



Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') for the period 2001-02 in respect of the dealer-assessee.

2. As revealed from the case record, the dealer-assessee is a manufacturer of cotton yarn and as such he purchases cotton and cotton waste from inside and outside the State. He had filed periodical returns showing his annual GTO and NTO after which he was served with a notice from the assessing officer u/R. 12(5) of the CST (O) Rules to produce books of account relating to his business for examination and verification of his returns. Accordingly he produced his books of account which were examined on 22.08.2002 by the assessing officer. Further some statements were also recorded in respect of his business activities and then assessment order under the OST Act was passed on 22.08.2002 for the relevant period which was communicated to the dealer vide order No. 2544 dated 16.09.2002. The dealer-assessee who had appeared before the assessing officer initially and produced declaration form seeking exemption on consignment sale and branch transfer in course of his inter-State business transactions as well as other documents, however, subsequently remained absent for which the order of assessment was passed against him *ex parte* on the basis of materials available in the record. The assessing officer on proper calculation determined that the dealer-assessee was required to pay `9,37,842.00 for that relevant period.

Being aggrieved with the said order, the dealer-assessee preferred an appeal before the first appellate authority challenging the demand raised by the assessing officer so far his tax liability is concerned. He also took a plea that due to prolong labour problem his factory was locked out from 01.01.2002 for which it was not possible to recover the documents and statutory forms, if any, from the factory premises as well as from the consignment agents. The business establishment of the dealer-assessee was making all the efforts by taking up a case with the Labour Commissioner to finalize the dispute with the labourers which would ultimately enable him to reopen the factory and would also help him to retrieve all the documents as required for a proper calculation of his tax liability. It was also contended by the dealer-assessee that he had not been given reasonable opportunity to furnish the required form and as such he sought for setting aside the order of assessment. However, the first appellate authority confirmed the assessment after verifying the impugned order of assessment, grounds of appeal and the materials available on record.

3. Being aggrieved with the order of the first appellate authority, the dealer-assessee came up with this second appeal on the following grounds :-

The impugned order was passed *ex parte* against him without examination of the records and documents. It is also contended that he (the dealer) was not given reasonable opportunity to produce the documents before the authority concerned and as such the order of the first appellate authority suffers from deficiency. Therefore, such order is liable to be quashed. However, in course of hearing the appellant did not turn up for which the appeal was also heard *ex parte*.

4. On perusal of the case record it is found that the first appellate authority has categorically mentioned that he had gone through the order of assessment, grounds of appeal and the materials available on record. The appellant i.e. the dealer-assessee did not respond to the notice issued to him for hearing of the appeal for which the said matter was decided *ex parte* against him. The dealer-assessee was required to produce declaration in Form-F from the persons in the State to whom the goods were sent with evidence but he did not bother to produce all those documents which he should have in his possession. Thus as the dealer-assessee did not produce the 'F' declaration form and could not substantiate his claim for exemption with record or evidence the assessing officer on due calculation fixed the tax liability of the dealer-assessee. In such circumstances the first appellate authority confirmed the entire order of assessment. The dealer-assessee who is the appellant in this second appeal, however, did not turn up despite

notice to him though it is his duty and legal obligation to appear before this forum and convince the Bench as to why the impugned order has to be interfered with and set aside. On the other hand the impugned order is found to have been based upon records and documents. Further as the impugned order remained virtually unchallenged and uncontroverted in any manner and no illegality or infirmity is noticed therein it is felt that the same should not be interfered with by this forum.

5. In the result, the appeal is dismissed and the impugned order of the first appellate authority is hereby confirmed.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Subrat Mohanty)**  
**2<sup>nd</sup> Judicial Member**

I agree,

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