

2. The facts as revealed from the case record are that the dealer-assessee named and styled as "M/s. Shree Mahalaxmi Rice Industries (P) Ltd." was running a rice mill at Barpali in the district of Bargarh. During the year under assessment it had purchased paddy worth `1,26,29,409.00 from the cultivators as well as unregistered dealers. Those paddy were milled and converted into rice by the dealer and those rice were subsequently sold by the dealer to persons who had exported the same outside India. The said exporters had purchased rice from the dealer-assessee in compliance with certain agreements and orders made with the foreign buyers. In relation to the aforesaid export the rice mill is to furnish Form-H issued by the exporter under the provisions of Rule 12(10) of the Central Sales Tax (Registration & Turnover) Rules, 1957 read with Section 5(3) of the Central Sales Tax Act, 1956. The establishment of the dealer-assessee was assessed u/S. 12(4) of the OST Act and at that time the Managing Director of the dealer-Company had appeared before the assessing officer with books of account consisting of sale, purchase and stock registers prescribed by the Civil Supplies Authority. On examination the assessing officer could find that the dealer had sold rice weighing Q.18,533.00 outside the State out of its own milling and Q.2430.00 out of purchase tax paid rice. He had a closing stock of Q.1530.00 of tax paid rice as on 31.03.1999. It had received transportation charges amounting to `3,54,794.14

towards supply of rice to FCI. This amount was exempted from levy of tax u/S. 5(2)(A)(iii) of the OST Act. In the instant case the assessing officer was required to decide whether purchase tax u/S. 3(b) of the OST Act was leviable on the purchase turnover of paddy from which rice was extracted and sold to the exporter who in turn exported the same to outside India as claimed by the dealer. Thus after considering the legal position on this matter and the manner of transactions held in the instant case about which the assessing officer had clearly mentioned in para-5 of his order, he (the assessing officer) concluded that the dealer-assessee who had paid admitted tax of `16,26,888.00 was still required to pay a sum of `5,37,166.00 as per the terms and conditions of the demand notice.

Being aggrieved with this order of assessment the dealer-assessee preferred an appeal before the first appellate authority on the ground that the order of assessment was wrong and illegal. However, the dealer-assessee did not appear before the first appellate authority despite service of notice on it and sought for adjournment. The first appellate authority ultimately heard the matter *ex parte* and then considering the provision of Sec. 15(ca) of the CST Act and view of the Finance Act, 1996 came to a conclusion that the provisions of Sec. 15(ca) of the CST Act has limited application to the direct export. As in

the present case the dealer-assessee had purchased paddy and rice was then milled out of the said paddy which was ultimately sold to a third party who exported the same outside India it was held by him (the first appellate authority) that the purchase of paddy by the dealer-assessee i.e. the rice miller was not in course of indirect export out of India because the scope of indirect export u/S. 5(3) of the CST Act extended only to sale of rice by the rice miller to the exporter and no further. Thus the first appellate authority categorically held that the transaction involving purchase of paddy by the dealer-assessee did not fall within the ambit of Sec. 5(3) read with Sec. 15(ca) of the CST Act. He held the dealer-assessee liable to pay purchase tax and as such ultimately dismissed the appeal while confirming the order of assessment passed by the assessing officer against the dealer-assessee.

3. The dealer-assessee not being satisfied with the aforesaid order of the first appellate authority preferred appeal before this forum on the grounds that the order of assessment as well as the order passed by the first appellate authority which is an *exparte* order, are completely wrong and illegal. It is asserted by the dealer-assessee in its grounds of appeal that;

Quote "where a tax on sale or purchase of paddy referred to in sub-clause (E) of clause (D) of Sec. 14 of the CST Act is liable under that law and rice procured out of such paddy is exported out of India, then for the purpose of sub-Section

(3) of Sec. 5 the paddy and the rice shall be treated as a single commodity.” Unquote.

He also cited a decision rendered in the case of M/s. Jayalaxmi Industries Vs. Deputy Commissioner of Commercial Taxes (Assessment), Tumkar, [1996] 103 STC 182 (Karnataka).

No cross-objection has been filed on behalf of the State in this case.

4. However, in course of hearing this appeal it is found that the dealer-assessee despite receiving a notice to appear before this forum and substantiate the grounds of appeal as advanced before this forum, none appeared on behalf of the dealer-assessee. Hence, the matter was heard exparte. On perusal of the record and the law involved in the matter it is found that Section 14 of the CST Act does not envisage any such circumstance as referred by the dealer-assessee in its grounds of appeal quoting the provisions such as sub-clause (E) of clause (D) of Section 14 of the CST Act because no such sub-clause or clause is found to have been incorporated in the aforesaid section of the CST Act.

5. Section 15(ca) of the CST Act provides :

Quote : “where a tax on sale or purchase of paddy referred to in sub-clause (i) of clause (i) of Section 14 is leviable under that law and the rice procured out of such paddy is exported out of India, then, for the purposes of sub-section (3) of

Section 5, the paddy and rice shall be treated as a single commodity;" Unquote.

Section 5(3) of the CST Act provides :

Quote : "Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export." Unquote.

In the instant case as revealed from the order of assessment as well as the order passed by the first appellate authority, the exporter concerned had purchased rice from this dealer-assessee in compliance with certain agreements and orders made with the foreign buyers. Therefore, the transactions pertaining to sale and purchase of rice between the dealer and the exporter respectively certainly came within the purview of Sec. 5(3) and Sec. 15(ca) of the CST Act.

6. Now the question comes whether the dealer had to furnish Form 'H' issued by the exporter in its favour to claim exemption from its tax liability on account of purchasing paddy from the cultivators and unregistered dealers as a mandatory requirement of law. However, considering these points as revealed from the findings of both the forums below and in view of the goods transacted between the dealer and the exporter and then applicability of provisions envisaged u/S. 5(3)

and 15(ca) of the CST Act in the transactions involved in this case it has certainly become very difficult to hold that the assessing officer had rightly passed the order of assessment. Similarly the order of first appellate authority confirming the said order of assessment also cannot be held as correct in the facts and circumstances of the case.

In the present case both the assessing officer as well as the first appellate authority had raised the tax demand on the ground that the export sale which is exempted u/S. 5(1) of the CST Act was the third transaction in the entire process and the second transaction preceding this export sale is the penultimate sale by the dealer-assessee and penultimate purchase by the exporter. The first transaction which took place between the dealer-assessee and the seller of paddy was held as a pre-penultimate purchase and thus excluded from the ambit and purview of Sec. 5(3) read with Sec. 5(4) of the CST Act. However, on analysis in respect of the transactions in question and laws involved therein this Tribunal is of the opinion that the transaction made by the dealer-assessee in purchasing paddy from the cultivators as well as unregistered dealers is also a part of the penultimate transaction pertaining to the export of rice to the foreign buyers by the exporter and as such has to be exempted from purchase tax liability. Therefore, this matter is remitted back to the assessing officer to make fresh assessment keeping in view the aforesaid finding of this Tribunal

and also the fact as to whether the dealer-assessee is required to furnish Form 'H', bill of lading and copy of agreement with regard to its transaction with the exporter pertaining to rice exported in the instant case, if the same is required as per law to assess the exact tax liability of the dealer-assessee. This exercise in making fresh assessment of tax liability of the dealer-assessee should be completed within three months from the date of receipt of this order.

7. In the result, the appeal is allowed and the order passed by the first appellate authority is set aside. The matter is remitted back to the assessing officer for fresh assessment as per the observations of this Tribunal made in the foregoing paragraphs.

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/-
(Ranjit Kumar Rout)
Accounts Member-II