

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

The dealer-assessee in the instant case M/s. Lingaraj Rice Mill (P) Ltd., Larpank, Remed, Sambalpur was assessed by the Sales Tax Officer, Sambalpur-I Circle, Sambalpur (in short, 'assessing officer') u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the tax period 2000-01. The dealer-assessee who runs a rice mill used to purchase paddy which it converts to rice, broken rice and bran for sale. A Fraud Case Report (FCR) was also submitted by the IST, Vigilance Flying Squad, Cuttack against the dealer-assessee wherein some irregularities in the transactions effected by the dealer-assessee were noticed by the Vigilance Officials. The assessing officer examined the evidence collected by the visiting squad and then came to a conclusion that the dealer was quite habitual in clandestine trade which occasioned suppression of sales by it during the relevant period. Thus the assessing officer held that suppression worth ₹74,15,559.00 was well established against the dealer-assessee. The assessing officer also came across one more report against the dealer-assessee with the allegations of suppression made by the Vigilance Wing, Sambalpur. Therefore, the assessing officer while describing in detail as to how he came to a conclusion regarding sale suppression of the dealer-assessee determined its GTO at ₹11,97,46,828.10. He allowed deductions of

₹19,52,049.69 towards STC and then determined the TTO of the dealer at ₹11,77,94,778.41. He taxed the dealer-assessee @ 4% on ₹3,84,28,535.00 for paddy, @ 4% on ₹7,92,27,493.41 for rice and @ 4% on ₹1,38,750.00 for broken rice which on calculation came to ₹47,11,791.14 and after necessary adjustment the total tax dues of the dealer came to ₹30,35,041.58. Since the dealer had already paid ₹15,79,810.00 u/R. 36 of the OST Rules, the assessing officer required it to pay the balance amount of tax i.e. ₹14,55,232.00 as per the terms and conditions of the demand notice issued against it.

Being aggrieved by this order of assessment the dealer-assessee preferred an appeal before the first appellate authority challenging the legality and justifiability of the order of assessment since the same was passed ex parte against the dealer and as such the dealer was prevented from putting forth its case before him properly. Learned Counsel appearing on behalf of the dealer-assessee pleaded before the first appellate authority that due to certain circumstances the mill was closed during the relevant period and as such was not in operation. The dealer-assessee was, therefore, prevented by sufficient cause from producing the books of account before the assessing officer. So far as the allegations made against the dealer-assessee in the FCRs are concerned the same could not be explained by the dealer in time.

Under this circumstance it was urged on behalf of the dealer to set aside the said order of assessment.

The first appellate authority after verifying the order of assessment, connected records as well as the documents submitted on behalf of the dealer was of the view that the order of assessment was passed in violation of the principle of natural justice since the same was decided *ex parte* against the dealer without affording it reasonable opportunity of being heard in the matter and to explain certain factual aspects involved in the case. Therefore, he set aside the order of assessment with a direction for fresh assessment by the assessing officer after providing necessary opportunity to the dealer to produce its books of account and also to explain the allegations made against it in the FCRs by way of confronting the same to it in course of assessment. He further directed that after detail examination of the books of account of the dealer in the light of allegations made in the FCRs against it (the dealer) the assessing officer should complete the assessment afresh following the observations made by him (the first appellate authority) within a period of two months realizing the gravity of the case.

3. The State being aggrieved by this sort of order passed by the first appellate authority preferred this appeal before the Tribunal on the ground that the impugned order is not just and proper. The dealer did not appear before the assessing officer for assessment

proceeding despite reasonable opportunity of being heard was extended to it. Further the allegations of fraud received against the dealer-assessee were well established in this case.

No cross-objection has been filed on behalf of the dealer-assessee in the instant case.

4. In course of hearing it was found that despite service of notice by way of affixture through CT & GST Circle-I, Sambalpur the dealer-assessee did not turn up to participate in the hearing of the appeal either through its Counsel or authorized representative. 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(2) of the OST Rules.

5. Learned Standing Counsel (CT) who appeared on behalf of the State vehemently urged before the Bench that a bare perusal of the order of assessment could reveal that the assessing officer had extended enough opportunities to the dealer-assessee to produce its books of account before him as well as to explain the allegations made against it in the FCRs. None on behalf of the dealer appeared before the assessing officer and cooperated with him for completion of the assessment proceeding. The assessing officer had to complete the said assessment by perusing the records and connected documents only alongwith the FCRs received against the dealer

concerned. Therefore, it was a fit case where the first appellate authority should have confirmed the order of assessment instead of remitting the matter to the assessing officer for making fresh assessment as per his observations and directions in the impugned order. He thus urged for restoration of the order of assessment in the case.

6. In the instant case the first appellate authority seems to have not appreciated and accepted the order of assessment on account of its being passed *ex parte* for which he felt it proper to give another opportunity to the dealer-assessee by way of remanding the case to the assessing officer for making a fresh assessment as per his observations and instructions within the stipulated time of two months. It is not known to us as to whether fresh assessment as per the order of the first appellate authority has already been made/completed or not but we do hope that in the meantime fresh assessment in the instant case might have been completed in terms of the impugned order. There is also no information before us as to whether the dealer-assessee has come up with any appeal against the fresh assessment order in all these years or if any second appeal is pending or disposed of in connection with this particular assessment. Under such circumstances we find absolutely no reason to interfere with the impugned order passed by the first appellate authority since this order certainly has not affected either

of the parties in a substantial manner but meant for extending further opportunity to the dealer-assessee to substantiate its defence, if any, in a proper manner in consonance with the principle of natural justice.

7. Therefore, as per the discussion made in the foregoing paragraph we find absolutely no reason to interfere with the impugned order in any manner and as such the same is confirmed by this forum, however, with a direction to complete the assessment afresh in terms of the impugned order at the earliest if the same has not been done as yet.

8. Accordingly, the appeal preferred by the State is dismissed.

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