

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

2. The facts leading to this appeal are as follows :-

The dealer-assessee in the instant case is a rice miller. During the relevant period he appeared before the assessing officer and produced accounts in response to a notice served on it u/S. 12(4) of the OST Act. On verification it was found that the dealer had purchased paddy and converted the same to rice, broken rice, bran etc. which he sold. It was also noticed further that he showed the GTO for that relevant period at ₹754.76 lakh as against ₹610.01 lakh. The purchases and sales made by the dealer-assessee as well as his stock accounts in detail were submitted to the assessing officer in separate sheet of papers. However, at the stage of assessment on being asked by the assessing authority the dealer submitted that it had supplied 80452 packets of rice to FCI and received ₹1.25 per packet which it had not included in his GTO. Since as per the definition of 'sale' under the OST Act this price was also supposed to have been included in the GTO of the dealer as that comprised a component of the sale price, the assessing officer added a sum of ₹1,00,565.00 to the GTO disclosed by the dealer. Then considering some other aspects basing on the Vigilance Report besides the above suppression the assessing officer held that the

dealer was to pay a sum of ₹17,476.00 towards its tax liability for that period.

The dealer being aggrieved with this order of assessment preferred an appeal before the first appellate authority and his appeal was allowed by the first appellate authority.

3. Now the State being aggrieved with the order of the first appellate authority came up with the present appeal on the grounds that the first appellate authority should not have allowed deduction of stitching charges from the TTO since it was incurred by the seller prior to delivery of rice. Thus gunny bags were separately billed by the seller and it had received payment on that count. Therefore, the same should have been included in the TTO of the dealer but the first appellate authority allowed deduction of the said stitching charges invoking the provisions envisaged u/S. 5(2)(A)(a)(iii) of the OST Act which is not at all applicable to the facts and circumstances of the present case. The sale price of gunny bags and stitching charges should have been included in the TTO of the dealer and be taxed. Thus learned Addl. Standing Counsel (CT) for the State urged before the Bench to remand the matter to the first appellate authority for recomputation on the above said basis.

4. No cross-objection has been filed on behalf of the dealer-assessee and moreover the dealer-assessee did not appear before the Tribunal for hearing despite service of notice on it.

5. As it seems the State has no grievance so far as other findings of the first appellate authority on tax demand against the dealer are concerned except the decision taken by the first appellate authority in regard to exclusion of stitching charges of the gunny bags from the sale price. On perusal of the order of assessment as well as the impugned order it could be gathered that there was no dispute regarding supply of 80452 packets of rice to FCI by the dealer-assessee during the year under assessment. The dealer also admitted to have received ₹1.25 per packet which it had not included in the GTO. Therefore, the assessing officer had added a sum of ₹1,00,565.00 in the GTO disclosed by the dealer. The first appellate authority accepted the submission of learned Counsel appearing on behalf of the dealer before him to the effect that stitching charges were charged separately on the body of the sale bills and thus deserves deduction u/S. 5(2)(A)(a)(iii) of the OST Act.

6. Learned Addl. Standing Counsel (CT) appearing on behalf of the State vehemently submitted that law is quite well settled that provision of Sec. 5(2)(A)(a)(iii) of the OST Act can be invoked only when the cost of stitching was separately charged. In this regard we

verified the LCR and noticed that there is absolutely no such documentary evidence on record to find that stitching cost was separately charged in the instant case for supply of rice in packets to the FCI which was admitted by the dealer-assessee himself before the assessing officer. The dealer-assessee also does not appear before this Tribunal to putforth its version which would entitle him for the deduction under the aforesaid provision of the OST Act. The Addl. Standing Counsel (CT) also cited a decision of Hon'ble High Court of Orissa rendered in the case of Essel Mining & Industries Ltd. Vs. State of Orissa (STREV No. 37/2003 decided on 27.08.2018) wherein it has been held by the Hon'ble Court that provision of Sec. 5(2)(A)(a)(iii) coupled with Clause-6 will come into play only when the purchaser pays the transportation charges then it will be known as part of sale price. Herein the instant case the dealer had admitted that it received a sum of ₹1.25 per packet while supplying 80452 pkts. of rice to FCI for which a sum of ₹1,00,565.00 was added to its GTO. Therefore, in absence of any cogent evidence to the effect that the aforesaid sum was not included in the sale price of rice packets we find it very difficult to accept as to why the first appellate authority deducted a sum of ₹1,00,565.00 towards stitching charges from the TTO of the dealer and for this reason only the matter is required to be remitted back to the first appellate authority for fresh disposal taking into account the aforesaid amount of ₹1,00,565.00

being added to the TTO of the dealer and recomputation of the tax liability of the dealer-assessee for the relevant period under assessment.

7. In the result the appeal preferred by the State is allowed. The matter is remanded to the first appellate authority for fresh disposal keeping in view the observations made above within a period of three months from the date of receipt of this order.

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