

2. The facts as revealed from the case record are that the dealer-assessee – M/s. Orissa State Civil Supplies Corporation Ltd., Sonepur deals in rice only. A notice under Section 12(4) of the OST Act was issued to the dealer for the period under assessment but neither the dealer nor its authorized agent appeared before the assessing officer in response to the said notice and as such did not produce the books of account before him for the year 2002-03. Thus the assessing officer completed the assessment *exparte* basing on the materials available on record. On verification of assessment record and returns the assessing officer found that the dealer deals in rice and there was no adverse report pending against it. He thus determined the GTO as well as the TTO of the dealer and calculated tax @ 4% on the TTO which came to ₹8,93,616.62. Since the dealer had already paid ₹222.00 u/R. 36 of the OST Rules the assessing officer required him to pay the balance amount of ₹8,93,395.00 towards its tax liability for the relevant period.

Being aggrieved with the said order the dealer-assessee preferred appeal before the first appellate authority while contending that since all the purchases were made by it (the dealer-assessee) from FCI which is exempted from tax it should not have been made liable for its transactions during the period of assessment. However, as the dealer-assessee could not produce any relevant

document regarding purchases and sales made by it the first appellate authority found it impossible to ascertain the exact business of the dealer-assessee and ultimately confirmed the order of the assessing officer.

3. Being dissatisfied with the aforesaid order the dealer-assessee preferred this second appeal on the ground that the dealer being a Government of Odisha Undertaking is engaged in handling of essential goods for smooth management of Public Distribution System under different schemes in the State. During the year of assessment it had purchased and supplied rice and sugar under Antyodaya Anna Yojana, Annapurna Rice yojana, sugar distribution scheme as formulated by the Government of Odisha under Public Distribution System. All the stocks were procured from FCI and had been supplied to the beneficiaries under the above schemes. Keeping in mind the activities of the dealer-assessee the Government had made a special entry at goods exempted from payment of tax in the OST Rate Chart. The assessing officer despite having knowledge regarding the activities of the dealer had arbitrarily taxed the goods supplied by it. It is further contended on behalf of the dealer that it (the dealer) had appeared before the first appellate authority and produced all the relevant records maintained by the Corporation but the latter (first appellate authority)

confirmed the order of assessment without assigning any cogent reason thereof and without considering the submissions of the appellant made before him. The first appellate authority had neither examined the books of account nor applied his mind to go through the details pertaining to this case. The dealer-appellant also asserted that during the year of assessment it had effected sale of rice and sugar worth ₹2,23,40,415.60 under different schemes which were exempted from tax and the dealer would produce evidence of such purchases before this forum to set aside the impugned order.

4. The State has filed cross-objection mentioning therein that the dealer could not produce relevant documents substantiating its claim of tax exempted purchase/sales before the first appellate authority and, therefore, the first appellate authority had rightly upheld the order of assessment.

5. In course of hearing the appeal the dealer-assessee submitted statement of purchase and sales of 2002-03 in detail and a copy of the order of assessment passed by the assessing officer pertaining to the period of assessment 2001-02. Learned Counsel appearing on behalf of the dealer-assessee contended that the authorities below without appreciating the fact have taxed the sale

turnover of rice purchased by the dealer-assessee from FCI. Rice purchased from FCI is goods subject to first point sales tax as per Item 240 of Chapter-IV of the Rate Chart under the OST Act vide SRO No. 21/2002 w.e.f. 01.03.2002. The sale of goods in the series of sales by the successive dealers shall be taxed at the point at which the first of such sales is effected by a registered dealer. In the present case the dealer-assessee i.e. Civil Supply Corporation not being the first seller is as such not liable to be taxed on its sales. Further as per Sec. 6 of the OST Act the Government from time to time have declared all varieties of food grains supplied by the FCI is exempted from tax under different schemes. This dealer was assessed by the same office i.e. Sales Tax Officer, Balangir-I Circle, for an earlier period and was exempted from paying tax on sale of rice. The dealer-assessee had received sugar from the Head Office and sold the same at `61,13,196.44 which was also taxed by the first appellate authority inspite of the submission of the statement in detail with regard to sales by the dealer-assessee before him at the stage of appeal. Sugar is exempted from tax as per List-A Item No. 37 of the list of goods exempted from OST.

6. Perused the statement furnished by the dealer-assessee regarding sale and purchase by it during the year 2002-03 and the copy of assessment order dated 26.02.2005 passed by the Sales

Tax Officer, Balangir-I Circle, Balangir in respect of the dealer-assessee for the year of assessment 2001-02. The said order reveals that the concerned assessing officer had examined the books of account and found that the dealer had dealt in wheat, sugar, rice and gunny bags by effecting purchases inside the State having its place of business at Sonepur and no discrepancy was noticed in its books of account. Further he was allowed deduction towards first point tax paid sales as well as tax free goods during the said period. However, this document though does not relate to this case yet the dealer filed a copy of the assessment order for the year 2001-02 pertaining to its establishment probably in order to impress upon that it is entitled for deduction towards first point tax paid sales and for sale of tax free goods. Apart from this it is also found that the goods involved in the transactions made by this dealer-assessee during the period under assessment are exempted from levy of tax. Therefore, the order of assessment and the order of first appellate authority confirming the said order of assessment appear to have no merit at all.

7. In the result, as per the discussion made above the appeal preferred by the dealer-assessee is allowed and the impugned order confirming the order of assessment in respect of the dealer-assessee for the period 2002-03 is hereby set aside. Cross-objection is disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Sri Subrat Mohanty)
2nd Judicial Member

I agree,

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