

ORDER

The S.A. No. 646 of 2005-06 preferred by the dealer-assessee and the S.A. No. 746 of 2005-06 preferred by the State are directed against the order dated 27.04.2006 passed by the Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (in short, "first appellate authority") in First Appeal Case No. AA- 475 (SAII) of 2005-06 wherein he allowed the appeal preferred by the dealer-assessee in part and reduced the assessment made by the Sales Tax Officer, Sambalpur-II Circle, Bargarh (in short, 'assessing officer') in respect of the business concern of the dealer-assessee u/S. 12(8) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') pertaining to the period 2001-02. As both the appeals are directed against the same order of the first appellate authority, those are taken up together for disposal in this order for the sake of convenience.

2. As would reveal from the case record the dealer-assessee named and styled as "M/s. Shyam Huller & Flour Mill" runs his mill at Bandhpali in Bargarh. For carrying on his business he purchases paddy and then after its milling sells rice, broken rice and rice bran. The dealer-assessee was assessed u/S. 12(4) of the OST Act and thereafter on receipt of fraud case report (FCR) submitted by the Inspector, Sambalpur-II Circle, Bargarh he (the dealer-assessee) was proceeded u/S. 12(8) of the OST Act. During this assessment u/S. 12(8) of the

OST Act it was found that the dealer-assessee had suppressed purchase of paddy weighing Q. 13,540 and this allegation was brought against the dealer-assessee basing upon the figures obtained by the Inspector from the Civil Supplies Department, Bargarh. Thereafter the assessing officer served a notice on the dealer but the dealer did not respond to that notice and subsequent intimations for which the assessing officer completed the assessment exparte against the dealer-assessee considering the materials available on record. The Sales Tax Inspector while comparing the figures showing the progressive procurement of paddy and sale of levy rice to FCI by the rice millers of Bargarh district, obtained the paddy procurement register of the instant rice miller from the Civil Supplies Department, Bargarh and then found that the dealer had suppressed the turnover by disclosing less purchase turnover of paddy weighing Q. 13,540 in comparison to the actual turnover of paddy procured during the year 2001-02. Thereafter the assessing officer calculated the sale price of rice, broken rice and rice bran that would have been manufactured from the aforesaid quantity of paddy and determined the sale price of such goods at `76,97,490.00. Then taking into consideration the volume of business of the dealer-assessee and extent of suppression established estimated, the actual suppression for that relevant year at `1,53,94,980.00 which is twice the amount of actual suppression. He then advanced a tax demand of `15,39,798.00

inclusive of penalty of `9,23,999.00 from the dealer-assessee u/S. 12(8) of the OST Act.

The dealer-assessee being aggrieved with the aforesaid order of assessment preferred an appeal before the first appellate authority contending that he did not know as to how the figures submitted by him differed from the figures obtained from the Civil Supplies Department and there might be some mistake while obtaining those informations from the Civil Supplies Department. The Sales Tax Authority did not conduct any independent enquiry to substantiate their stand and further they did not give him sufficient opportunity to explain the discrepancy noticed before them. He also cited the decisions of Hon'ble Orissa High Court rendered in the case of Laxminarayan Sawalram Vs. State of Orissa (OJC No. 286 of 1968); in the case of M/s. Bherodhan Jethmal (P) Ltd. Vs. State of Orissa, reported in 26 STC 536; in the case of State of Orissa Vs. Ranital Rice Mill, reported in 99 STC 364 as well as in the case of M/s. Roy Jacob Vs. State of Kerala, reported in 128 STC 256 in support of his contention. However, the first appellate authority after examining the grounds of appeal and perusing all the relevant papers available in the record concluded that there was suppression of purchase of Q. 13,540 of paddy by the dealer-assessee during that relevant period and in that regard the conclusion drawn by the assessing officer was absolutely correct.

The first appellate authority, however, did not agree with the determination of the tax amount to be levied from the dealer-assessee and while assigning his own reasons he reduced the amount to `6,87,484.00.

3. The dealer-assessee being not satisfied with the aforesaid order of the first appellate authority even though his appeal was allowed in part preferred the second appeal while contending before this Tribunal that he being a rice miller maintains all the accounts relating to purchase, sale, stock etc. and as such those documents can be verified. He had disclosed the correct figure in respect of his purchase of paddy during the year 2001-02 but did not know how that figure differed from the figure obtained by the IST from the Civil Supplies Department. This variation might be due to some mistake because the Civil Supplies Department had never authenticated this matter since then. The Sales Tax Authorities had never conducted any independent enquiry to establish their stand and during his regular assessment u/S. 12(4) of the OST Act no suppression of sale was detected or reported and further his books of account were also not rejected. The first appellate authority without taking note of these facts decided the matter arbitrarily. Hence he urged for quashing of the reassessment done u/S. 12(8) of the OST Act.

4. As stated above the State has also preferred second appeal as well as filed cross-objection in respect of the same order contending that learned first appellate authority had reduced the assessment without any justification even though the Sales Tax Officer had rightly established the fraud report and the first appellate authority also agreed with the fact of suppression as detected by the IST and the assessing officer. In the circumstances the State urged for restoration of the assessment order which was challenged before the first appellate authority.

5. In course of hearing the second appeal it was found that the dealer-assessee did not participate despite notice served on him. Therefore, the matter was heard ex parte against him.

6. While perusing the record it is found that the dealer-assessee had suppressed about purchase of Q. 13,540 of paddy during the period under reference. This could be ascertained from certain documents belonging to the Department of Civil Supplies, Bargarh. The dealer-assessee termed the aforesaid discrepancy as a mistake but he did not substantiate or reconcile the said mistake in any manner either before the assessing officer or before the first appellate authority. On the other hand the suppression in respect of his business concern which could be detected from some Government official records, in our view, should not be disregarded or discarded lightly. Therefore, the first

appellate authority has rightly accepted the said fact as revealed from the records.

7. The next question comes whether the tax liability of the dealer-assessee for this aforesaid suppression as determined by the first appellate authority is not correct having suffered from arbitrariness. In this regard it would be pertinent to mention here that the assessing officer, at the first instance had made some calculation and determined its tax liability. The assessing officer inferred the value of suppression taking the sale price of rice, broken rice and bran prevalent in that local area even though there was no specific evidence before him in determining the sale price of the respective items as had been calculated by him. On the other hand the first appellate authority taking into consideration the GTO of the dealer-assessee determined in his (dealer-assessee's) 12(4) assessment and the exact amount of suppression made by him determined his tax liability which came to `6,87,484.00 only. He disagreed with the tax liability determined by the assessing officer u/S. 12(8) of the OST Act on the ground that the latter had not assessed the value of paddy which came under suppression as such but added something more to that by virtue of his best judgment keeping in view the volume of business of the dealer-assessee. However, we do not find any infirmity in the order of the first appellate

authority regarding his determination of tax liability of the dealer-
assessee in the facts and circumstances of the case.

8. Therefore, as per the discussion made in the foregoing paragraphs we hold there is absolutely no reason to interfere with or to disturb the finding of the first appellate authority. As such the appeals preferred by both the parties i.e. the dealer-assessee as well as the State are dismissed. Cross-objection filed by the State is disposed of accordingly.

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/-
(Prabhat Ch. Pathy)
Accounts Member-I