



2. The facts as revealed from the case record are that the dealer-assessee named and styled as "M/s. Munda Gas Service" deals in L.P. Cooking Gas Cylinder and accessories such as tubes and stoves. A notice was served on it to appear before the authority concerned and produce necessary documents for its assessment u/S. 12(4) of the OST Act in respect of the period 1999-2000. The dealer-assessee, however, despite sufficient opportunity given to it did not turn up for which the assessing officer had to complete the assessment *exparte* basing on the materials available on record. He determined the TTO of the dealer-assessee equal to its GTO since the dealer failed to produce the books of account before him from which he could have ascertained the deductible amount from the GTO of the business establishment during that relevant period. Then the assessing officer calculated tax @ 12% on the said GTO and surcharge @ 10% on the tax amount which in total came to `8,31,911.61. Since the dealer had already paid `10,294.00 u/R. 36 of the OST Rules, it was instructed by the assessing officer to deposit the balance amount of `8,21,618.00 towards its tax liability for the relevant period.

Being aggrieved with the order of assessment the dealer-assessee preferred an appeal before the first appellate authority while challenging the order of assessment on the ground that the said

order was not just and proper on the facts and circumstances of the case. He stated to have produced the break up of the TTO alongwith the photocopy of the sales register of refill of L.P. Cooking Gas before the assessing officer but the same were not considered by him (the assessing officer). He, however, again produced the photocopy of break up of the TTO as well as the copy of the sales register of refill L.P. Cooking Gas before the first appellate authority and urged for setting aside the order of assessment. The first appellate authority after verifying the order of assessment alongwith related papers available in the assessment record as well as the grounds of appeal advanced by the dealer-assessee came to a conclusion that the dealer-assessee had not appeared before the assessing officer despite issuance of notices and intimations to him u/S. 12(4) of the OST Act on seven occasions for which he (the first appellate authority) held that the assessing officer had rightly taken up and completed the assessment proceeding exparte on the basis of materials available in the record. The first appellate authority could also notice that the dealer had never participated in the proceedings before him properly and though he filed xerox copies of certain documents (as described in page-3 of the order passed by the first appellate authority) had never produced the original books of account and documents like purchase register, purchase bills, sale register, sale bills, stock register, etc. before him. Thus he observed

that after examining the xerox copies of documents filed before him he thought it proper that those could not be substituted for original books of account and other documents as mentioned above. He categorically held that in absence of purchase register and purchase bills it could not be ascertained as to whether the goods dealt in had suffered tax or not. Further it could not be ascertained as to whether the goods purchased were made from inside or outside the State of Odisha. Under such circumstances without all the books of account of the dealer-assessee the first appellate authority having been left with no other option confirmed the order of assessment.

3. The dealer-assessee being dissatisfied with the aforesaid order of the first appellate authority preferred the second appeal before this forum. However, neither the dealer-assessee nor its authorized representative, if any, appeared before this Tribunal today i.e. on 15.05.2019 despite notice being served upon it with intimation to appear on this day for hearing of its appeal. Therefore, the appeal preferred by him is also heard by this Tribunal *ex parte*. On perusal of the order of assessment as well as the order of the first appellate authority and upon hearing learned Addl. Standing Counsel (CT) appearing on behalf of the State we also found that both the forums below have correctly concluded the tax amount to be levied from the dealer-assessee since he failed to produce its books of account for the

relevant period as well as other connected documents such as purchase register, purchase bills, sale register, sale bills, stock register etc. not only before them but also before this forum.

4. In the aforesaid circumstances we find absolutely no reason to interfere with the order passed by the first appellate authority against the dealer-assessee. Hence, the same is hereby confirmed and the appeal is accordingly dismissed.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Subrat Mohanty)**  
**2<sup>nd</sup> Judicial Member**

I agree,

**Sd/-**  
**(Prabhat Ch. Pathy)**  
**Accounts Member-I**