



Odisha Sales Tax Act, 1947 (in short, 'OST Act') pertaining to the tax period 1998-99.

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', "Wheat bran" and "refractions" out of wheat. It used to purchase wheat and wheat products from inside as well as outside the State for its business establishment in order to carry on trading activities of such goods. 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 Managing Director of the firm appeared before the assessing officer alongwith the books of account of their business establishment relating to the period 1998-99. 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 at appropriate rate. The assessing officer allowed the claim of tax free sales by the dealer on account of wheat bran in view of entry at Sl. No.

30-D of List-A of the Rate Chart i.e. sale of feed and fodder such as husk ...” But at the same time the deduction claimed by the dealer-assessee towards sale of 1<sup>st</sup> point tax paid goods such as ‘Atta’, ‘Maida’ and ‘Suji’ was disallowed by the assessing officer on the ground that those sales related to the goods received by it from outside the State on commission sale basis and thus he (the assessing officer) subjected the turnover to tax appropriately. The assessing officer also found that the dealer was effecting sales to SSI Units against declarations in Form I-D and Form I-D(96) to the tune of `31,93,390.32 and on submission of the required forms he allowed the exemption sale to that effect. Besides the above there were certain Fraud Case Reports (FCRs) submitted against the dealer-assessee by different authorities which were confronted to it in course of assessment. The Circle report basing on the visit dated 09.06.1998 wherein the allegation of shortage of Q.35.00 of wheat in the physical stock was made against the dealer was dropped by the assessing officer after due consideration of the explanation offered before him by the dealer on this score. The report submitted by the Vigilance Wing basing on their visit to the Mill premises on 18.07.1998 was confronted to the dealer and after cross-checking the entries made in the seized loose slips which were found in possession of the Manager of the dealer’s establishment during the visit of Vigilance Wing, the assessing officer did not accept the explanations offered by

the dealer on that count while holding the same as afterthought. He (the assessing officer) thus concluded that the dealer had committed sale suppression of around `2,00,000.00 relating to Slip No.2 and `3,750.00 relating to shortage of stock. There was another report received from the Circle officials alleging therein that the detained Truck bearing No. MP23/DA-3422 at Maneswar Checkgate at 9.15 PM on 03.02.1999 though carried 100 bags of 'Maida' of the instant dealer-assessee for delivery at Angul the driver of the said Truck could produce sale memo issued for 80 bags of 'Maida' only for which tax and penalty of `2,088.00 was realized relating to such extra 20 bags of 'Maida' at that time. The dealer-assessee explained before the assessing officer that though the driver was in possession of the sale challan relating to those 20 bags of 'Maida' he did not produce the same before the authority concerned and preferred to make payment of tax and penalty. However, the assessing officer having not been satisfied with such explanation of the dealer concluded that the sale suppression of `16,000.00 was proved against the dealer. There was also allegation of cash sales by the dealer on the basis of certain loose slips detected during visit of the Sales Tax staff to the Mill premises on 11.02.1999 as well as variation in electric consumption when consumption of electricity by the Unit relating to different months alongwith corresponding outrun

of the dealer was analyzed. That apart during spot visit of the inspecting officials a memo book with the heading of M/s. Gayatree Trading Co. of Khetrajpur was found in the Mill premises issued with certain memos which related to some fake transactions undertaken by the Mill. The assessing officer having not been satisfied with the explanations offered by the dealer in course of confrontation of the allegations made therein, arrived at a conclusion that the dealer was involved in wide scale evasion. Accordingly the assessing officer after rejecting the books of account maintained by the dealer as the same being not true and reliable enhanced the dealer's own accounts sale by 15% i.e. `48,74,998.00 to the best of his judgment. He (the assessing officer) thus determined the GTO and TTO of the dealer at `4,03,76,556.47 and `2,94,40,443.40 respectively after allowing deductions on account of tax free sales and sales against declaration forms. On calculation of tax and surcharge including interest u/S. 12(4-a) of the OST Act the total tax due amount came to `14,23,092.23. As the dealer had paid `18,394.00 at the Checkgates as per the money receipts filed by it the assessing officer required it (the dealer) to pay `14,04,698.00 towards its tax liability for the period under assessment.

Being aggrieved by the aforesaid order of assessment the dealer preferred an appeal against the same before the first appellate authority which was disposed of exparte on 27.03.2000. 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 petition dated 13.04.2000 vide his order dated 11.05.2000 on the ground that there was no provision under the OST Act to restore the appeal. The dealer-assessee went on revision before the Addl. Commissioner of Commercial Taxes, 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 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. No. 8033 of 2000 quashed the orders dated 27.03.2000 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 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. The dealer-assessee contended that the assessing officer should not assume sale suppression of `2 lakhs since there was absolutely no evidence of any sale suppression in respect of Slip No.2 in which certain orders were noted. Similarly, the sale suppression to the tune of `3,750.00 should not be charged by discarding the explanation of the dealer. Further it is submitted that as the driver did not produce relevant bill and way bill for 20 bags of 'Maida' no adverse inference should have been drawn against the dealer. The alleged loose slips detected by the Circle Staff reflected certain small quantity of Atta, etc. which were supplied to staff of the dealer-appellant for their own consumption and, therefore, no 'sale suppression' could be attributed to the dealer. Further the accounts of the dealer-assessee could not be rejected simply on variation of electricity consumption. There was also no business transaction with

M/s. Gayatri Trading Company by the dealer-appellant in the past or at that relevant time. The dealer thus asserted that the assessing officer had enhanced the GTO returned by 15% i.e. ₹48,74,998.00 without reasonable nexus, materials or basis. Further, the dealer submitted that levy of surcharge was unconstitutional and bad in law. The dealer-appellant also contended that levy of penal interest u/S. 12(4-a) of the OST Act was not maintainable in law.

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 first appellate authority considered the contentions advanced by the Counsel in course of hearing of the appeal as well as the explanation of the dealer-appellant given at the time of assessment proceeding with regard to the entries made in Slip No.2 of the Fraud Case Report (FCR) to be an afterthought thereby confirming the sale suppression of ₹2,03,750.00 as held by the assessing officer as per the said slip. With regard to selling of 20 bags of 'Maida' out of account the first appellate authority held that the appellant was connived with the purchasing dealer for such transaction since it (the dealer) took the plea of innocence by issuing sale bill in

support of it when the clandestine business was detected and as such, upheld the sale suppression of `16,000.00 in that respect. So far as loose slips relating to cash sales of `2,929.00 as detected by the Circle Staff from the business premises of the dealer are concerned the first appellate authority observed that the contention of self-consumption taken at a later stage by the dealer was nothing but an afterthought for which it deserved no consideration. He (the first appellate authority) thus ultimately upheld the finding of sale suppression as per the report. With regard to sale memo book with heading "Gayatri Trading Co. of Khetrajpur" found from the business establishment of the dealer-appellant during inspection on 09.02.1999 by the Inspecting Officials of the Circle the dealer-appellant had disowned the same to be related to its business contending that the same had been left by any unknown person/driver. However, the first appellate authority could not accept such explanation offered by the dealer-appellant and affirmed the sale suppression determined by the assessing officer as per the memo book. On the estimation of suppressed turnover taking the electric consumption as corroborative factor as per case law cited, it was observed by the first appellate authority that the enhancement of turnover by the assessing officer was based on the decision rendered in the case of Shree Amar Trading Co. Vs. State of Haryana, reported in 109 STC 346. In view of the nature and extent of business done by the

dealer and the quantum of sale suppression established as per the FCRs the first appellate authority considered the enhancement of turnover by `48,74,998.00 and allowing deduction of a sum of `7,20,000.00 from it towards sale of tax free goods by the assessing officer in his order of assessment as justified. The first appellate authority also considered the withholding of payment of admitted tax by the dealer-appellant as illegal and as such, confirmed the demand of interest u/S. 12(4-a) of the OST Act done by the assessing officer on this score. Similarly the challenge on levy of surcharge u/S. 5-A of the OST Act by the dealer-assessee was not considered as sustainable in view of the decision of the Hon'ble High Court of Orissa rendered in the case of Titania Enterprises Vs. State of Orissa (O.J.C. No. 1724 of 1992 decided on 07.12.1992). Under these circumstances as mentioned above, the first appellate authority dismissed the appeal filed by the dealer-assessee and confirmed the order of assessment.

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 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 and further levy of interest as well as surcharge from it is also wrong, illegal and unconstitutional. The dealer-appellant reiterated the grounds as raised

by it in the first appeal with regard to the allegations made in the FCRs relating to its clandestine transactions in course of doing the business. It (the dealer) submitted that the assessing officer had arbitrarily rejected its books of account and grossly erred in enhancing its turnover by 15% to the tune of `48,74,998.00 without indicating any reasonable nexus, material or basis. Therefore, it 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 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 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 in 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 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 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 FCRs in detail were duly confronted to the dealer and the forums below after considering the explanations of the dealer being not satisfactory held the quantum of sales suppressions to have been established against it and accordingly enhanced the turnover thereof on best judgment basis. He also submitted that levy of interest u/S. 12(4-a) of the OST Act as well as surcharge u/S. 5-A of the OST Act was in accordance with the provisions of law. In the aforesaid circumstances the order passed by the first appellate authority confirming the order of

assessment should be considered as just and proper without any interference from 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. No material or cogent evidence was produced before this forum to dislodge the charge of suppression brought against the dealer-assessee as well as the estimation of suppressed turnover by the forums below. On the other hand we found that the forums below had examined each of the allegations made in the FCRs by affording due opportunity to the dealer to rebut the same but the explanations as offered by the dealer were found to be not convincing which ultimately resulted in establishing the suppression of sales against it. Further levy of interest u/S. 12(4-a) of the OST Act on the ground of withholding of payment of admitted tax by the dealer is considered to be justified in the facts and circumstances of the case. The challenge on levy of surcharge u/S.5-A of the OST Act by the dealer-assessee also cannot be sustained in view of the ratio laid down by the Hon'ble High Court of Orissa in the case of Titania Enterprises Vs. State of Orissa (O.J.C. No. 1724 of 1992 decided on 07.12.1992). The dealer 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)**  
**2<sup>nd</sup> Judicial Member**

I agree,

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