

manufacture and sale of paper as well as paper products at J.K. Pur, Rayagada, Odisha having its Registration Certificate No. KOCII.84. In course of its business it sells the product within the State of Odisha as well as makes inter-State sales and branch transfer and consignment sale outside the State. It carries on export sales also out of the territory of India. The dealer-assessee had filed annual return under the CST Act for the year 2003-04 disclosing the sale turnover of its business concern and paid tax on its admitted amount on various heads. However, in course of examination of its books of account the Sales Tax Officer, Koraput-II Circle, Rayagada (in short, 'assessing officer') could notice that the dealer-assessee had claimed excess cash discount for that relevant period. By examining the sales made by the dealer-assessee and other connected documents which were placed before the assessing officer by it (the dealer-assessee) while seeking exemption and concession etc., the assessing officer determined the GTO of the Company at `238,55,18,277.81 and after allowing deductions of `2,80,37,934.61 and `8,70,80,924.00 towards cash discount and collection of CST respectively calculated the NTO at `227,03,99,419.20. Then imposing tax @4% on `206,26,09,584.96, @10% on `20,52,07,334.24 and @12% on `25,82,500.00 and further adding

surcharge @10% of the tax due of pulp sales the assessing officer demanded balance amount of `1,62,85,083.00 from the dealer-assessee towards its tax liability for that relevant period.

Being aggrieved with the said order of assessment, the dealer-assessee preferred an appeal. Learned first appellate authority took into consideration the compliance made in the defective 'C' forms and also some wanting 'C' forms filed by the dealer-assessee before him and accordingly allowed the claim of concession on that score holding those documents as genuine. He also allowed the claim of exemption u/S. 5(1) of the CST Act in respect of export sales to Nepal and Bhutan after considering the relevant certificates. Further, the first appellate authority though allowed the claim of exemption to the tune of `5,49,585.00, however, disallowed other claim for exemption at his level on the ground of defective 'H' forms. Accordingly, the GTO and NTO were determined alongwith the CST liability of the dealer-assessee at `49,59,359.00 for the relevant period. As such, the first appellate authority partly allowed the appeal and reduced the demand raised in the order of assessment in his order now under challenge in this appeal.

The State being dissatisfied with this reduction in assessment by the first appellate authority preferred this appeal.

3. When the matter is taken up for hearing learned Counsel for the dealer-assessee submitted that another appeal i.e. S.A. No. 159(C) of 2005-06 against the very same order of the first appellate authority passed in First Appeal Case No. AAC (KOII) 70/ 2004-05 was filed by the dealer-assessee and that appeal was disposed of by this Tribunal vide order dated 09.02.2012. In the said appeal the Tribunal after considering copies of the documents which include declarations in Form 'H' and 'C' as well as other bills concluded that the matter was required to be remitted back to the STO to verify the original documents pertaining to this case and to make a fresh assessment as per law keeping in view the observations made by the Tribunal in the said order.

4. Learned Addl. Standing Counsel (CT) appearing on behalf of the State also conceded that an appeal directed against the impugned order of the first appellate authority was under challenge in S.A. No. 159 (C) of 2005-06 which was filed by the dealer-assessee and since that appeal was disposed of in presence of the State it (the State) has got nothing more to say in the present appeal.

5. In the aforesaid circumstances, as per the discussions made in the foregoing paragraphs this Tribunal has no other option but to treat this appeal as infructuous in view of the order passed by this Tribunal in S.A. No. 159 (C) of 2005-06 contested between the same

parties pertaining to the same assessment as well as order of the first appellate authority.

6. 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)
2nd Judicial Member

I agree,

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