



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

The dealer-assessee in the instant case M/s. Shiva Parbati Mini Rice Mill, Mandiakudar in the District of Sundargarh carries on the business of processing paddy and sale of rice, broken rice, husk and bran etc. During the relevant time a notice u/S. 12(4) of the OST Act was issued to the dealer-assessee with a direction to appear before the assessing officer with its books of account on 12.09.2005. The dealer, however, did not respond the said notice and also ignored several intimations sent to it thereafter for the above purpose. As the dealer despite service of notice on it neither appeared before the assessing officer nor furnished its accounts before him the latter proceeded to complete the assessment u/S. 12(4) of the OST Act exparte against the dealer. He (the assessing officer) then on verification of record and returns available with him as well as the Fraud Case Report (FCR) submitted against the dealer determined the gross turnover of the dealer at ₹2,46,09,506.09 and as he did not find the dealer to get any deduction admissible under the statute he determined its taxable turnover at the same amount. He then calculated tax @ 4% on taxable turnover which came to ₹9,84,380.24 and since the dealer had already paid ₹4,66,293.00 towards tax the assessing officer issued a demand notice requiring it (the dealer) to pay a sum of ₹5,18,087.00 towards its tax liability for that relevant period.

The dealer-assessee preferred an appeal before the first appellate authority assailing the order of assessment on the grounds that the order of the Sales Tax Officer was illegal and unjust. It was further contended on behalf of the dealer that the assessing officer should have given it the opportunity of being heard in this matter. The dealer also submitted that the assessing officer had not applied his mind while verifying the sales tax returns filed by it during the relevant year. The enhancement of gross turnover and taxable turnover by ₹12 lakhs without confronting the fraud case report to the dealer was arbitrary and illegal.

The first appellate authority issued notice to the dealer-assessee for hearing of the appeal on 28.10.2015. The dealer-assessee though received the notice informing it the date of hearing yet did not appear before the first appellate authority on the date fixed for which the first appellate authority sent another intimation to the dealer-appellant fixing the date of hearing to 18.11.2015. However, the dealer did not respond that notice also. As the first appellate authority became convinced that despite opportunity being afforded to the dealer-assessee it failed to turn up he (the first appellate authority) also heard the appeal *ex parte* and maintained the order of assessment.

3. As revealed from the record the dealer-assessee being aggrieved with the aforesaid order of the first appellate authority filed a

second appeal before this Tribunal and also challenged the order dated 21.01.2017 passed by the Addl. Commissioner of Sales Tax, Northern Zone, Odisha, Sambalpur, Dist. Sambalpur in Revision Case No. IIAST-RL-95(OST)/15-16 wherein the authority concerned had directed the dealer to make payment of ₹2,00,000.00 excluding the previous payments and declined to grant the interim relief during pendency of the second appeal before this Tribunal by filing a writ petition bearing No. W.P. (C) No. 4982 of 2017 before the Hon'ble Court. The Hon'ble High Court while disposing of the aforesaid writ petition on 20.03.2019 were pleased to pass the following order :-

Quote : "Considering the fact situation of the case, it is directed that if the petitioner will deposit 50% of the tax demand within four weeks from today before the opposite parties-authorities the O.P. No.2 shall stay the demand till the outcome of the Second Appeal. The Tribunal is also directed to dispose of the Second Appeal of the petitioner, in accordance with law, as early as possible, preferably, within a period of four months from the date of receipt of a certified copy of this order. However, we have not expressed any opinion on the merit of the case of the petitioner.

It is made clear that if the deposit, as directed above, is not made within the stipulated period, it will be open for the O.P. no.2 to proceed in the matter in accordance with law.

With the aforesaid observation and direction this writ petition stands disposed of." Unquote.

4. Pursuant to the aforesaid order of the Hon'ble Court the second appeal was taken up for hearing by this Tribunal on 05.09.2019. The dealer-assessee has raised the following points as its grounds for appeal before this forum.

The exparte order passed in first appeal was not based on the facts and circumstances of the case. The first appellate authority without giving reasonable and sufficient opportunity to the dealer has passed the impugned order which is against the principle of natural justice. The provision under the OST Act during the relevant period was that the miller would pay purchase tax on paddy purchased from the local farmer or unregistered dealer and would get set off in respect of that tax on its payment of tax on sales of rice and broken rice manufactured from those paddy. The assessing officer as well as the first appellate authority without going through the documents available on record had wrongly calculated the gross turnover and taxable turnover of the dealer which led them to make extra demand from the dealer. The enhancement in the taxable turnover of the dealer without proper consideration and that too without giving an opportunity to the dealer to rebut the same was against the principle of natural justice. The dealer-assessee placed reliance in the decisions rendered in the case of Steel Authority of India Ltd., reported in 94 STC 105; Kisanlal Rajmal, reported in 45 STC 88 and Titaghur Paper Mills Co. Ltd. Vs.

State of Odisha, reported in 53 STC 315 to justify its abovesaid contentions.

5. The State has also filed its cross-objection mentioning therein that there is no merit in this second appeal as the same is not sustainable in the eye of law. The assessing officer as well as the first appellate authority had rightly completed the assessment/appeal basing on the statutory provisions under the Act and Rules which are also connected to the points raised by the dealer to substantiate its case. The dealer had failed to furnish proper documentary evidence before both the forums below to substantiate its claim. Learned Addl. Standing Counsel (CT) for the State also urged before this forum to confirm the order of assessment in the instant case.

6. In course of hearing this second appeal learned Counsel for the dealer-assessee submitted that the first appellate authority had issued notice to the dealer only twice fixing the dates on 28.10.2015 and 18.11.2015 i.e. within a gap of twenty days during that period for hearing of the appeal but he made an incorrect observation in his order by mentioning therein that he had given enough intimations to the dealer for its appearance before him. Further the demand of ₹5,18,087.00 as made by the assessing officer and confirmed by the first appellate authority is absolutely illegal since that amount was raised by misconceiving the facts relating to the case and wrong

calculation of taxable turnover of the dealer-assessee. In that process both the forums below had totally lost sight of the fact that the provision under the statute during that relevant period was that the miller would pay purchase tax on paddy which it purchased from the local farmers or unregistered dealers and would get set off of that tax on payment of tax only on sales of rice and broken rice obtained from those paddy. Learned Counsel appearing on behalf of the dealer-assessee urged before the Bench that this is a fit case for reducing the demand on verification of the documents as well as other evidence only and those documents and evidence can be produced before the assessing officer or first appellate authority, as the case may be, if the dealer would be afforded with an opportunity to cause production of its books of account before those authorities concerned and permitted to be heard in the matter at length.

7. Learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that in the instant case the dealer had failed to appear before the assessing officer as well as before the first appellate authority despite notices being served on it repeatedly for the purpose of affording him the opportunity of being heard in the matter by producing its books of account and other evidence before them which were required to be verified by them for determination of its tax liability. The dealer rather did not bother to appear before the authorities below

for which they had to dispose of the matter exparte. Now it wants to avail another opportunity of being heard by them. No document or evidence has been placed by the dealer before this forum to find that it has certain material evidence with it which can be taken into account for reopening the case. He thus submitted that in such circumstances there is absolutely no necessity for this Tribunal to interfere with the impugned order.

8. On perusal of the case record it is found that the first appellate authority while taking up this appeal for hearing had issued a notice to the dealer-assessee fixing the date to 28.10.2015 for hearing and as the dealer failed to respond the said notice he sent another intimation to it fixing the date to 18.11.2015 for hearing. When the dealer failed to appear before the authority concerned he proceeded to dispose of the matter in its absence and accordingly passed his order on 25.11.2015 i.e. within seven days of the second date fixed for hearing of the appeal. He has virtually disposed of the appeal without delving into the merit of the case. Precisely for that reason only this Tribunal now finds it very difficult to determine the issues raised by the dealer-assessee in this second appeal. In the circumstances we feel that this is a fit case to be remitted back to the assessing officer for making fresh assessment in respect of tax liability of the dealer-assessee pertaining to that relevant period by examining all the documents which would be

produced before him by the dealer-assessee within a stipulated time fixed by him for this purpose. In such event the dealer-assessee is also directed to take necessary care to appear before the assessing officer with its documents on the date fixed by the latter for verification of its documents as well as hearing of its submissions before him with regard to its tax liability for the aforesaid tax period.

9. In the result as discussed in the foregoing paragraph the appeal is allowed and the impugned order is hereby set aside. The matter is remitted back to the assessing officer for fresh assessment in accordance with law keeping in view the observations made in the preceding paragraph within a period of three months 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/-**  
**(Subrat Mohanty)**  
**1<sup>st</sup> Judicial Member**

I agree,

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