

passed by the Sales Tax Officer, Jagatsinghpur Circle, Paradeep (in short, 'assessing officer') against the dealer-assessee for the period 2004-05 with a direction to complete the reassessment pertaining to the said period within a period of six months from the date of receipt of his (first appellate authority) order.

2. The facts as revealed from the case record are that the dealer-assessee in the instant case is a Limited Company engaged in manufacturing of Calcinised Petroleum Coke out of inputs Petroleum Coke and effects sale in course of inter-State as well as intra-State trade and commerce. In order to verify the authenticity of the returns filed by the dealer for the material period 2004-05, statutory notice was issued against it under Rule 12(5) of the Odisha Central Sales Tax (Odisha) Rules, 1957 (in short 'CST (O) Rules') which was duly served on the dealer-assessee. However, the dealer-assessee did not appear before the assessing officer in response to the aforesaid notice and also subsequent communications made to it till the date 23.10.2006. But on 23.10.2006 a petition was filed before the assessing officer on behalf of the dealer seeking adjournment of hearing in the matter which was also allowed by the assessing officer by fixing another date for hearing. Ultimately the matter before the assessing officer was adjourned from

time to time at the instance of the dealer who ultimately neither appeared before the assessing officer nor participated in the proceeding. Thus on verification of the periodical returns filed by the dealer for the quarter ending 30.06.2004, 30.09.2004, 31.12.2004 and 31.03.2005 the assessing officer could find that it (the dealer) was supposed to pay balance tax of `5,38,33,867.00 for the relevant period. Thus he passed the order of assessment *exparte* and demanded the aforesaid sum in terms and conditions of the demand notice.

Being dissatisfied with the aforesaid assessment for the relevant period the dealer-assessee preferred first appeal and in that appeal the authority concerned set aside the order of assessment with a clear direction to the assessing officer to complete the reassessment within six months from the date of receipt of his order following the observations made by him in the said order. Being aggrieved with the said order the dealer preferred this second appeal.

3. The points raised by the dealer-assessee before this forum are that both the assessing officer as well as the first appellate authority had acted arbitrarily while determining its GTO and TTO and the case was heard *exparte*. They also did not look into the material evidence/documents furnished by the dealer at the time of assessment.

Further the first appellate authority though accepted the dealer's contentions regarding inter-State sale of Calcinised Petroleum Coke amounting to `33,43,84,209.00 as exempted turnover supported with declaration Form `C', however, calculated the exemption at the rate of 8% instead of concessional rate of 4% for which the total exemption as calculated and worked out became wrong. The same needs rectification and recomputation at the appropriate rate and accordingly the progressive exemption should be calculated and the mistakes in calculation of exemption benefits availed by the dealer should be removed.

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

4. However, in course of hearing the learned Counsel for the dealer-assessee filed a memo mentioning therein that it wants to withdraw this appeal since in the meantime the assessing officer has already completed his fresh assessment for the period 2004-05 pursuant to the order of the first appellate authority. He also filed copy of the order of fresh assessment i.e. reassessment which has been done on the basis of guidelines and observations made by the first appellate authority.

5. In the aforesaid circumstances the present second appeal has certainly become infructuous and hence the same is disposed of accordingly.

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