

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

The dealer-assessee M/s. Orissa Industries Ltd., Baranga and Lathikata was engaged in manufacturing and sale of refractories bricks and was carrying on inter-State sale transactions. It had two units i.e. one located at Baranga in the District of Cuttack and the other one was at Lathikata, Rourkela in the District of Sundargarh. Pursuant to the notice issued u/R.12(5) of the CST (O) Rules the Manager of Finance alongwith its Advocate had appeared before the Sales Tax Officer and produced the books of account consisting of purchase register, purchase invoice, sale accounts comprising of sale register and sale invoices etc. which were examined. However, the dealer was not engaged in manufacturing process at its Lathikata Unit at that relevant period due to lock out of the factory. As the dealer in the process of manufacturing of its finished product i.e. refractories bricks used raw materials like fireclay, bauxite, cement, limestone, sodium, silicate, belpahar plastic clay, silica fines as well as silica sands and as such had purchased raw materials worth ₹10,95,608.25, fuel worth ₹28,30,305.78 and packing materials valued at ₹55,582.00 during the relevant period at its Baranga Unit only, the assessing officer taking into consideration its declaration in Form-C determined its GTO at ₹15,22,38,375.14 for the period 2003-04 and then after allowing

deduction of ₹31,83,599.45 towards freight and ₹57,34,991.27 towards other charges which were reflected separately towards STC the NTO of the dealer was determined at ₹14,33,19,784.42. Then on due calculation the dealer was required to pay the balance amount of ₹57,02,449.00 towards its further tax liability for the relevant period.

Being aggrieved with the said order the dealer-assessee preferred an appeal before the first appellate authority. In the said appeal the first appellate authority after perusing the order of assessment and considering the written note submitted by the Advocate for the dealer before him concluded that as the dealer-appellant failed to deposit the admitted tax amount of ₹57,02,449.00 for the assessment year 2003-04 though it (the dealer) had collected the tax dues from the customers and retained the same with it for the last three years, its appeal was not supposed to be entertained and thus he rejected its appeal quoting the 1st proviso of Sec. 23 of the OST Act read with Rule 22 of the CST (O) Rules.

3. Being aggrieved with the said order the dealer came up with this appeal before this forum challenging the impugned order on the grounds that the appellant being a sick industrial unit faced serious financial crisis for which it was prevented by sufficient cause to deposit the admitted tax. The assessing officer had determined its GTO and NTO arbitrarily and the demand of tax at ₹57,02,499.00 from it was

excessive and bad in law. Being a sick unit it had made necessary application under the relevant provision of SIC Act and accordingly the BIFR authority gave the final order on 24.12.2003 granting necessary concession for payment of sales tax as well as exemption of sales tax for a period of 10 (ten) years in its favour. Further the authority concerned had also made it clear that the sales tax dues, if any, was outstanding against the appellant then the same would be paid in suitable installments by spreading over the same for a period of 7 (seven) years with moratorium of one year without carrying any interest. The first appellate authority ignoring all these facts had rejected the appeal without adhering to the provisions as envisaged u/S. 9(2) of the CST Act read with 1st proviso to Sec. 23(1) of the OST Act and Rule 49 of the OST Rules which required to be construed liberally in such cases.

In this case no cross-objection has been filed on behalf of the State.

4. However, in course of hearing argument it was found that the dealer-assessee did not turn up despite notice served on it and as such the matter was heard exparte. On perusal of the order of assessment as well as the order passed by the first appellate authority which is now under challenge before this Tribunal it is found that the

dealer despite notice to him had failed to deposit the admitted tax for the relevant assessment year i.e. 2003-04 though it was found to have collected tax dues from the customers during that period. Since the dealer-Company withheld payment of tax collected from the customers in order to invest the same in its business which it did and virtually made profit therefrom the first appellate authority following the ratio laid down by the Hon'ble High Court of Andhra Pradesh rendered in the case of SOL Pharmaceuticals Ltd. Vs. Mandal Revenue Officer and another, [2007] 5 VST 580 (AP), to the effect that the amount collected from the customers as tax has to pass to revenue even if an industry is declared sick, had refused to entertain the appeal petition filed by the dealer-assessee in view of the provisions of Sec. 23 of the OST Act. Since this order of the first appellate authority has not been controverted by the dealer-assessee in any manner in course of hearing of the present appeal despite opportunity was afforded to the dealer to be heard in the matter and further as the impugned order is found to be based upon sound reasons in consonance with legal provisions to be applicable in the facts and circumstances of the case, we have no hesitation to hold that the impugned order needs no interference at all by this Tribunal.

5. Accordingly the appeal is dismissed and the order passed by the first appellate authority is hereby affirmed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Smt. Sweta Mishra)
2nd Judicial Member

I agree,

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