

Odisha Sales Tax Act, 1947 (in short, 'OST Act') pertaining to the tax period 1998-99.

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

The dealer-assessee M/s. Tests, Inspection & Services, Industrial Estate, Bhubaneswar resells Cumins Engine and its spare parts. The assessment proceeding u/S. 12(4) of the OST Act was initiated against it for the year 1998-99. Accordingly a notice was issued to the dealer-assessee for production of its books of account before the assessing officer. Pursuant to the said notice Counsel for the dealer appeared before the assessing officer and furnished some declaration forms as well as purchase and sale statements. However, he was found absent on subsequent dates and since the dealer failed to produce any books of account before the assessing officer the assessment against it was completed by the assessing officer to his best judgment on the basis of materials available on record. The dealer had disclosed total purchases at ₹1,78,77,390.18 and the tax paid purchases at ₹2,09,923.78. However, it had not furnished the R.C. number and dates alongwith the list of tax paid purchases. It claimed exempted sales of ₹26,368.83 but in absence of any evidence or explanation in that regard the assessing officer had to reject the said claim. Similarly the dealer had claimed collection of sales tax of ₹15,20,405.57 which could not be

accepted by the assessing officer in absence of books of account. However, the assessing officer had accepted some valid and correct declaration forms in respect of the claim of the dealer being supported with Form-IV to the extent of ₹1,14,18,319.57. The dealer had claimed transit sales of spare parts and engine amounting to ₹23,56,695.84 and submitted two numbers of declaration in Form 'C' and corresponding E-I form in support of its claim but the assessing officer could not examine the transit sales claimed by the dealer in absence of purchase and sale invoices, purchase orders and purchase and sale register. Therefore, he (the assessing officer) had disallowed the claim of the dealer regarding the inter-State sales and treated the same as intra-State sales when the final buyers of those goods were found to be within the State of Odisha. The dealer had produced declaration in Form 'C' from NALCO, Damanjodi and SAIL, Balani. The assessing officer added the turnover amounting to ₹23,56,695.84 to the GTO and TTO of the dealer under the OST Act and accordingly taxed those transactions at the appropriate rate. The assessing officer determined the GTO and TTO of the dealer at ₹2,21,61,160.81 without allowing any deduction therefrom. He taxed @ 4% on ₹89,45,795.98 (against Form-IV submitted by the dealer), @ 8% on ₹42,60,034.71 and @ 16% on ₹89,55,330.12 which in total came to ₹24,31,487.00. He then added surcharge @ 15% on the tax dues and the entire amount came to ₹24,51,210.52. Thus an extra demand of tax

amounting to ₹7,86,324.00 was raised by the assessing officer since the dealer had already deposited ₹16,64,887.00 u/R. 36 of the OST Rules.

Being aggrieved by this order the dealer-assessee preferred an appeal before the first appellate authority challenging the additional demand of tax as raised by the assessing officer being illegal and arbitrary. The dealer also challenged the rejection of some Form-IV by the assessing officer treating the same as defective and then taxing the transactions effected by the dealer as transit sales. Thus it was urged on behalf of the dealer before the first appellate authority to set aside the aforesaid order of assessment. The first appellate authority issued a notice to the dealer for hearing of appeal fixing the date to 24.07.2003. The notice was served on the dealer on 17.07.2003. Then the Advocate for the dealer filed a petition seeking time on 24.07.2003 and on his petition the date of hearing was adjourned to 31.07.2003. However, the dealer-appellant did not appear before the first appellate authority on the date fixed for hearing of the appeal and thereafter it never appeared before the first appellate authority despite intimation sent to it on the subsequent date. As a result the first appellate authority had to dispose of the appeal on merit *exparte* against the dealer on the basis of materials available on record. He confirmed the order of assessment as the dealer failed to submit its books of account for the year 1998-99 before him for verification.

3. Being dissatisfied with the aforesaid order the dealer-assessee preferred this second appeal before the Tribunal almost on the same grounds as were raised by it before the first appellate authority.

No cross-objection has been filed on behalf of the State in this 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 CT & GST Circle Head, Bhubaneswar-III, Bhubaneswar and kept on record. Hence, the matter was heard *ex parte* to be disposed of on merit as per Rule 60(1) of the OST Rules.

5. On perusal of both the orders i.e. the order of assessment as well as the impugned order, passed by the forums below, it could be gathered that the dealer's assessment was done basing upon the materials available on record and further the exemption/concession as claimed by the dealer before the assessing officer neither being supported nor substantiated with any evidence were disallowed by the assessing officer with cogent reasons. The dealer also did not appear before this forum to substantiate its claim as it had raised before the forum below. The order of assessment as well as the impugned order virtually remained uncontroverted and unchallenged by the dealer despite opportunity being afforded to it. In the aforesaid circumstances,

as no infirmity or illegality is noticed in the impugned order warranting interference by this forum we confirmed the same.

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

I agree,

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