

'assessing officer') in the assessment held by him u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the period 2004-05.

2. The facts as revealed from the case record are that the dealer-assesee named and styled as "M/s. Shree Maruti Agencies" carries on business in Ayurvedic medicines having its place of business at Nandisahi, Cuttack. He maintains the accounts of purchase and sale in purchase register, purchase invoices, sale register and sale memos respectively. On scrutiny of his accounts it was found that the dealer had effected total purchase of goods to the tune of `1,92,80,198.85 from outside the State and disclosed his total sales at `2,07,96,967.21 for the relevant period. He had claimed deductions of `15,29,198.23 and `1,52,919.02 towards sales tax and surcharge collected showing TTO at `1,91,14,858.95. A Fraud Case Report (FCR) No. 11 dated 24.09.2004 was submitted by the IST, Cuttack-I West Circle, against the dealer-assesee and when he was confronted with the same with regard to excess tock of 950 boxes of Ayurvedic medicine above his book balance, he explained that the excess stock found in his business premises at that relevant time was due to non-delivery of 450 boxes of medicine sold on 18.10.2004 and 500 boxes of medicine sold on 19.10.2004.

However, the assessing officer could not accept his explanation as quite convincing for which he rejected the same and in the result he also rejected his books of account and completed the assessment basing upon the principle of best judgment thereby enhancing his GTO returned by `1,62,000.00. Then taking into his GTO and deduction towards sales tax collected he (the assessing officer) determined the TTO of the dealer-assessee at `1,92,76,858.96 and taxing the same @8% determined his tax due at `15,42,148.71 and ultimately on calculation of surcharge @ 10% on tax due as well as the amount already paid by the dealer u/R. 36 of the OST Rules found him liable to pay the balance amount of `14,521.00.

Being aggrieved with the said order, the dealer-assessee preferred an appeal before the first appellate authority challenging the aforesaid order of assessment as illegal and bad in law. The first appellate authority accepted the plea of the dealer-assessee to the effect that the aforesaid 950 boxes of Ayurvedic medicine having been already sold by the date of visit of the reporting officials which, however, could not be taken by the purchaser from his business premises due to want of conveyance, deleted the enhancement made by the assessing officer in his tax demand on this score.

3. Being aggrieved with the aforesaid order of the first appellate authority, the State came up with this appeal challenging the order of the first appellate authority as arbitrary, illegal and bad in law. In course of hearing learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that the assessing officer could find purchase of 450 boxes of Ayurvedic medicine out of those 950 boxes which were out of account. The explanation offered by the dealer-assessee that the excess stock found in his business premises were already sold before the visit of the inspecting officers is wrong because those visiting officials had verified the stock with the books of account of the dealer-assessee and at that time the dealer had not shown the sale bills of those excess stock. In the circumstances learned Addl. Standing Counsel (CT) for the State submitted that the order of the first appellate authority should be set aside and the matter be remanded to the assessing officer for examination of alleged purchase suppression of stock and to make a fresh assessment after verification of purchase, sale and stock account in respect of the said relevant period.

4. In reply to the aforesaid assertions of the learned Addl. Standing Counsel (CT) for the State, the dealer-assessee through his Counsel pointed out that there is ample evidence to prove about his showing the sale bills pertaining to the excess stock but both the

reporting officer as well as the assessing officer had ignored the same for the reasons best known to them. In course of hearing learned Counsel appearing on behalf of the dealer-assessee filed the sale bills and a copy of statement given by the Manager of the dealer-assessee which was recorded on 19.10.2004.

5. On perusal of the said statement it is found that the Manager of the dealer-assessee had explained the circumstances under which those excess stock were found in their premises despite some of those were being sold on the previous day of the inspection and the rest were already sold on the same day of the inspection. The dealer-assessee had also shown the sale bills pertaining to that excess stock which were found to have been verified by the IST on the same day of his visit to the business premises of the dealer-assessee. Under such circumstances there is absolutely no reason to hold that the first appellate authority came to a wrong conclusion by accepting the explanation of the dealer-assessee that those goods which were already sold vide the relevant sale bills were still found lying in his business premises as the purchasing dealer was not able to collect his items from the said place due to non-availability of conveyance.

6. Therefore, as per the discussion made in the foregoing paragraphs it is found that there is absolutely no infirmity in the order

passed by the learned first appellate authority deleting the enhanced demand made by the assessing officer.

7. In the result, the appeal preferred by the State 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