

(Odisha) Rules, 1957 (in short 'CST (O) Rules') 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 of 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 `3,46,90,269.00. Then all types of sales tax benefit as per IPR, 1989 was withdrawn w.e.f. 01.08.1999 vide Notification No. 33562/CTA-71/99-F. Therefore, the dealer became ineligible for any sales tax benefit after 31.07.1999 and as such he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 held 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. The claim of exempted sales to the tune of `3,15,29,186 by the dealer was not accepted in view of the decision of the Hon'ble High Court of Orissa rendered in the case of M/s. Sooshree Plastics and as such tax was levied on the aforesaid turnover @ 12%. Thus the NTO

was determined at `6,68,68,253.00 after allowing deduction of `14,13,567.00 from the GTO returned by the dealer. While calculating the tax at appropriate rates alongwith surcharge in assessment the tax due came to `60,74,060.43. After considering the payment of admitted tax and also the demand which had already been made u/S. 9(2) of the CST Act the dealer was then made liable to pay a sum of `55,75,679.00 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 who considered all the relevant documents pertaining to the case and order of assessment. On examination of books of account the claim of deferment of sales tax amounting to `9,12,347.00 by the dealer-assessee was allowed only upto the period 31.07.1999 but the same was disallowed by the first appellate authority w.e.f. 01.08.1999. After examining certain declarations in Form 'C' which he (the first appellate authority) found to be valid accepted the same. He also allowed sale of HDPE/PP fabrics by the dealer-assessee worth `7,05,269.00 as tax free sales (as per Sl. 22 of Tax Free Schedule under OST Act) whereas disallowed such claim of tax free sale to the tune of `30,55,570.00 against 'C' form and levied tax @4%. Ultimately on calculation the first appellate authority found the dealer to pay a sum of `17,37,301.00 only.

3. Not being satisfied with the aforesaid order of the first appellate authority the dealer-assessee came up with 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 accordingly 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 was submitted on behalf of the State that the deferment of tax liability as claimed by the dealer-assessee was withdrawn since 01.08.1999. Therefore, the impugned order should not be disturbed.

5. Learned Counsel appearing on behalf of the dealer-assessee 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 CST 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 deductions in respect of its tax liability. On the other hand the impugned order is quite clear in respect of withdrawal of the benefit under IPR, 1989 with effect from 01.08.1999. Thus the benefit of deferment of sales tax in favour of the dealer was rightly allowed upto 31.07.1999 which is found to be in consonance with the Government Notification concerned.

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