

Estate, Mancheswar, Bhubaneswar is a manufacturer of HDPE, PP fabrics and sacks both laminated and unlaminated which it also sells. This dealer's Unit was given the status of Small Scale Industrial Unit by the District Industries Centre, Bhubaneswar and accordingly a permanent registration certificate was issued in its favour. Pursuant to a statutory notice u/R. 12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') served on the dealer for assessment of its business transactions pertaining to the period 2001-02 the General Manager of the Company appeared before the Asst. Commissioner of Sales Tax (Assessment), Puri Range, Bhubaneswar (in short, 'assessing officer') with its books of account and statements of purchase and sale without any declaration form which he (the General Manager of the dealer-Company) claimed to have in respect of the business of dealer-industry. The case was then heard in part and adjourned to another date. But on the next date of hearing, as fixed earlier, the dealer remained absent for which the assessing officer completed the assessment exparte on the basis of materials available on record. He determined the GTO and TTO of the dealer for the year 2001-02 in absence of any books of account and then calculated the tax dues of the dealer inclusive of surcharge @ 10% which came to ₹1,26,52,547.44. Since the dealer had already paid a sum of ₹3,77,045.00 before filing of the return a demand notice was sent to him for making payment of

balance amount of ₹1,22,75,502.00 as per the terms and conditions of the demand notice issued to it.

Being aggrieved with the aforesaid order of assessment the dealer preferred an appeal before the first appellate authority against the same on the ground that the order of assessment was passed arbitrarily without taking into consideration the categories of sales under different tax rates; sales under statutory declarations as well as exemptions etc. Further it was also asserted on behalf of the dealer that no opportunity was given to it for producing its books of account and other documents etc. for proper assessment by the assessing officer.

3. The first appellate authority, in course of hearing the appeal, perused the documents such as permanent registration certificate issued by the Government of Odisha, Directorate of Industries, DIC, Bhubaneswar; Form II-A issued by the General Manager, District Industries Centre, Bhubaneswar; eligibility certificate for sales tax exemption on sale of finished products of existing Small Scale Industrial Unit under IPR, 1996 and 'C' declaration forms in respect of sales under inter-State trade and commerce which were produced before him by the dealer. He considered those documents as well as the submissions made by the authorized representative of the dealer who described before him as to how and under what

circumstance the dealer-Company was entitled for exemption being a Small Scale Industrial Unit under the provisions of IPR, 1980 and IPR, 1996. The first appellate authority then concluded that the assessing officer should have given another opportunity to the dealer to explain its case before him before proceeding to pass an ex parte order of assessment against it. The first appellate authority also held that the exempted sales of the dealer under the benefits provided in IPR, 1996 were supposed to have been examined keeping in view 'C' form condition and other documents available with the dealer by affording him reasonable opportunity of being heard in this regard. Thus he set aside the order of assessment and remanded the matter to the assessing authority for reassessment in the line of observations made by him in the impugned order.

4. Being dissatisfied with this finding of the first appellate authority State came up with the present appeal on the ground that the order of the first appellate authority is not just and proper and further exemption cannot be allowed on the basis of copies of 'C' form, the exemption on sales should have been disallowed and goods should be taxed at the appropriate rate with surcharge being levied thereon. In the instant case the dealer was afforded with reasonable opportunities by the assessing officer to put forth its case, if any, properly but he

failed to appear before him in time. Therefore, the order of assessment should be restored.

5. No cross-objection has been filed by the dealer-respondent in the instant appeal. However, learned Counsel appearing on behalf of the dealer-assessee submitted that the dealer has all the relevant documents with it and had produced the same before the first appellate authority for which the first appellate authority felt constraint to remand the matter to the assessing officer with the observation that exemption sales under IPR, 1996 benefits were to be examined in the proper perspective with reference to exemption certificates available with the dealer and conditions of Industrial Policy Resolution by allowing him (the dealer) reasonable opportunity of being heard. Furthermore all sales under 'C' form conditions are also to be examined on production of 'C' forms by the dealer with reference to its books of account. Under such circumstances, the State should not have opposed for reassessment of the tax liability of the dealer-assessee. Thus in course of hearing this appeal learned Counsel for the State-appellant submitted that if the impugned order in any event is going to be confirmed by this Tribunal then a specific order should be given to the respondent i.e. the dealer-assessee to produce all the documents as described above in original before the assessing officer for fresh calculation of its tax

liability for that relevant period. Learned Counsel for the dealer-
assessee conceded to this proposition of the State.

6. In view of the aforesaid submissions it is held that there is absolutely no justifiable reason to interfere with the impugned order in any manner but as submitted by learned Counsel for the State the dealer-assessee is hereby required to produce all the relevant documents before the assessing officer in original for enabling the assessing officer to make properly fresh computation of its tax liability in respect of the assessment period 2001-02.

7. In the result, 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