

12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the period 1998-99.

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

The dealer M/s. Gampus Plastech (P) Ltd. of Ganeswarpur Industrial Estate is a manufacturer and seller of HDPE and PP tapes, fabrics and bags. This is an SSI Unit and availed the benefit of IPR, 1989 which exempts its tax liability on the finished products upto 31.10.1998. However, basing upon the fraud report the dealer was confronted by the assessing officer and statement of its Assistant Manager (Commercial) was recorded on S.A. by the assessing officer. It was also found that the contents of the fraud report related to the business transactions of the dealer-assessee pertaining to the years 1999-2000 and 2000-01. The assessing officer could also find that the Sales Tax Officer (Vigilance) in his report had advised to disallow the claim of deduction towards sale of HDPE fabrics for the assessment year 1998-99. Therefore, the assessing officer examined the accounts of the dealer-assessee and then considering all the aspects pertaining to the business transactions of the dealer-assessee made it liable to pay a sum of ₹8,57,695.08 towards its tax dues alongwith surcharge @ 10% calculated on the aforesaid amount of tax liability which in total came to ₹9,43,464.58. As the dealer had already paid a sum of ₹30,192.00 u/R.

36 of the OST Rules, 1947 he was required to pay the balance amount of ₹9,13,273.00 as per the terms and conditions of the demand notice sent to it.

3. Being aggrieved with the aforesaid order the dealer-assessee preferred an appeal before the first appellate authority describing the said order of assessment as arbitrary, illegal and bad in law. The dealer also claimed that being an SSI Unit under the coverage of the benefit provided under IPR, 1989 it was allowed to get the benefit of exemption for the previous years prior to 01.04.1998 whereas the Sales Tax Officer disallowed such exemption in respect of its transactions from 01.04.1998 to 31.10.1998. The first appellate authority in course of hearing the appeal could notice that the assessing officer in his order of assessment had mentioned that the dealer-appellant was eligible for exemption on sale of finished products upto 31.10.1998. He (the assessing officer), however, disallowed the exemption claimed to the tune of ₹53,50,431.00 as the dealer failed to file the certificate in Form-III granted by the G.M., DIC for the period from 01.11.1997 to 31.10.1998. As the dealer-assessee filed a copy of the eligibility certificate issued by the G.M., DIC in Form-III before the first appellate authority the latter felt it proper to allow the deduction claimed to that extent subject to verification of authenticity of the certificate. The first appellate authority also considered the dealer's

assertion regarding HDPE fabrics as a tax free goods as per Sl. No. 22 of the Tax Free Rate Chart and ultimately agreed with the finding of the assessing officer who treated the aforesaid items as articles of plastic and as such exigible to tax. Thus the first appellate authority concluded that levy of tax on the sales of HDPE fabrics worth ₹29,58,840.00 as held by the assessing officer was fully justified. However, the first appellate authority ultimately remanded the matter to the assessing officer with a direction to make a fresh assessment and precisely the dealer-assessee challenging this order of the first appellate authority came up with the present appeal before this Tribunal.

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

4. In course of hearing the appeal learned Counsel for the dealer instead of raising the grounds of appeal before the Bench submitted that the original assessment order dated 29.11.2001 passed u/S. 12(4) of the OST Act demanding tax of ₹9,13,273.00 was challenged before the first appellate authority who remanded the matter to the assessing officer with a direction to make fresh assessment. The dealer then preferred this second appeal but in the meantime the assessing officer in compliance to the direction of the first appellate authority made reassessment and allowed the dealer to avail exemption as per IPR, 1989 on sale of finished products but levied tax on sale of

HDPE fabrics. Ultimately after remand of the matter the assessing officer demanded ₹1,31,682.00 towards tax liability of the dealer vide order dated 18.07.2002 marked as Annexure-1. Challenging the said order of reassessment i.e. order dated 18.07.2002 the dealer ultimately came up with a second appeal before this forum which was numbered as S.A. No. 2609 of 2002-03. The matter was heard by this Tribunal and disposed of vide order dated 28.09.2010. In the said appeal the Tribunal accepted the submission of the dealer-appellant and allowed sale of HDPE fabrics to be exempted from tax liability as per Entry 22 of the List of Goods Exempted and remanded the matter to the Sales Tax Officer for reassessment. He also filed a xerox copy of the order passed by the Division Bench of Odisha Sales Tax Tribunal vide Annexure-2 in S.A. No. 2609 of 2002-03 and intimated this Bench that the reassessment had already been made pursuant to the order of the Tribunal in abovesaid S.A. No. 2609 of 2002-03. Pursuant to the order passed in above second appeal the dealer-appellant received refund of ₹25,000.00 in respect of this issue which is the subject matter of the present appeal. He also filed a xerox copy of the reassessment order dated 07.09.2011 vide Annexure-3. In the above circumstances learned Counsel for the dealer-assessee submitted that the dispute arising out of order dated 29.11.2001 having been set at rest there is no need for the dealer to go ahead with this present appeal.

5. Perused the case record and the documents submitted by the learned Counsel for the dealer-assessee. Copies of these documents have already been served on learned Addl. Standing Counsel (CT) for the State. In view of such development in the matter we found that the order dated 23.04.2002 passed by the first appellate authority had lost its existence since long and as such the present appeal has become infructuous in the meantime.

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

I agree,

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