

the Central Sales Tax (Odisha) Rules, 1957 (in short 'CST (O) Rules') for the period 2004-05.

2. The facts as revealed from the case record are as follows :-

The dealer-assessee M/s. Jai Balaji Jyoti Steels Ltd. is a manufacturer of sponge iron and it sells the same in course of its business. Its assessment under the OST Act was completed on 03.05.2006 in which its production and utilization of raw materials were considered in detail. A notice u/R. 12(5) of the CST (O) Rules was issued to the dealer in order to complete its assessment under the CST Act. In response to that notice the Authorized Representative of the dealer alongwith their Advocate appeared before the assessing officer with the books of account of the dealer-assessee which consisted of purchase and sale registers. Those books of account were verified with reference to the return filed by the dealer under the CST Act. On verification of those documents the assessing officer could notice some discrepancies with regard to sale value in respect of inter-State sales and consignment sales effected by the dealer. On being confronted it was pleaded on behalf of the dealer-assessee that those discrepancies in the books of account were nothing but clerical and arithmetical mistakes for the reasons that the dealer had neither filed revised return for the quarters 12/2004 and 3/2005 nor claimed any sales return. Further the

reduction in the value of dispatch against consignment sale did not commensurate with increase in the price of inter-State sales as the price of both sales and dispatch had been decreased. Such pleas advanced on behalf of the dealer made the assessing officer feel that the dealer was writing its books of account in anticipation of Form 'C' or Form 'F' from its customers outside the State. As the dealer had not furnished any revised return and failed to give satisfactory evidence reconciling the discrepancies during the relevant assessment the assessing officer accepted the figures shown in its quarterly returns. In course of assessment the dealer had produced a 'C' form against its sale worth ₹5,78,20,789.00 and another 'C' form No. MAH/01/8244430 issued by M/s. Ramsons Casting (P) Ltd. for ₹6,65,568.00 whereas it (the dealer) failed to produce 'C' form against its sale worth ₹92,47,815.82. The assessing officer did not accept these two 'C' forms on the ground of those being defective and devoid of relevant particulars pertaining to the transactions held by the dealer. The assessing officer also found the Form 'F' bearing No. 0102762 for ₹19,64,275.00 issued by M/s. Surya Corporation, New Gayatri Nagar, Raipur produced before him by the dealer to be incomplete. The dealer also failed to furnish important informations such as RC number of the transferor and description of goods sent to the agent, quantity of the goods in weight as well as information relating to its transportation etc. to the assessing officer for

which its claim for exemption from making payment of tax u/S. 6A of the CST Act was also disallowed. Thus ultimately the assessing officer determined the GTO and NTO of the dealer-assessee and concluded that it (the dealer) was required to pay ₹31,14,804.75 towards its CST liability and as the dealer had already paid ₹25,57,610.00 at the time of filing of its returns the assessing officer issued a demand notice requiring it to pay the balance amount of ₹5,57,195.00 as per the terms and conditions of the said demand notice.

Being aggrieved with this order of assessment the dealer-assessee preferred an appeal assailing the same before the first appellate authority on the ground of the said order being illegal and fabricated. The dealer-assessee also contended that it had submitted its revised return which was reflected in its annual return filed within the time limit. The Sales Tax Officer rather did not give it (the dealer-assessee) sufficient opportunities to submit the wanting declaration forms nor allowed it to rectify the defects in the declaration Form 'C' bearing No. MAH/01/8244430 issued by M/s. Ramsons Casting (P) Ltd.. It was asserted by the dealer-assessee that commission sales against Form 'F' done by the dealer-Company being supported with documentary evidence as well as declaration form seeking exemption from payment of tax u/S 6A of the CST Act were produced before the assessing officer but he ignored the same and passed the order in

haste. The first appellate authority considering all these aforesaid grounds being raised by the dealer-assessee in its appeal alongwith the order of assessment concluded that since the dealer-assessee failed to rectify the defects detected by the Sales Tax Officer in the declaration Form 'C' and also failed to produce relevant documents even before him at the stage of appeal the order of assessment passed against it was correct. Thus he confirmed the order of assessment while dismissing the appeal preferred by the dealer-assessee.

3. The dealer-assessee then challenged the aforesaid order of the first appellate authority before this forum with its contentions that it (the dealer-appellant) was assessed in a most arbitrary manner in the instant case and as such the impugned order confirming the order of assessment having been passed against the provisions of law is illegal. It challenged the order of first appellate authority on the ground that both the forums below had ignored the revised return which was filed by the dealer-appellant well within the time and did not give it sufficient opportunities to submit the wanting Forms and also to rectify the defects whatsoever. The disallowance of commission sales against Form 'F' as well as the observation made by the first appellate authority that the 'C' forms issued in favour of the dealer-assessee were defective are not in consonance with statutory provisions. Therefore, those orders have to be set aside.

In the instant appeal no cross-objection has been filed on behalf of the State.

4. In course of hearing the Authorized Representative of the dealer filed xerox copies of a number of documents which are found to be mostly 'C' forms vide Annexures-A, B and D and xerox copies of its agreement with M/s. Surya Corporation alongwith statement of goods sold on consignment with 'F' form declaration vide Annexure-C. The authorized representative of the dealer urged before the Bench to accept these documents for consideration and determination of the tax liability. He also submitted that in the case of M/s. Surya Alloy Corporation the dealer had submitted Form 'F' under VAT Act and since M/s. Surya Alloy Corporation is a consignment agent they enclosed a copy of consignment agreement. He (the Authorized Representative) further submitted that they had filed monthly details like copy of ledger, copy of sale patti and consignment expenses before the assessing officer but the assessing officer did not consider all those documents at the time of assessment. Similarly the first appellate authority did not consider the fact that the purchase dealers' RC was not cancelled when this dealer had transaction with them during the relevant periods i.e. October, 2004 and November, 2004. In this regard the Authorized Representative of the dealer-assessee brought to the notice of the Bench a copy of Form 'C' for verification.

5. Learned Addl. Standing Counsel (CT) for the State submitted that the dealer-assessee had never filed all those 'C' forms before the assessing officer and the 'C' forms which it had then filed were neither legible nor correct in all respect for which the assessing officer felt constrained to discard the same. Further the dealer-assessee also failed to produce all the relevant documents in support of its claim before the first appellate authority despite opportunity being given to it for the same. Therefore, the dealer is not entitled to get any relief from this forum in the instant case.

6. However, in course of hearing as it was noticed that the copies of documents filed by the dealer-assessee before this forum are quite relevant for determining its tax liability appropriately it is felt that the matter should be remitted back to the assessing officer for fresh assessment of the tax liability of the dealer-assessee keeping in view all these documents such as 'C' forms, 'F' form alongwith copy of the agreement, copy of the ledger, sale patti as well as detail consignment expenses documents as filed by the dealer-assessee before this forum. On this point learned Addl. Standing Counsel (CT) for the State urged before the Bench to direct the dealer-assessee to produce not only the original but also legible copies of documents before the assessing officer enabling him to make fresh assessment in accordance with law.

7. In the circumstances as discussed in the foregoing paragraphs the order passed by the first appellate authority confirming the order of assessment is hereby set aside. The matter is remitted back to the assessing officer with a direction to complete the assessment afresh within three months from the date of receipt of this order while considering the documents as described above if those are filed before him within one month from the date of receipt of this order. Accordingly, the appeal is allowed.

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