

Odisha Sales Tax Act, 1947 (in short, 'OST Act') pertaining to the tax period 1997-98.

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

The dealer-assessee M/s. Samaleswari Roller Flour Mill (P) Ltd., Bhalubahal, Sasan in the district of Sambalpur carries on the business of manufacturing 'Atta', 'Maida', 'Suji', 'Wholemill Atta' and "Wheat bran" out of wheat and for carrying on its trading activities of such goods it purchases wheat as well as wheat products both from inside and outside the State for its business establishment. After milling of those wheat in its Flour Mill the dealer sells the products as mentioned above. Pursuant to a notice issued u/S. 12(4) of the OST Act the dealer-assessee appeared before the assessing officer alongwith the books of account of its business establishment relating to the period 1997-98. On verification of the said books of account the assessing officer could notice some discrepancies and irregularities in the business transactions made by the dealer during the period under assessment. The dealer though claimed certain tax exemption under IPR, 1989 scheme yet on account of its not furnishing the eligibility certificate issued by the competent authority of the Industries Department, the assessing officer turned down its claim and taxed the sale turnover at appropriate rate. The assessing officer also found the dealer claiming

deduction of ₹18,58,450.64 towards sales effected to SSI Unit against declaration in Form I-D even though it could not furnish such forms for ₹10,24,375.64 out of the aforesaid claimed amount for which the assessing officer taxed the said sale proceeds amount i.e. ₹10,24,375.64 at appropriate rate. Besides the above there was a Fraud Case Report (FCR) dated 28.07.1997 against the dealer which was submitted by the IST, Sambalpur-II Circle, Bargarh while conducting mobile checking of goods near Unified Checkgate, Sohella alongwith the STO, Sambalpur-II Circle, Bargarh on 02.07.1997. It was alleged in the FCR that the dealer was transporting Q. 50.00 of wheat from Raipur without supporting way bill. During confrontation the dealer could produce the way bill No. 387322 with entry of 90 bags of wheat originally which was interpolated for Q. 140.00 of wheat. Since the dealer could not explain properly with supporting document for Q. 50.00 of wheat, the assessing officer inferred that the dealer had indulged itself in clandestine business activities by purchasing goods out of account with the intention to evade payment of tax on sale of wheat or sale of consequential products out of account. He (the assessing officer) thus completed the assessment to the best of his judgment after adding an amount of ₹8,13,600.00 to the GTO and TTO of the dealer on account of its aforesaid sale suppression. The assessing officer ultimately required the dealer to make payment of balance amount of

₹13,66,318.00 as per terms and conditions of the demand notice for the relevant tax period.

Being aggrieved with the aforesaid order of assessment the dealer preferred an appeal against the same before the first appellate authority which was disposed of *exparte* on 25.03.2000. Learned Advocate for the dealer-assessee then filed a petition for restoration of its appeal challenging the aforesaid *exparte* order as illegal. The first appellate authority rejected the said petition vide order dated 11.05.2000 on the ground that there was no provision under the OST Act for restoration of the appeal. The dealer-assessee went on revision before the Addl. C.C.T., Northern Zone, Sambalpur against the aforesaid order of rejection wherein the Revisional authority vide order dtd. 06.07.2000 rejected the revision petition filed by the dealer before him. Thereafter the dealer-assessee filed two writ petitions bearing O.J.C. Nos. 7025 and 8029 of 2000 before the Hon'ble High Court of Orissa wherein the Hon'ble Court vide order dated 27.09.2000 quashed the orders dated 25.03.2000 and 11.05.2000 of the first appellate authority with a direction to him (the first appellate authority) to hear the appeal on merit. Pursuant to the direction of the Hon'ble Court, the dealer-appellant appeared before the first appellate authority on 30.10.2000. The matter was adjourned from time to time for different reasons till 18.02.2002. It was contended by learned Counsel for the

dealer on 18.02.2002 that another writ petition was filed by it (the dealer) before the Hon'ble High Court of Orissa challenging the order of the G.M., DIC, Sambalpur disallowing the dealer to get exemption as per IPR, 1989 on the pretext that Flour Mill is an ineligible industry to get the benefit of exemption. As the order of the Hon'ble Court was awaited then it was submitted on behalf of the dealer to defer the final order of its appeal before the first appellate authority till pronouncement of the order of the Hon'ble Court in the aforesaid writ petition. It (the dealer-assessee) challenged the order of assessment as unjust, illegal and arbitrary while asserting that its Roller Flour Mill could not be treated as an ineligible industry to get the benefit of exemption provided to new SSI Units under IPR, 1989. The dealer-assessee contended that it was prevented by sufficient cause to file the balance ID declaration forms. The dealer-appellant further submitted that the assessing officer was not justified in treating the dealer to have clandestinely purchased Q. 50.00 of wheat from M/s. Puja Traders of Raipur since the responsibility to transport the goods was with the supplier and for such default on the part of the supplier i.e. M/s. Puja Traders, Raipur or their transporter there should not be adverse view against the dealer-assessee. The dealer-appellant could not be doubly penalized or taxed since for the same offence the dealer was duly penalized by recovery of

tax and penalty thereon. It (the dealer-assessee) also asserted that the estimation of the suppressed turnover was very high and excessive.

The first appellate authority considering all the above issues, as raised before him on behalf of the dealer, observed that a flour mill was not eligible for availing the benefit of exemption under IPR, 1989 as per Entry 30-FFF of List-A of the Rate Chart appended to the OST Act. Further the dealer in the instant case also failed to produce the eligibility certificate before him. Therefore, he upheld the order of assessing officer in taxing the sale turnover of wheat products amounting to ₹2,98,85,792.00 at appropriate rate. So far as claim of the dealer for deduction of ₹18,58,450.64 due to its sale of wheat products to new SSI Unit against Form I-D was concerned he found that the dealer could produce the declaration in Form I-D for ₹8,34,075.00 and failed to produce the aforesaid form pertaining to its transaction worth ₹10,24,375.64 before the assessing officer. He (the first appellate authority) upheld the finding of the assessing officer in disallowing the dealer's claim for deduction on the ground that the dealer had failed to produce the I-D declaration form for an amount of ₹10,24,375.64 before him as well despite reasonable opportunities afforded to it for production of the same. Further the first appellate authority taking into consideration the allegation made in the FCR vis-à-vis the materials available on record observed that the interpolation in the way bill made

in the wake of detection of the fraud enroute confirmed the guilt of the dealer-appellant for the same and accordingly he affirmed the charge of suppression against the dealer and the quantum of suppressed turnover thereof as determined by the assessing officer. The first appellate authority also observed that the dealer-assesee was not entitled to contend on payment of penalty on the ground of its being non-est as per the decision of the Hon'ble High Court of Karnataka rendered in the case of Sakharia Bandhu Vs. Addl. Dy. Commissioner of Commercial Taxes, reported in [1999] 112 STC 449. He thus dismissed the appeal and confirmed the order of assessment passed by the assessing officer.

3. The dealer then brought this second appeal before the Tribunal challenging the legality of first appellate authority's order on the grounds that its Flour Mill can never be denied any benefit of exemption provided to new Small Scale Industries. The products of the dealer-appellant cannot be made exigible to tax. The dealer was prevented by sufficient cause to file wanting I-D Forms before the forums below but it can file those forms before this forum, if permitted to do so, at the time of or before hearing of its appeal. Further there was no intention on the part of the dealer to suppress the total quantity of goods i.e. Q. 140.00 of wheat purchased by it which would be evident from other circumstantial evidence like payment of marketing fees at Raipur for Q. 140.00 and accounting for the goods by the dealer-

appellant in its books of account to the aforesaid extent. The dealer further contended that even for the same offence, though not admitted, it should not be doubly penalized or taxed when recovery of tax and penalty had already been done. It was further submitted on behalf of the dealer that rejection of its books of account in the facts and circumstances of the case was totally uncalled for and there was no justification for completion of assessment to the best of judgment after estimating sale suppression of the dealer at ₹8,13,600.00. It thus challenged the assessment as wrong, illegal and excessive.

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

4. A notice was sent to the dealer to appear before this Tribunal on the date fixed for hearing of its appeal. As revealed from the report of the Asst. CT&GST Officer, Sambalpur the notice was served on the dealer on 12.09.2019. It appears from the S.R. one Kishan Agrawal, son of Motilal Agrawal received the notice on behalf of the dealer-assessee. On verification of the record it could be ascertained that the notice was sent to the dealer in the address furnished by it in its memorandum of appeal which reveals that the notice may be sent to the dealer-appellant in the care of Sri Motilal Agarwal, PO/Dist. Sambalpur. Therefore, we proceeded to hear the appeal holding the service of notice on the dealer as sufficient. However, when the appeal

was taken up for hearing it was noticed that none on behalf of the dealer-assessee appeared before the Bench. No intimation was also received from the dealer seeking adjournment of hearing of the appeal. As this is a pretty year old matter the appeal was heard from the side of the State only to be disposed of exparte on merit as per Rule 60(1) of the OST Rules.

5. In course of hearing learned Standing Counsel (CT) appearing on behalf of the State also filed a written note of argument in the case which is kept on record. He contended that the first appellate authority on account of absence of eligibility certificate supposed to be issued by the Industries Department in favour of the dealer's Flour Mill confirmed the finding of the assessing officer in disallowing the exemption claimed by the dealer under IPR, 1989. The first appellate authority did not accept the claim of deduction of ₹10,24,375.64 as advanced by the dealer since it (the dealer-assessee) failed to produce the requisite declaration forms before him despite opportunity being given to it. Apart from this the first appellate authority could not have come to any other conclusion in the matter since Flour Mills are not allowed to get the exemption as envisaged under Entry 30-FFF of List-A of the Rate Chart appended to the OST Act. Further the allegation of purchase suppression of Q. 50.00 of wheat as per the FCR against the dealer was proved beyond doubt basing on the material available on

record and the estimation of the suppressed turnover by the forums below on that score could not be said to be high and excessive. In the aforesaid circumstances the order passed by the first appellate authority confirming the assessment can be considered as just and proper and should be maintained as such.

6. On perusal of the order of assessment as well as the impugned order it could be gathered that the dealer had not placed any evidence before both the forums below in proof of its eligibility as a Small Scale Industry to get the benefit of exemption under IPR, 1989. The assessing officer had justifiably considered the declaration in Form I-D which the dealer could produce before him and allowed deductions from its sale turnover accordingly. The first appellate authority after examining the order of assessment confirmed the same as the dealer failed to produce wanting declaration forms before him. No cogent evidence has been furnished by the dealer before this forum to dislodge the charge of suppression against it as well as the estimation of suppressed turnover by the forums below. The dealer rather despite receiving the notice from the Tribunal failed to appear before the Bench to substantiate its grounds of appeal. No illegality or error is noticed in the impugned order. Therefore, we find absolutely no reason to interfere with the same in any manner.

7. In the result, as per the discussion made above we confirm the order passed by the first appellate authority. The appeal is dismissed being devoid of merit.

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