



Odisha Sales Tax Act, 1947 (in short, 'OST Act') pertaining to the tax period 1995-96.

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

The dealer-assessee M/s. Samaleswari Roller Flour Mill (P) Ltd., Bhalubahal, Sason in the district of Sambalpur carries on the business of manufacturing 'Atta', 'Maida', 'Suji' and "Wheat bran" out of wheat. It also effects sale of those manufactured goods both intra-State as well as inter-State. The assessment in respect of the dealer-assessee u/S. 12(4) of the OST Act for the tax period 1995-96 was completed on 31.08.1996. However, on receipt of a Fraud Case Report (FCR) bearing No.33 dated 20.08.1997 from the Sales Tax Officer (Intelligence), Berhampur against the dealer with allegation that a sizeable portion of the turnover of the dealer had escaped assessment, the assessing officer reopened the case u/S. 12(8) of the OST Act for reassessment. Thus responding the notice issued against the dealer for this reassessment, the Director of the dealer-firm appeared before the assessing officer and produced the books of account of their business establishment relating to the relevant period i.e. 1995-96. On verification of those 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 Industries Department, the assessing officer turned down its claim and taxed the sale turnover alongwith surcharge at appropriate rate in the assessment completed u/S.12(4) of the OST Act for the relevant tax period. Even though the dealer-assessee was liable to pay interest u/S. 12(4) of the OST Act on the amount of tax and surcharge computed which could not have been levied on it, the assessing officer holding the claim of tax exemption by the dealer-assessee as false calculated the interest of `73,013.34 i.e. @ 24% per annum for a period of 90 days on the amount of tax and surcharge due for the relevant period. Besides the above there was a Fraud Case Report submitted against the dealer-assessee by the STO (Intelligence) which was confronted to it (the dealer) in course of assessment. On a thorough verification of the books of account of the dealer vis-à-vis the explanation offered by the dealer-assessee relating to the documents seized from its business establishment during inspection by the Intelligence Officials as per the FCR, the assessing officer came to a conclusion that the dealer-assessee had sold eight trips of wheat bran to various dealers without accounting for the same in its books of account and as such, he calculated the sale value of the same at `3,20,000.00 i.e. `40,000.00 per trip as disclosed by the dealer itself. Similarly from

the bunch of 283 nos. of slips recovered from the factory premises of the dealer by the Intelligence Officials during inspection the written sheet no. 241 relating to sale of 'maida' to M/s. Binod & Co., Angul on 03.11.1995 and 05.01.1996 was detected to have been unaccounted for by it. The assessing officer having not been satisfied with the explanation given by the dealer held that it had suppressed the sales to the tune of `1,07,312.50 with a view to evade payment of legitimate tax. Considering the nature of business, the quantum of suppression detected and the modus operandi of the dealer in its business transactions the assessing officer rejected the books of account of the dealer and completed the assessment to the best of his judgment after enhancing the turnover by `1,06,82,800.00 i.e. twenty five times of the suppression. The assessing officer ultimately redetermined the GTO of the dealer at `4,69,90,885.67 and TTO at `3,85,44,551.77 after due deductions towards exempted sales against Form I-D, sale of 1<sup>st</sup> point tax paid goods and tax free goods as allowed in its favour in the assessment u/S. 12(4) of the OST Act. He then levied interest to the tune of `73,013.34 u/S. 12(4-a) of the OST Act and also penalty of `5,000.00 u/S. 12(8) of the OST Act. Accordingly the assessing officer required the dealer to pay the tax liability of `5,48,057.00 for the period

under reassessment as per terms and condition of the demand notice sent to it.

Being aggrieved by the aforesaid order of assessment the dealer preferred an appeal against the same before the first appellate authority. In course of hearing of the said appeal learned Counsel for the dealer-assessee filed a petition seeking adjournment on the ground that the appeal should not be disposed of prior to disposal of certain related matters pending before the Commissioner of Commercial Taxes, Addl. Commissioner of Commercial Taxes and a writ petition before the Hon'ble Orissa High Court. However, the first appellate authority rejected the aforesaid petition of the dealer and disposed of the appeal exparte on 22.03.2000. Learned Advocate for the dealer-assessee then filed a petition for restoration of the appeal challenging the exparte order as illegal. The first appellate authority rejected the abovesaid petition dated 13.04.2000 vide his 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 challenging this order of rejection passed by the first appellate authority before the Addl. Commissioner of Commercial Taxes, Northern Zone, Sambalpur but the revisional authority also vide his order dtd. 06.07.2000 rejected the revision petition filed by the dealer before him. Thereafter the dealer-assessee filed writ petitions before the Hon'ble High Court of Orissa wherein the Hon'ble Court vide order dated

27.09.2000 passed in O.J.C. Nos. 7972 and 8085 of 2000 quashed the orders dated 22.03.2000 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 above direction of the Hon'ble Court, the dealer-appellant appeared before the first appellate authority on 30.10.2000. The matter was then 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 General Manager, 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. Further the finished products of the dealer could not be subjected to levy of tax and surcharge thereon. The dealer-appellant also contended that levy of penal interest u/S. 12(4-a) of the OST Act was not maintainable in law. It (the dealer-assessee) further challenged the reopening of the

assessment u/S. 12(8) of the OST Act as bad in law since there was neither any escaped assessment nor under assessment in respect of its business transactions held during that relevant period. Further the dealer-assessee submitted that the allegation of unaccounted for sale of eight trips of wheat bran worth `3,20,000.00 basing upon brokerage bill submitted by M/s. Benidutta Sharma of Cuttack reflecting the date of bargain was arbitrary and also the allegation of sale suppression in respect of 'maida' as per slip No. 241 had not been established against it. Therefore, the estimation of its turnover at `1,06,82,800.00 i.e. 25 times of the alleged suppression was wrong. Similarly imposition of penalty on the dealer u/S. 12(8) of the OST Act was also challenged by it as unlawful in the facts and circumstances of the case.

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. The averments of the dealer that there was no material before the assessing officer for reopening of the case was held to be incorrect by the first appellate authority in view of the fact that the FCR was received with allegation that a portion of the GTO of the dealer had escaped assessment for which he (the assessing

officer) reopened the case u/S. 12(8) of the OST Act. Thus the first appellate authority while rejecting the contentions as raised on behalf the dealer before him also held that the affidavit sworn in by the broker-Sri Benidutta Sharma was irrelevant. He, therefore, ultimately came to a conclusion that the findings arrived at by the assessing officer were justified on the ground that the dealer had effected sale of wheat bran as per the alleged slip No.75 and out of such sales it had accounted for some while suppressing others involving sale value of `3,20,000.00. Similarly the allegation of out of account sale of `maida' by the dealer amounting to `1,07,312.50 made to one M/s. Binod & Co., Angul as per written slip No. 241 which was found among 283 nos. of written slips recovered during inspection having related to the business of the dealer, the first appellate authority did not accept the contention of the dealer denying such transactions. So, the first appellate authority keeping in view the fraudulent transactions of the dealer in its business establishment sustained the enhancement of `25,00,000.00 made in the assessment done by the assessing officer. However, he (the first appellate authority) deleted the interest amounting to `73,013.84 levied u/S. 12(4-a) of the OST Act on the ground that demand of such interest in case of reassessment u/S. 12(8) of the OST Act was not proper. But the first appellate authority upheld levy of surcharge on the amount of

tax due on the sale turnover and also the penalty in reassessment by the assessing officer. Under these circumstances as mentioned above, the first appellate authority redetermined the GTO of the dealer at `3,88,08,085.67 and after allowing deductions towards ID form sales, 1<sup>st</sup> point tax paid goods and tax free goods determined the TTO at `3,03,61,751,77. He thus calculated the tax, surcharge and penalty of the dealer together at `13,40,917.07. Taking into consideration the amount raised in assessment u/S. 12(4) of the OST Act, the first appellate authority computed the balance tax liability of the dealer- assessee at `1,48,380.00 in the impugned order.

3. The dealer then brought this second appeal before the Tribunal challenging the legality of the first appellate authority's order on the grounds that its Flour Mill could 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 and further levy of surcharge as well as penalty from it is also wrong and arbitrary. The dealer-appellant reiterated the grounds as raised by it in the first appeal with regard to the allegations made against it in the FCR regarding its clandestine transactions in course of doing the business and reopening of the assessment against it u/S. 12(8) of the OST Act. It (the dealer) submitted that the assessing officer had arbitrarily rejected its books of

account and grossly erred in enhancing its turnover by `25,00,000.00 without indicating any basis or material or any reasonable nexus between its alleged suppression and the business transactions held by it. Therefore, it submitted in this second appeal to annul or set aside the aforesaid assessment on the ground of its being wrong and illegal.

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 and 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 was to be sent to the dealer-appellant in the care of Sri Motilal Agarwal, PO/Dist. Sambalpur. In the instant case as per the SR the notice was received by none else but by the son of Sri Motilal Agarwal. 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 also noticed that none on behalf of the dealer-assessee appeared before the Bench. No intimation was also received from the dealer seeking

adjournment in the hearing of 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 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. Apart from this also 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. It was further contended by learned Standing Counsel (CT) that the allegations made in the FCR in detail were duly confronted to the dealer and the forums below after considering the explanations of the dealer, being not satisfactory, held that the quantum of sales suppressions by the dealer was established against it. Accordingly they enhanced the turnover thereof on best judgment policy. He also submitted that levy of surcharge as well as penalty was done in accordance with the provisions of law. In the aforesaid circumstances the order passed by the first appellate authority reducing the order of assessment should be considered as just and proper without any interference by this forum.

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 assertion of the dealer-assessee with regard to reopening of assessment u/S. 12(8) of the OST Act by the assessing officer without any material does not merit for consideration in view of the fact that there had been escaped assessment in the GTO of the dealer-assessee as per the information contained in the FCR. No material or cogent evidence was placed before this forum to dislodge the charge of suppression brought against the dealer-assessee. No material has been brought to the notice of the Tribunal to hold that the estimation of suppressed turnover by the forums below was incorrect or unjustified. On the other hand we found that the forums below had examined each of the allegations made against the dealer in the FCR by affording due opportunity to it (the dealer) to rebut the same but the explanations as offered by the dealer were found by them to be not convincing which ultimately resulted in establishing the suppression of sales by it. The dealer's challenge on levy of surcharge u/S.5-A of the OST Act is also found to be unsustainable since 'atta', 'maida' and 'suji' are distinct and different commodities though derived from same wheat and further those goods are not declared goods in view of the ratio laid down by the Hon'ble Apex Court in the case of Rajasthan Roller Flour Mills

Association and another Vs. State of Rajasthan and others, reported in [1993] 91 STC 408. Levy of penalty u/S. 12(8) of the OST Act by the forums below in the present case is also found to be in accordance with law. The dealer-assessee inspite of its 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)**  
**2<sup>nd</sup> Judicial Member**

I agree,

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