67 and on calculation of tax @ 8% on the TTO the tax due was found to be ₹13,47,902.97. The assessing officer then added surcharge @ 15% on the tax due which came to ₹2,02,185.35. Thus tax and surcharge together came to ₹15,50,087.72 and as such the dealer was required to pay ₹15,50,088.00 towards its tax liability for the relevant period 2000-01.

Being aggrieved by this order of assessment the dealer preferred an appeal before the first appellate authority with its contention that the processing loss as estimated by the assessing officer in the instant case to his best judgment was not correct being devoid of cogent reasons. The dealer had shown the percentage of loss in the processing of shrimps at 23% as per the acceptable norms declared by MPEDA, Ministry of Commerce, Government of India. The dealer had dealt with different varieties of prawns during the relevant period and the percentage of processing loss differs from variety to variety. Therefore, the determination of percentage towards processing loss at 10% of the gross quantity was violative of the principle of natural justice.

The first appellate authority in course of hearing of the appeal examined the order of assessment, grounds of appeal and other relevant materials available on record. The dealer had produced a xerox copy of letter dated 11.10.2004 of MPEDA (Ministry of Commerce and Industry) before him. At Sl. No. 2 of the said letter loss for different types of prawn/shrimps have been mentioned and the said letter further revealed that processing loss also varies depending upon the variety of prawns. However, as the dealer could not produce any evidence before him (first appellate authority) in respect of types of prawn/shrimps dealt by it (the dealer) he (the first appellate authority), as accepted generally in common parlance that the more bigger the shrimps is, the less is the processing loss, accepted the average percentage of loss as determined by the assessing officer to be genuine and correct. He, therefore, confirmed the order of assessment.

3. The dealer then carried this second appeal before the Tribunal on the grounds that despite its maintaining detail accounts like purchase register, production register, export sale register as per which the processing loss came to 1,41,457.230 Kgs. against gross quantity of 6,18,553.430 Kgs. the forums below did not accept the same. They should not have completed the assessment on their best judgment assuming certain facts which are not correct. Further the order of assessment being ante dated is not maintainable.

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

4. In course of hearing of the appeal it was noticed that the dealer did not turn up despite service of notice on it (as per postal tracking report kept in record). No intimation was also received from the dealer seeking adjournment in the hearing of its appeal. 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. Learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that had the dealer produced proper evidence before the assessing officer or first appellate authority then they probably would have been in a position to find out exactly as to what should be the exact percentage of processing loss to be allowed in the instant case. The dealer could have furnished relevant evidence before this forum also to enable the Bench to find out the percentage of processing loss of different varieties of prawn/shrimps handled by the dealer following the norms and guidelines laid down in the letter issued by MPEDA, Ministry of Commerce and Industry. In absence of necessary evidence supposed to have been furnished by the dealer it cannot be said that the order of assessment as well as the impugned order confirming the said assessment are wrong or arbitrary. Therefore, there

is absolutely no justification for interfering with the impugned order in the facts and circumstances of this case.

6. Admittedly the dealer has failed to substantiate its contention that it had dealt with different varieties of prawn/shrimps by not producing proper documents to that effect before the forums below and also before this forum. Its books of account must not be clear enough to justify its claim for allowing 23% of processing loss out of the gross quantity. None on behalf of the dealer appeared before this Tribunal to substantiate or justify its aforesaid claim regarding the percentage of processing loss. The impugned order virtually remained unchallenged and uncontroverted before this forum. No infirmity or illegality is also noticed in the impugned order justifying our interference therein. Considering all these circumstances we confirm the impugned order.

7. In the result, the appeal preferred by the dealer-assessee is dismissed being devoid of merit.

Dictated & Corrected by me,

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

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**  
I agree,

**Sd/-**  
**(Smt. Sweta Mishra)**  
**2<sup>nd</sup> Judicial Member**  
I agree,

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