

Sales Tax Act, 1947 (in short, 'OST Act') in respect of the dealer-assessee for the period 2001-02.

2. The facts as revealed from the case record, in brief, are that the dealer-assessee named and styled as "M/s. Gita Sales Corporation" trades in cooking coal, coal dust etc. The assessment of the dealer-assessee for the year 2001-02 was completed vide order dated 12.10.2004 u/S. 12(4) of the OST Act in which its GTO was determined at `5,87,32,142.00 and the TTO was determined as nil. However, in course of audit of the assessment record A.G. (Audit) pointed out that according to the 2nd provision to item 42(a) of Tax Free List under the OST Act the dealer was to produce a certificate from the OSFC/IPICOL to make it eligible for exemption on purchase of raw materials and spare parts of machinery and sale of finished goods while showing clearance of its defaulted dues. As in the instant case the declaration in Form I-D(92) was the dealer's own statement the assessing officer of the purchasing dealer had no scope to verify the declaration-wise purchases. Thus, the A.G. (Audit) held that the escapement of purchase turnover against own stationery by the dealer-assessee cannot be ruled out in the instant case. Under such circumstance the A.G. (Audit) required the dealer to produce the copy of certificate obtained from OSFC showing clearance of defaulted dues to the selling dealer for exemption as a purchasing IPR'92 beneficiary. It

was also found that in the instant case one M/s. Pyramid Coke Industries (P) Ltd. had purchased goods amounting to `1,52,21,776.35 and had furnished declaration in Form I-D(92) on its own stationery . Thus it was held by the assessing officer that the exemption which was allowed in favour of the dealer-assessee in absence of certificate of OSFC was irregular which resulted in under assessment. Thus the case was reopened u/S. 12(8) of the OST Act and notice was served on the dealer-assessee accordingly. However, the dealer-assessee did not turn up for which it was held by the assessing officer that he (the dealer-assessee) was deliberately avoiding the reassessment proceeding. The assessing officer then completed the assessment applying the principle of best judgment and decided to disallow the exemption to the tune of `1,52,21,776.35 which was exempted basing upon the declaration furnished by the dealer-assessee in Form I-D(92). This amount was added to the TTO and the OST @ 4% was levied on the TTO which on calculation came to `6,08,871.00. As the dealer had not paid any tax on the ground of its TTO being shown as nil he was required to pay the aforesaid amount as per the demand notice issued to him.

As revealed from the order of assessing officer passed u/S. 12(8) of the OST Act the dealer had not participated in the proceeding but he preferred an appeal before the first appellate authority challenging the order of assessment without furnishing the

grounds of appeal. The first appellate authority after hearing the Advocate who appeared on behalf of the dealer-assessee and going through the impugned order of assessment as well as other materials on record ultimately held that as the dealer-assessee failed to produce any documentary evidence to disprove the demand raised against him, he (the first appellate authority) confirmed the order of the assessing officer.

3. The dealer-assessee being aggrieved with the aforesaid order preferred this second appeal with the following grounds:-

- (i) The order passed by the Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range is bad in law and as such the same should be quashed; and
- (ii) The Form I-D(92) submitted by the purchasing dealer in the instant case is just and proper and further it had produced a letter from the purchasing dealer M/s. Pyramid Coke Industries (P) Ltd., CU-III-3970 before the assessing officer and the first appellate authority to show that it had not applied for any loan from OSFC.

4. In course of hearing it was also found that none appeared on behalf of the dealer-appellant to put forth his stand in this appeal and none of them even tried to produce the documents which

could have substantiated that in this particular case the dealer-assessee is exempted from paying tax on account of certain benefits extended in his favour. He rather despite opportunity being offered to him failed to substantiate and explain his claim without any reason. In the circumstances as the order of the first appellate authority remained unchallenged and uncontroverted apart from the facts that the same is based upon the reasons as mentioned in the order itself, we feel there is absolutely no reason to interfere with the same at this stage.

5. Accordingly, 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)
2nd Judicial Member

I agree,

Sd/-
(Ranjit Kumar Rout)
Accounts Member-II