

summarily u/R. 49 of the Odisha Sales Tax Rules, 1947 (in short, 'OST Rules').

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

The dealer-assessee M/s. Utkal Agro Organic Ltd., Shergarh, Balasore is a rice miller and as such it was involved in procurement of paddy and processing of rice therefrom during the relevant periods. The dealer failed to appear before the assessing officer despite service of notice on it u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') whereby it was asked to produce its books of account before the assessing officer on the date fixed. It also did not appear before the assessing officer pursuant to intimations sent to it repeatedly. As a result the assessing officer had to complete the assessments in respect of the dealer-assessee pertaining to the years 2001-02 and 2002-03 exparte against it basing on the materials available on record. He determined its GTO and TTO and then its liability to pay the balance amount of tax of ₹2,63,145.00 for the tax period 2001-02 and ₹19,46,920.00 for the tax period 2002-03.

Being aggrieved by the aforesaid orders of assessment the dealer-assessee preferred appeals before the first appellate authority. The first appellate authority then detected the following defects in both the appeals presented to him on behalf of the dealer :

- (i) The Court Fee stamps as regards stay petition worth ₹1.25 had not been paid.
- (ii) The appeals were found barred by limitation.
- (iii) The admitted taxes amounting to ₹11,70,000/- and ₹14,65,801.00 for the years 2001-02 and 2002-03 respectively were not paid before filing of the appeals.

Having noticed the above defects the first appellate authority also issued notice to the dealer-assessee to show-cause as to why the appeals preferred by it should not be rejected summarily being defective and not maintainable under the provisions of law. Again the dealer-assessee though received the notice from the authority concerned yet did not appear before him through its authorized agent or Advocate on the dates fixed for hearing. No petition was also filed on its behalf seeking time for its appearance before the first appellate forum. The first appellate authority, therefore, following the provisions u/S. 23 of the OST Act rejected the appeals summarily u/R. 49 of the OST Rules.

3. The dealer-assessee then carried these appeals (S.A. Nos. 1951 & 1952 of 2004-05) before this forum challenging the abovesaid common order of the first appellate authority on the grounds that the orders of assessment passed by the assessing officer as well as the impugned order passed by the first appellate authority rejecting the

appeals summarily were not just and proper. Further no notice was ever served on it for removal of defects. Therefore, rejection of its appeals u/R. 49 of the OST Rules is absolutely arbitrary and illegal. The dealer-appellant also stated that it was not correct to say that it had not paid the admitted tax. Further the delay in filing of its appeals was caused due to illness of its Advocate. While advancing these grounds in the memorandum of appeal in both the appeals the dealer urged before this forum to quash the impugned order.

4. The State has filed cross-objections in both the appeals mentioning therein that the forum below was justified in dismissing the appeals of the dealer u/R. 49 of the OST Rules. The dealer-appellant had rather failed to comply the show-cause notice despite receiving the same and further it had not affixed Court-fees stamp on its appeal petition which was barred by limitation. The dealer also withheld the admitted tax of ₹11,70,000.00 and ₹14,65,801.00 for the years 2001-02 and 2002-03 respectively. The State thus submitted for upholding the order of the first appellate authority now under challenge before this forum.

5. When the appeals were taken up for hearing it was noticed that the dealer-assessee despite service of notice on it by way of affixture remained absent before the Bench. These are pretty year old matters and as such the appeals were heard from the side of the State

only to be disposed of exparte on merit as per Rule 60(1) of the OST Rules.

6. On perusal of the case record it is found that the dealer-assessee despite receiving notice from the assessing officer to produce its books of account before him failed to do so for which the assessing officer after giving intimations to it (the dealer) repeatedly proceeded to complete the assessments exparte against it. The dealer then preferred appeals before the first appellate authority challenging the abovesaid orders of the assessing officer. The first appellate authority also afforded enough opportunity to the dealer-appellant to proceed with the hearing of its appeals but the same could not be done due to absence of the dealer before him. His (the first appellate authority) order reveals that he waited for the dealer-appellant to appear before him on the dates fixed but when the dealer failed to do so despite receiving intimations for the same repeatedly the first appellate authority was compelled to dispose of the matter exparte by rejecting the appeals summarily. We also found that the dealer was never inclined to appear in all these forums to explain its stand properly. In this circumstance when we notice that the orders of assessment as well as the impugned order seem to be correct and in consonance with relevant provisions of law we feel there should not be any obstruction in

carrying out the orders of assessment pertaining to the relevant tax periods.

7. In the result, as we find absolutely no infirmity in the impugned order the same stands confirmed. Accordingly the appeals are dismissed. The cross-objections are disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

I agree,

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