

'assessing officer') u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the period 2000-01 in the following circumstances.

2. The dealer-appellant in the present case is a manufacturer of out-still liquor and for this purpose it carries on distillation of mohua flower. He sells liquor through a network of out-still shops located at different places in the District of Bargarh. During the relevant period a notice u/S. 12(2) of the OST Act was served on the dealer-assessee through registered post with A.D. and thereafter several intimations were also sent to him for assessment of his business concern u/S. 12(4) of the OST Act. However, the dealer did not respond all these intimations sent to him by the assessing officer for which the assessment was completed by the latter exparte. The dealer was thus required to pay a sum of ₹10,79,462.00 towards his tax liability since he had already paid ₹76,107.00 out of his admitted tax for that period.

Aggrieved by the order of assessment the dealer preferred an appeal before the first appellate authority. He questioned the legality of the order of assessment on various grounds. The first appellate authority then afforded him the opportunity to be heard in the matter with a direction to make payment of his admitted tax amounting to ₹3,46,941.00 by 08.04.2002 vide his office letter No. 2742 dated 02.04.2002. The dealer, however, did not deposit the aforesaid amount despite repeated intimations sent to him. Therefore, the first appellate

authority for this reason as well as considering the merit of the case concluded that the order of assessment was framed judiciously and reasonably by way of covering all the facts of the case and for that he could not find any cognate reason to interfere in the finding of the assessing officer. Ultimately he confirmed the order of assessment and rejected the appeal summarily.

3. The dealer-assessee then preferred this second appeal on the grounds that the impugned order was passed by the first appellate authority quite arbitrarily and that too without giving him proper opportunity of being heard in the matter. He thus challenged the legality and maintainability of the order before this forum.

No cross-objection has been filed on behalf of the State.

4. In course of hearing of the appeal learned Counsel for the dealer-appellant raised various issues to apprise the Bench as to how there was a violation of the principle of natural justice by the authority concerned while deciding the matter against him. He categorically pointed out that the order of assessment was passed against the dealer *ex parte* and further the first appellate authority also proceeded against him *ex parte* without giving him reasonable opportunity to appear with all his papers and documents to substantiate his case before him. He disposed of the appeal quite hurriedly even

though he could have deferred the matter awaiting appearance of the dealer before him. He thus urged before the Court to set aside the impugned order as well as the order of assessment in the interest of justice. He also filed xerox copies of revised returns (five numbers) filed by him pertaining to the period under assessment.

5. Learned Addl. Standing Counsel (CT) in his reply to the aforesaid argument as advanced on behalf of the dealer-assessee submitted that this forum is required to see first whether the appeal can be heard on merit or not since the first appeal of the dealer-assessee was rejected summarily on account of his default in making payment of his admitted tax. On being questioned learned Counsel for the dealer fairly submitted that the dealer had not paid the admitted tax at the time of filing his first appeal and further he also did not file any challan showing his payment of admitted tax till the date. Learned Addl. Standing Counsel (CT) for the State thus contended that on this ground alone the dealer-appellant is barred from filing a second appeal before this Tribunal seeking to be heard on merit of the case.

6. Section 23 of the OST Act envisages –

Quote : “23. Appeal and Revision –

(1) Within thirty days from the date of receipt of the copy of –

(a) an order of assessment with or without penalty under Section 12, 12-A or 12-B; or

- (b) an order directing payment of interest under sub-section (4-a) of Section 12; or
- (c) an order imposing penalty under sub-section (3) of Section 9-B or under sub-section (3) of Section 11,

any dealer or person, as the case may be, may, in the prescribed manner appeal to the prescribed authority against such order;

Provided that no appeal shall be entertained by the said authority unless he is satisfied that such amount of tax as the appellant may admit to be due from him has been paid." Unquote.

In this regard we would like to quote a decision of our Hon'ble Court rendered in the case of Bhubaneswar Flour Mills Vs. State of Orissa, reported in [1983] 52 STC 192 (Ori.), wherein it is held that where a first appeal is dismissed without examination of merits on some technical ground of procedural defect, in second appeal the merit of the matter would not be available to be adjudicated though a second appeal lay by treating the dismissal of the first appeal as an appellate order.

7. In the instant case it is noticed that the impugned order was passed summarily rejecting the first appeal not only on account of dealer's default in making payment of admitted tax but also on merit of the case. It is, therefore, felt that the present appeal can be considered to find the validity of the impugned order. It is further noticed from the impugned order as well as order of assessment that

the dealer had not participated in those proceedings properly before the respective authorities. In this regard we would like to quote here the order of the first appellate authority.

Quote : "As revealed, at this forum the appellant was given reasonable opportunity of being heard by way of asking him to effect payment of admitted tax of ₹3,46,941.00 on 8.4.2002 defaulted vide this office letter No. 2742/2.4.02. In response the adjournment petition was filed. Subsequently another intimation in this office letter No. 2892/ dt. 10.04.02 was issued fixing date on 29.4.02 but no response was forthcoming despite due service of notice. Considering the entirety of the facts and circumstances of the case in their proper prospective, it is quite evident that the style of functioning of the appellant has been characterized by conspicuous presence of attitude of non-cooperative, in-action and callousness which has been clearly manifested both at the assessment stage as well as at appellate stage. Hence the disposal of the case exparte has been turned out to be the only panacea for the indifferent syndrome of this recalcitrant appellant. This is what has been precisely done by the L.A.O. and what I am inclined to do under a spell of compulsion." Unquote

8. On perusal of the case record it is found that the dealer had rather taken the above proceedings very lightly and did not choose to fulfill its legal obligations before seeking the relief in the matter despite opportunity afforded to him repeatedly.

9. In the aforesaid circumstances we have no other option but to hold that the forum below has not committed any error in dismissing the appeal preferred by the dealer. Accordingly, the present appeal is dismissed being devoid of merit.

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