



in respect of the dealer-assessee for the tax period from 01.12.1999 to 31.03.2000.

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

The dealer-assessee M/s. General Manager, Ordnance Factory, Badmal in the district of Balangir is stated to be a Defence Organization wherein arms and ammunitions are manufactured and supplied to the Defence Force of India. The dealer was subjected to assessment u/S. 7(4) of the OET Act for the tax period 01.12.1999 to 31.03.2000. As per the record assessment of the dealer under the OET Act was taken up by the assessing officer on the same day when he made assessment of the dealer under the OST Act for the relevant period i.e. from 01.12.1999 to 31.03.2000. The assessing officer on perusal of the record of the dealer-assessee found that though it had filed quarterly returns under the OST Act yet did not file any monthwise statement under the OET Act which was in force w.e.f. 01.12.1999. As per Section 3 of the OET Act entry tax should have been levied and collected on entry of scheduled goods into a local area for consumption, use or sale therein on the purchase value of such goods and as such, every dealer who had brought or caused to be brought any scheduled goods were liable to pay entry tax on purchase of such goods. In the instant case the dealer had purchased a number of scheduled goods from outside the State as well as inside the State for its use in the

Ordnance Factory. Therefore, the assessing officer determined its GTO at `36,07,75,937.00 and TTO at `35,71,61,954.00 i.e. after allowing deduction towards purchase of scheduled goods which had already suffered entry tax from the GTO and then issued a demand notice to the dealer requiring it to pay `52,41,180.00 towards its tax liability for the relevant period.

3. Being aggrieved by this order of assessment the dealer-assessee preferred an appeal before the first appellate authority asserting that the order of assessment was not justified because the assessing officer completed the assessment *exparte* against it without serving a statutory notice on it as required u/S. 10(3) of the OET Act read with Rule 10(2) of the OET Rules, 1999. The Ordnance Factory, Badmal is a Unit of Central Government Organization under the Ministry of Defence. The OET Act, 1999 came into force w.e.f. 01.12.1999 and Rule 3 of the OET Rules prescribes the rate of entry tax on the scheduled goods and further as per Sub-rule (4)(b) no entry tax should be charged when the scheduled goods are used as raw materials by a manufacturing unit not located in Municipality or Municipal Corporation or Notified Area Council. In the instant case the Ordnance Factory, Badmal is located under Gandpatrapali Gram Panchayat area for which a certificate to that effect issued by the Sarapanch of the said Panchayat was filed as a proof before the assessing officer. Under such

circumstances, the dealer claimed that no entry tax should have been levied on the scheduled goods brought by it. It was also contended on behalf of the dealer-assessee that the assessing officer was not justified in including the value of the goods received by the assessee in course of inter factory transfer from its sister concerns under the Ministry of Defence as the same resulted in wrong computation of both GTO and TTO of the dealer. Besides this the assessing officer had also wrongly treated many goods purchased by the dealer from outside the State as the scheduled goods though those goods have not been mentioned in Part-I and Part-II of the schedule.

The first appellate authority considering all these issues as raised by the dealer-assessee alongwith the order of assessment and relevant documents available before him held that the assessing officer was very much justified in taking up the assessment u/S. 12(4) of the OST Act read with Rule 15(1) of the OET Rules simultaneously even without issuing a notice u/S. 10(3) of the OST Act read with Rule 10(2) of the OET Rules, 1999 while completing his assessment in respect of the dealer-assessee u/S. 12(4) of the OST Act read with Rule 15(1) of the OET Rules. So far as levy of entry tax in respect of the scheduled goods which were used as raw materials by the dealer's manufacturing unit is concerned the first appellate authority concluded that a "Gram Panchayat" has already been defined as a "local area" under the OET Act, 1999. Therefore, the question of dealer's

manufacturing unit not coming within the definition of "local area" under the OET Act does not arise. Thus, the first appellate authority held that since the goods were brought for use in the factory the same were subjected to levy of entry tax in terms of Section 3 of the said Act. Accordingly he confirmed the order of assessment.

4. The dealer-appellant then brought this appeal before the Tribunal on the grounds that the first appellate authority was not justified in confirming the order of assessment since he completely failed to analyze and interpret the provisions contained in Sec. 10(3) of the OET Act read with Rule 10(2) of the OET Rules in the instant case. The dealer-assessee is neither a registered dealer under the OET Act nor it had filed monthly statement u/S. 10(1) of the Act. Therefore, the assessing officer should have assessed the dealer provisionally by issuing a notice in Form-E4 and after giving the dealer reasonable opportunity of being heard should have assessed the dealer to the best of his judgment. The first appellate authority also failed to appreciate that though "local area" as defined u/S. 2(f) of the OET Act covers Gram Panchayat, the rate of entry tax should have been collected on the scheduled goods as provided in Rule 4(b) of the OET Rules and further no entry tax should have been charged when the scheduled goods were used as raw materials by a manufacturing unit not located in Municipality or Municipal Corporation or a Notified Area Council. Therefore, the demand made by the assessing officer and confirmed by

the first appellate authority should be annulled. It is also contended on behalf of the dealer that the assessing officer was not justified in its including value of goods received from inter transfer factory which are sister concerns of the Organization under the Ministry of Defence. Further the Hon'ble Orissa High Court in the case of IMFA and others Vs. State of Orissa have been pleased to hold that the goods which enter into a local area/areas only for the purpose of transit will not be subject to entry tax. In the instant case the dealer-appellant i.e. the Ordnance Factory, Badmal being a unit under the Ministry of Defence, Government of India, should be exempted from tax which are to be imposed by a State or by any authority of the State as per the provisions contained in Article 285 of the Constitution of India.

5. In course of hearing learned Counsel appearing on behalf of the dealer-assessee submitted that in this case the Revenue had no authority to advance a demand from it without issuing a proper notice. As per the provision envisaged in the relevant rules the entry tax assessment can be made alongwith sales tax assessment but a notice has to be issued against the dealer affording it an opportunity of being heard. Apart from this as the dealer is a manufacturer of arms and ammunitions which are exigible to tax at 50% of the rate of such goods, the dealer had already paid a sum of `26,20,590.00 vide Cheque No. AR267266 dated 26.03.2004 which is 50% of the demanded tax.

6. Learned Standing Counsel (CT) appearing on behalf of the State submitted that the dealer had deposited the tax after the assessment only. The dealer had not raised those points before the first appellate authority at the stage of hearing of its first appeal which it has now advanced before this Tribunal. So far as issuance of separate notice to it for assessment under the OET Act is concerned the dealer for the first time raised this point before this forum though there was no reason for it (the dealer) to become prejudiced by such assessment in respect of its business establishment.

7. On a thorough scrutiny of the case record and the facts involved therein it can be gathered that the dealer vehemently challenged initiation of the assessment proceeding against it on the ground of not serving a proper notice upon it for such assessment and as such the entire assessment proceeding against it was vitiated. However, in a decision rendered by the Hon'ble Apex Court in the case of Commissioner of Sales Tax and others Vs. Subash & Co., reported in 130 STC 97 (SC), it has been held as follows :-

Quote : "20. The emerging principles are :

- (i) Non-issue of notice or mistake in the issue of notice or defective service of notice does not affect the jurisdiction of the assessing officer, if otherwise reasonable opportunity of being heard has been given.
- (ii) Issue of notice as prescribed in the Rules constitutes a part of reasonable opportunity of being heard.

- (iii) If prejudice has been caused by non-issue of invalid service of notice the proceeding would be vitiated. But irregular service of notice would not render the proceedings invalid; more so, if assessee by his conduct has rendered service impracticable or impossible.
- (iv) In a given case when the principles of natural justice are stated to have been violated it is open to the appellate authority in appropriate cases to set aside the order and require the assessing officer to decide the case de novo." Unquote.

Now it is to be examined as to whether the dealer was taken by surprise in the process of assessment held under the OET Act. The dealer had raised this point before the first appellate authority but at the same time as the first appellate authority found that the dealer had taken active part in the assessment proceeding and further was given opportunity to defend its stand it held that no prejudice was caused to it on account of notice not being given to it under the OET Act and Rules. Therefore, the plea of the dealer that the entire assessment proceeding has been vitiated for the aforesaid reason seems to be not tenable.

8. So far as the dispute between the dealer-assessee and the taxing authorities is concerned, it is found that due to non-production of certain connected documents the assessing officer on verifying the purchase statement submitted by the dealer-Company

determined its entry tax dues in the case. The dealer-assessee claimed that the assessing officer did not consider about the taxability of the goods while determining its tax liability under the OET Act and as such imposed tax on the entire amount which included the non-scheduled goods also. It is revealed from the order of assessment that the assessment under the OST Act in respect of the dealer-assessee was completed on 07.01.2003 and the assessment under the OET Act was also taken up by the assessing officer on the same day simultaneously for that relevant period. The dealer had filed quarterly returns under the OST Act but had not filed any statement monthwise under the OET Act. Under such circumstances it is felt that the dealer which is a Government of India undertaking should be given an opportunity to produce the details of the accounts towards goods brought/purchases made by it from which the exact amount of its tax liability can be determined. On its (the dealer's) failure to produce such documents before the assessing officer within one month from the date of receipt of this order, it can be safely concluded that the tax liability as determined by the assessing officer should remain undisturbed.

9. Thus as per the discussion made above, the case is remitted back to the assessing officer for determination of the tax liability of the dealer-assessee afresh provided it produces the required books of account and connected documents, purchase bills, register etc. before the assessing officer within the stipulated time. In that event the

assessing officer is to complete the assessment within three months from the date of receipt of this order.

10. Accordingly this appeal is allowed with the aforesaid observations. The matter is remanded to the assessing officer for assessment afresh as per the observations made above.

Dictated & Corrected by me,

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

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

I agree,

**Sd/-**  
**(A.K. Dalbehera)**  
**1<sup>st</sup> Judicial Member**

I agree,

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