



Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') pertaining to the tax period 2004-05.

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

The dealer-assessee M/s. GMR Industries Ltd. is a Limited Company which carries on wholesale trading of coal, lame coke, chrome ore and chrome lumps. Further it (the dealer-Company) despatches coke to its factory site at Tekkali, Andhra Pradesh on branch transfer basis after the coke is converted from coal by its conversion agents for using the same as consumable by the plant for production of high carbon ferrochrome. In course of assessment the books of account of the dealer-assessee were examined by the assessing officer who found that there was no branch transfer of goods during the relevant period and further the dealer had disclosed sale of coke of 146.130 MT at ₹17,78,364.00. At that time there was also a Fraud Case Report (FCR) against the dealer-assessee which was submitted by the Intelligence Officials of Cuttack Range, Cuttack with an allegation of sale suppression worth ₹81,55,056.00 inclusive of tax by the dealer-assessee. When the dealer was confronted with this allegation it explained that the alleged sales suppression was nothing but the same sale invoice through which the dealer had effected sale to M/s. OSD Coke (P) Ltd. vide Bill No. 5 dated 02.12.2004 for the amount

₹81,55,056.00 inclusive of tax which was only a proforma invoice. The assessing officer, however, did not accept the aforesaid contention of the dealer and determined the GTO of the dealer's establishment at ₹96,19,764.00 for that relevant period. He treated the aforesaid amount as NTO (net turnover) and levied tax @ 8% thereon which on calculation came to Rs.7,69,581.12. The dealer had already paid ₹68,088.00 towards its tax liability for which it was required to pay the balance amount of ₹7,01,493.00 per the demand notice issued by the assessing officer.

3. The dealer-assessee being dissatisfied with the aforesaid order of assessment had preferred an appeal before the first appellate authority challenging the reasonableness and sustainability of the said order on the grounds that levy of tax @ 8% on the turnover of ₹96,19,764.00 by the assessing officer was unjust and uncalled for when there is a specific statutory provision under Section 15(a) of the CST Act, 1956 putting a limit not to levy tax at a rate beyond 4%. Further the proforma invoice for the proposed sale value of ₹78,41,400.00 not being a sale made by the appellant but by its head office from Hyderabad in the State of Andhra Pradesh imposition of tax on such transaction as sale in Odisha was unreasonable and unfair on the part of the assessing officer.

4. The first appellate authority heard learned Counsel appearing on behalf of the dealer-assessee and went through the impugned order of assessment as well as grounds of appeal and concluded that since the appellant had failed to produce the declaration in Form 'C' at the stage of assessment as well as before him in course of hearing of the first appeal, the order of assessment levying tax @ 8% on the NTO of the dealer as determined by the assessing officer was correct. So far as the alleged sales suppression of ₹78,41,400.00 is concerned learned Advocate appearing on behalf of the dealer had explained before the first appellate authority that the proforma invoice which was taken as sale invoice by the assessing officer was issued by the Head Office of the dealer from Hyderabad and not by the dealer himself. Therefore, it was unfair on the part of the assessing officer to treat the said turnover as sale suppression. The first appellate authority, however, did not accept the aforesaid explanation/contention as advanced on behalf of the dealer-assessee on the ground that the questionable invoice was detected from the place of business of this dealer and learned Advocate appearing on behalf of the dealer before him failed to explain as to why that invoice was with the dealer at that relevant time. As no other corroborative evidence or document justifying the dispatch of alleged goods to outside the State of Odisha otherwise than sale was furnished or filed before him by the dealer he

(the first appellate authority) accepted the view of the assessing officer regarding sales suppression on the part of the dealer-assessee and consequently levy of tax thereon at the appropriate rate as legally correct. He thus upheld the order of assessment.

5. The dealer-assessee being aggrieved with the aforesaid order of the first appellate authority carried the second appeal before this forum challenging the said order for the reasons that the dealer-appellant having acted in Odisha merely as a conduit of its Head Office Company at Hyderabad pursued conversion of imported coal into coke by OSD Cokes Pvt. Ltd. here i.e. in the State of Odisha. The said coke was delivered at Dhanbad. Therefore, taxing the dealer under CST Act when there was actually no inter-State trade is unjust and unreasonable on the part of the authorities concerned. When it was established that 700 MT of coke processed by the dealer was meant for delivery at Dhanbad Plant of the said processor the same could not have been treated as sale by it. Therefore, levy of tax on the said goods under the CST Act is contrary to law. It is also contended on behalf of the dealer-appellant that mere possession of a document ipso facto does not determine liability of the dealer unless it is verified properly in accordance with law. The first appellate authority has mechanically confirmed the order of assessment allowing levy of tax @ 8% on the turnover of coal of ₹96,19,764.00 instead of 4% thereon. It is thus

urged on behalf of the dealer-appellant to set aside the impugned order as the same is not only uncalled for but also unjust.

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

6. In course of hearing it was found that the dealer-appellant remained absent despite service of notice on it by way of affixture. Under such circumstances the appeal was heard from the side of the State-respondent only to be disposed of on merit as per Rule 60(1) of the OST Rules read with Rule 22 of the CST (O) Rules.

7. On a thorough scrutiny of the order of assessment as well as the impugned order and materials available on case record, it could be noticed that the assessing officer while proceeded with the assessment had verified all the documents including the books of account pertaining to the dealer-Company. He had clearly reflected in his order of assessment passed u/S. 12(4) of the OST Act on the same date i.e. 28.03.2006 against the same dealer as to how and under what circumstances he could detect alleged sales suppression by the dealer. His aforesaid order of assessment u/S. 12(4) of the OST Act reveals that he had elaborately verified all the documents pertaining to the transactions held in the dealer's business concern during the relevant period. He could find that the alleged sale suppression though was given

the colour of a proforma invoice was actually a sale transaction. The first appellate authority while disposing of the appeal preferred by the dealer against the order of assessment also assigned the reasons as to why he agreed with the order of the assessing officer regarding rate of tax determined by the latter to be levied from the dealer-assessee in respect of the goods because the dealer had failed to produce the declaration in Form 'C' before both the forums at that time. At the cost of repetition it can be mentioned here that the first appellate authority affirmed the finding of the assessing officer regarding sales suppression as the dealer failed to substantiate through corroborative documents showing the alleged goods being dispatched to outside the State of Odisha otherwise than sale. The dealer-appellant did not appear before this forum to contest the impugned order in any manner despite opportunity being afforded to it. Therefore, the impugned order remained virtually uncontroverted and unchallenged before this forum. However, since the matter is being disposed of on merit we also verified if the impugned order suffers from any sort of irregularity or illegality inviting our interference in the matter but in our considered opinion no such infirmity is being noticed in the said order so as to disturb the same in this appeal.

8. In the result, as per the discussion made above we find that the order passed by the first appellate authority confirming the

order of assessment has to be confirmed by this forum. Accordingly, the appeal is dismissed.

Dictated & Corrected by me,

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

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

I agree,

**Sd/-**  
**(Subrat Mohanty)**  
**1<sup>st</sup> Judicial Member**

I agree,

**Sd/-**  
**(Rabindra Ku. Pattnaik)**  
**Accounts Member-III**