

1957 (in short, 'CST (O) Rules') in respect of the dealer-assessee for the tax period from 01.04.2007 to 31.03.2012.

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

The dealer-assessee M/s. A.R. Enterprises in the instant case is a registered dealer and engaged in trading of iron and steel goods. The principal place of business of the dealer is located in Civil Township, Rourkela in the district of Sundargarh. It has also its branch office outside the State of Odisha i.e. in Chhatisgarh. On the basis of the Audit Visit Report (AVR) received from the Audit Team, the assessing officer issued a notice to the dealer in Form-IV (Rule 12(3) of the CST (O) Rules) alongwith a copy of the AVR for the tax period from 01.04.2007 to 31.03.2012. On receipt of the said notice the Advocate engaged on behalf of the dealer had appeared before the assessing officer and after getting the matter adjourned from time to time ultimately produced the books of account and other papers as well as documents before the assessing officer on 03.01.2012. The assessing officer verified the aforesaid documents in detail and found that the dealer had furnished valid declaration in Form 'C' of `24,61,081.00 for the sales against 'C' form. The dealer though claimed to have made exempted sales u/S. 6(2) of the CST Act worth `12,42,43,055.00 yet could not furnish proper documents in respect of those sales and instead

furnished photocopy of the FIR, affidavit and paper advertisement with a request to the assessing officer to accept the above documents for consideration and allowance in respect of exempted sales. However, the assessing officer accepted the 'C' form and allowed the corresponding transactions as CST sales which he taxed accordingly at concessional rate. For the period 2009-10 the dealer could furnish valid declaration in Form 'C' and 'E-1' against exempted sales u/S. 6(2) of the CST Act amounting to `8,29,38,861.00. The assessing officer accepted the same and allowed exemption as he found those documents to be in order after proper verification. The dealer furnished declaration in Form 'C' of `1,08,88,670.00 for the transactions made by it during the period 2010-11 but failed to produce declaration in Form 'E-1' against exempted sales u/S. 6(2) of the CST Act. Therefore, the assessing officer did not accept the transactions in question as exempted sales and accordingly treated those sales as CST sales. Ultimately he (the assessing officer) rejected the books of account of the dealer and completed the assessment to his best of judgment. He sent a notice to the dealer-assessee for making payment of `51,54,764.00 including penalty for the relevant tax period.

Being aggrieved by the aforesaid order of the assessing officer the dealer preferred an appeal before the first

appellate authority challenging the said order of assessment on the grounds that it (the dealer) was assessed most arbitrarily in the instant case. It had filed periodical returns regularly and reflected true and correct turnover claiming concessional rate/ exemption rate of tax on sales under CST Act against declaration in Form 'C' and Certificate 'E-1' but it was not given sufficient time to submit the wanting declaration forms before the assessing officer for which the entire process of assessment became wrong and illegal. The first appellate authority in course of hearing of the appeal accepted three numbers of 'E-1' Certificates covering the transactions of `1,08,88,670.00, photo copies of two numbers of 'E-1' Certificate for `1,68,75,129.00, affidavit, paper clip, copy of FIR regarding loss of declaration forms and a statement of sale made u/S. 6(2) of the CST Act on those being produced before him by the dealer-assessee through his Counsel. When the appeal before him was in part heard stage since it was requested on behalf of the dealer to give it (the dealer) time upto July, 2014 for collection of duplicate copy of 'E-1' Certificate the case thus lingered further till 15.09.2014. However, as none appeared on behalf of the dealer before the first appellate authority on the date fixed for hearing of the appeal the latter disposed of the matter exparte basing on the materials available on record.

3. The dealer-assessee then carried this appeal before the Tribunal almost on the same grounds as it had raised before the first appellate authority.

The State has filed cross-objection in the present appeal mentioning therein that this second appeal preferred by the dealer is not maintainable at all as the assessing officer and the first appellate authority had correctly completed the assessment and the appeal respectively basing on the statutory provisions under the Act and Rules. As the dealer had failed to furnish statutory forms within the stipulated period as envisaged u/R. 12(7) of the CST (R&T) Rules no further time should be allowed in its favour for filing of those forms.

4. In course of hearing argument it could be noticed again that the 'E-1' forms which were required to be furnished for claiming exemption had not been furnished by the dealer either before the assessing officer or the first appellate authority on the ground that those were lost. In course of hearing of the appeal the dealer through its Counsel submitted two numbers of 'E-1' forms covering the entire disputed transactions and urged before the Bench that since this Tribunal is certainly competent to accept the relevant documents those forms should be taken into consideration in the interest of justice as well as for a just decision in the case. In response to this submission coming from the side of the dealer learned Addl. Standing Counsel (CT) on behalf of the State replied that if certain 'E-1' forms which were found

wanting before the forums below were produced by the dealer presently before this Tribunal then it (the Revenue) had got no objection if those would be accepted by this Tribunal. However, at the same time learned Addl. Standing Counsel (CT) for the State urged before the Bench that in such event the matter should be remitted back to the assessing officer with a direction that he (the assessing officer) is to verify the genuineness of the documents which were produced on behalf of the dealer before this Bench and then make a fresh computation of tax liability of the dealer after accepting and considering the said 'E-1' forms only. Learned Counsel for the dealer also agreed with this proposition as advanced on behalf of the State.

5. In view of the above contentions placed before the Bench on behalf of the dealer-assessee as well as the State respectively we feel it proper to remit back the case to the assessing officer to make fresh calculation of tax liability of the dealer-assessee by taking into account/consideration two nos. of 'E-1' forms which are to be produced before him in original after ascertaining the genuineness of those forms. Therefore, the 'E-1' forms produced before this Tribunal be returned to the dealer keeping xerox copies of the same ('E-1' forms) in the appeal record of this Tribunal.

6. In the circumstances, as discussed in the foregoing paragraph the appeal is allowed and the matter is remanded to the assessing officer for recomputation of tax liability of the dealer-assessee

following the observations made by this forum in accordance with law within three months from the date of receipt of this order. The dealer is also directed to produce the declarations in Form 'E-1' in original before the assessing officer within three weeks from the date of receipt of this order. Cross-objection is disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

I agree,

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