

in respect of the dealer-assessee u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short 'OST Act') for the period 1999-2000.

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

The dealer in the instant case named and styled as M/s. Tara Tarini Rubber (India) Pvt. Ltd., Januganj, Balasore is a Medium Scale Industry which manufactures HDPE/PP woven sacks and fabric tapes. This Unit was set up on or after 01.12.1998 and it had gone into commercial production on 08.09.1998. Necessary certificate regarding its eligibility of sales tax deferment on finished products was also issued by the Director of Industries as per IPR, 1989. Later on the dealer was categorized as a Small Scale Industrial Unit by the General Manager, District Industries Centre, Balasore. The Advocate of the dealer had informed this change of status to SSI Unit since 05.01.1999 but the dealer had not submitted any document with regard to its claim for deferment after 1997-98. No further agreement with IDCOL after 1997-98 was also produced. However, the dealer had submitted return for the quarter endings 6/1999, 9/1999, 12/1999 and 3/2000 reflecting deferment turnover of `48,67,810.00. Then all types of sales tax benefit as per IPR, 1989 was withdrawn w.e.f. 01.08.1999 vide Notification No. 33562/CTA-71/99-F. Therefore, the dealer became ineligible for any sales tax benefit after 31.07.1999 and as such he was also not eligible

for deferment of sales tax upto 31.07.1999 since he did not produce any supporting document like agreement in Form-B with IPICOL. In course of inspection it could be noticed that there was suppression in respect of some transactions worth `4,85,995.00 during five months of the financial year i.e. 1999-2000. Thus the authority concerned estimated the total sale suppression during the period under assessment at `29,15,970.00. When the GTO returned by the dealer was enhanced accordingly the assessment was completed basing upon the best judgment principle and the dealer was then made liable to pay a sum of `64,69,858.00 as per the terms and conditions of the demand notice sent to him.

Being aggrieved with the said order the dealer-assessee preferred an appeal before the first appellate authority. The first appellate authority considered all relevant documents pertaining to the case and order of assessment. He also examined certain declarations in Form-IV and found those to be in order for which he accepted the same. He also found that the sale of HDPE/PP fabrics by the dealer-assessee worth `30,87,263.00 as tax free sales as per Sl. 22 of Tax Free Schedule under OST Act and then ultimately on calculation found the dealer to pay a sum of `20,18,925.00 only.

3. Not being satisfied with the aforesaid order of the first appellate authority the dealer-assessee preferred the present appeal before this forum while contending that the impugned order is wrong and unjust since the authorities below did not allow the dealer's establishment to avail the benefit of tax deferment as per IPR, 1989 and thus the first appellate authority failed to appreciate that this is a case where the demand was not to be reduced but should have been deleted entirely.

4. In this case the State-respondent has not filed any cross-objection but in course of hearing from both sides it submitted that the deferment of tax liability as claimed by the dealer-assessee was withdrawn since 01.08.1999. Thereafter when suppression by the dealer was found its tax liability was fixed on best judgment principle. Therefore, the impugned order should not be disturbed.

5. Learned Counsel appearing on behalf of the dealer-submitted that the tax demanded from the dealer-assessee has already been collected. The dealer has submitted some copies of Treasury challans showing its payment details for the period 1999-2000 under the OST Act. The dealer has preferred this appeal in order to get the amount reduced so that it can get some refund to which it is entitled. However, no further material or evidence was placed before this Tribunal to come to a conclusion that the dealer is certainly entitled for

some deduction in respect of its tax liability. On the other hand, it is found that the dealer has not produced the declaration form or agreement or any authority by virtue of which it would be entitled to pay less tax than the amount determined by the first appellate authority. As revealed from the impugned order the deferment of sales tax was allowed as per eligibility certificate issued in favour of the dealer-assessee and its agreement in Form-B which were valid till 07.09.1999. However, all types of sales tax benefit which were extended under IPR, 1989 were withdrawn w.e.f. 31.07.1999 by virtue of a Government Notification. Therefore, it is found that the appropriate authority has rightly disallowed the claim of the dealer-assessee on this score.

6. Under such circumstances we find no cogent reason to interfere with the impugned order in any manner. Accordingly, 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/-
(Rabindra Ku. Pattnaik)
Accounts Member-III