

assessee u/S. 12(4) of the 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 M/s. Veena Rice Industries, Sansinghari, Sambalpur owns a rice mill and it purchases paddy for milling of the same in its mill to produce the finished products such as rice, broken rice and bran. It sells those finished products on wholesale basis. There were four Fraud Case Reports (FCRs) against the dealer relating to the period 1998-99 which prompted the assessing officer to initiate assessment proceedings against its business establishment u/S. 12(4) of the OST Act. The dealer responding the notice issued by the assessing officer for the aforesaid purpose had appeared before him through its authorized agent and Advocate. They produced the books of account and relevant statements pertaining to the business transactions of the dealer's establishment before the assessing officer for his verification. The assessing officer after examining all the documents which included the stock registers of paddy and rice as well as the broken rice and the returns filed by the dealer-assessee for the tax period etc. came to a conclusion that there was suppression by the dealer during the relevant period and as such taking into account the allegations made against the dealer-assessee in the FCRs as well as its

stock position and business transactions he (the assessing officer) determined its GTO (gross turnover) for that relevant period at ₹4,50,67,622.79. He allowed deductions of ₹9,12,091.29 towards STC (sales tax collected) and then determined its TTO (taxable turnover) at ₹4,41,85,531.50. He imposed tax on this TTO @ 4% which came to ₹17,67,621.26 and then as the dealer was also liable to pay surcharge @ 15% on the sale value of the 'bran' which came to ₹3,981.00, he added the tax as well as surcharge which came to ₹17,71,402.26. The dealer was then allowed deduction of ₹7,66,515.54 against purchase tax paid by it on equivalent quantity of paddy covered under sale of rice under the OST Act. There was also further deduction of ₹2,99,998.00 in favour of the dealer-assessee as the assessing officer had raised the demand u/S. 13(4-A) of the OST Act against the assessee for that relevant period. Apart from this as the dealer had paid ₹3,91,799.00 by way of admitted tax u/R. 36 of the OST Rules and those payments were made in the checkgates, the assessing officer after due calculation held the dealer to pay ₹3,13,090.00 towards its tax liability for the relevant period.

The dealer being aggrieved with the aforesaid order of assessment preferred an appeal before the first appellate authority raising various issues before him. The first appellate authority perused the order of assessment and other documents including the FCRs

submitted against the dealer-assessee and then with a discussion in detail in his order he concluded that there were some admissible shortage in the stock position of the paddy purchased by the dealer-assessee which was well within the norms given by the Civil Supplies Department on account of 'moisture loss' in the goods in course of time. Therefore, he ignored the allegation pertaining to 'stock discrepancy' found in case of paddy, rice and broken rice in the dealer's establishment. He also concluded that on one of the alleged occasions the actual shortage might not have been detected properly by the officials concerned due to short span of time devoted by them in stock taking of the goods in the dealer's establishment. However, after examining all the circumstances related to this case he (the first appellate authority) thought it proper to redetermine the GTO and TTO of the dealer-assessee at ₹4,25,80,112.79 and ₹4,16,68,021.50 respectively in the appeal before him. Ultimately he found the tax payable by the dealer was ₹2,12,389.00. Accordingly he allowed the appeal preferred by the dealer in part and modified the order of assessment.

3. The State then carried the second appeal before this forum on the grounds that the first appellate authority failed to appreciate the facts and reduced the demand to ₹2,12,389.00 which is not correct. The first appellate authority came to a wrong conclusion in

this regard because he failed to consider the fraudulent activities of the dealer even though there were both shortages and excesses in the stock position of the dealer-assessee during the relevant period. The first appellate authority thus came to a wrong conclusion in deriving the final suppression figure of the dealer-assessee. The State thus urged before this forum to set aside the impugned order and restore the order of assessment as the first appellate authority failed to follow the principles of law to find out the actual suppression made by the dealer-assessee during the relevant period.

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

4. In course of hearing of this appeal it was found that the dealer remained absent despite service of notice on it by way of affixture through Asst. CT&GST Officer, Circle II, Sambalpur. Therefore, the appeal preferred by the State was heard exparte to be disposed of on merit as per Rule 60(2) of the OST Rules.

5. Learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that the assessing officer in his order had elaborately dealt with the suppression found against the dealer as per the FCRs and he had also rightly concluded the tax liability of the dealer-assessee during the relevant period. The first appellate authority agreed with his (the assessing officer) finding almost very nearly but

ignored certain suppressions as alleged against the dealer on the ground that those suppressions could be accounted for as per norms issued by the Civil Supplies Department justifying the loss in stock position of paddy and rice in a dealer's establishment in course of time. The first appellate authority has also assigned reasons for his coming to a conclusion with regard to redetermination of the GTO and TTO of the dealer-assessee in the instant case. Under such circumstances there is nothing much to submit in the case as the order of the first appellate authority seems to be quite explicit in determining the issues raised by the party concerned.

6. Perused the order of assessment as well as the order of the first appellate authority. The dealer had preferred the appeal against the order of assessment wherein the demand made against it was reduced and as such its appeal was allowed in part. Now the State has come up with this appeal and it seems the State also does not have any valid issue to assail the order passed by the first appellate authority so far as the quantum of suppression by the dealer is concerned. The first appellate authority in his order has elaborately discussed the matter and has assigned very justifiable reasons which made him to reduce the tax demand in favour of the dealer-assessee. Under such circumstances we feel there is no necessity for this Bench to disturb the aforesaid order of the first appellate authority as we do not notice any

sort of infirmity therein. Accordingly the impugned order is hereby confirmed.

7. In the result, the appeal is dismissed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
1st Judicial Member

I agree,

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