

- (iii) whether the first appellate authority should have not dealt with the plea like payment of tax at higher rate at the checkgate by the dealer is not within his jurisdiction to take into consideration in appeal before him;
- (iv) what order?

2. The instant dealer is a proprietorship concern engaged in trading of garments and hosiery goods. It was faced assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, OST Act) for the assessment period 2004-05 by the Sales Tax Officer, Cuttack I West Circle, Cuttack, Ward-B as assessing authority which was ended in demand of balance amount of tax at Rs.44,515.00.

3. In appeal before the first appellate authority, the demand became reduced to Rs.2,333.00.

Being aggrieved by such reduction in the demand, Revenue has preferred this appeal with a prayer to set aside the impugned order and for a direction of reassessment.

Admitted facts in this case are the dealer had not maintained his books of account properly such as, it had maintained the purchase account but not the sale account. The dealer had affected total purchase of goods to the tune of Rs.11,89,402.76 out of which goods worth of Rs.10,60,613.76 were taxable and goods worth of Rs.42,438.00 were tax free goods. The dealer was found to have paid tax on a part of his purchase @ 12% at the border checkgate against the goods like Muffler, Kanpatti, Caps and scarf etc. But, in its regular return, the dealer has disclosed the tax @ 4% on entire TTO and in that process the dealer has made adjustment of the excess amount of tax paid at checkgate for levy of higher rate @ 12%. The assessing authority rejected the mode of calculation by the dealer with the reasoning that, the dealer had not challenged the imposition of tax @ 12% at checkgate by preferring revision before competent authority. So, once he had accepted that rate of tax and paid the same, he cannot raise the same before the assessing authority in the regular assessment. On the other hand, as the dealer had not maintained sale account, the

assessing authority added 15% profit margin to the purchase turnover and thereupon he calculated the tax due from the dealer. It has levied tax @ 12% which was collected at the checkgate then, on the rest amount of goods it has levied tax @ 4% and in ultimate calculation the dealer was found liable to pay the balance amount of tax of Rs.44,515.00.

4. Being aggrieved with the mode of calculation and demand as raised on the basis of assessment above, the dealer knocked the door of first appellate authority. Learned Joint Commissioner of Sales Tax (Appeal), Cuttack I Range, Cuttack as first appellate authority re-determined the tax liability of the dealer. He has held that, the goods are machine made woolen goods covered under entry Sl. No.33 of the OST Rate Chart taxable @ 4%. The excess payment of tax made by the dealer at checkgate should be adjusted from his total tax liability and in that process, however he has upheld the view of the assessing authority relating to addition of 15% profit margin. In consequence to the recalculation of tax liability @ 4% on entire taxable turnover, the dealer became found liable to pay balance tax of Rs.2,333.00.

5. When the matter stood thus, State being aggrieved, preferred this appeal with the contentions that, the dealer should have preferred revision against the collection of tax at a higher rate at the checkgate. Unless, the jurisdiction exercised by the first appellate authority is illegal, as such the reduction in tax due by the order of the first appellate authority is not sustainable.

6. The goods dealt with by the dealer in course of his business transaction and its nature are remained unchallenged. The goods are readymade garments and the garments were mill made woolen fabrics. If that is, it covers under tax group of 4% i.e. as per entry Sl. No.33 of the OST Rate Chart. As because the dealer was levied with tax @ 12% on a fraction/part of it purchases at checkgate, he should be denied to get the relief in the regular assessment is the argument on behalf of the Revenue. It is found that, the assessing authority has calculated tax @ 4% for the rest portion of the purchase which were not taxed at checkgate. The portion of

the purchases were taxed at checkgate @ 12% remained as it is in the assessment by the assessing authority. There is no reasonable explanation given by the assessing authority, how a particular kind of goods was taxed @ 4% for a part of the transaction and 12% for another part of the transaction. It found not conceivable that, as because the dealer had not challenged the imposition of tax @ 12% at the checkgate by preferring revision, the dealer is not entitled to relief in the appeal. Such a reasoning by the assessing authority has no sanction under law. The jurisdiction of the assessing authority or the first appellate authority which is an extended forum of assessment cannot be curtailed as held by the assessing authority. Be that as it may, it is believed that, the first appellate authority has not committed any jurisdictional error in entertaining the appeal and be that as it may, this Tribunal has no jurisdiction to say, whether an order which should have been preferred in revision has not preferred so by the dealer, hence, the appeal dealt with by the first appellate authority is not within his jurisdiction. Accordingly, it is held that, the ground basing which the order of the first appellate authority is challenged, is not maintainable before this forum. Hence, it is held that, the impugned order calls for no interference. Accordingly, it is ordered.

7. The appeal is dismissed as of no merit.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

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