

2. The facts as revealed from the case record are that the dealer-assessee named and styled as "M/s. Bansal Trading Co., Bargarh" is a registered trader in sugar under the OST Act and OET Act. It had purchased sugar from inside and outside the State of Odisha for sale. Thus during the relevant year i.e. 2003-04 the dealer had effected total purchase of sugar worth `7,35,70,671.70 including purchase of scheduled goods brought into the local area in respect of which entry tax was levied at earlier stage for `93,87,213.70. The dealer had not disclosed the gross purchase of scheduled goods by adding the freight and incidental charges over the purchase turnover. For this reason the assessing officer had rejected the books of account of the dealer-assessee and completed the assessment while determining the balance tax of `44,386.00 to be paid by the dealer-assessee.

Being aggrieved with the order of assessment the dealer preferred the appeal before the first appellate authority while submitting that the order of assessment was bad in law and facts. Determination of TTO at `6,89,29,448.00 as against TTO returned at `6,41,33,458.00 by adding the freight charges was illegal and improper.

Further in alternative the same was high and excessive and the freight charges so added on the ground that the same has been paid by the dealer was not correct. It was further averred by the dealer-assessee that levy of entry tax on freight charges in respect of inside purchase of the goods is illegal and improper as the same is against the provision of Rule 17(2) and Sub-rule (5) of the Rule 3 and provision of Section 3(2) of the OET Act and so also freight charges cannot be taken as a part of purchase price.

The first appellate authority considered the argument as advanced on behalf of the dealer-assessee on the above stated points and came to a conclusion that the assessing officer had not brought any material to the record from which it could have been gathered that the dealer was liable to pay the balance amount of tax as determined by him. Further he had not conducted proper enquiry u/R. 17(1) of the OET Rules for determination of purchase value of the goods liable to be taxed under the said Act. Under such circumstances the first appellate authority had allowed the appeal of the dealer-assessee in full and reduced the order of assessment to figures as admitted by the dealer-assessee. He also ordered that excess payment, if any, made by

the dealer-assessee was to be refunded to it as per the provisions of law.

3. Being aggrieved with the aforesaid order the dealer-appellant preferred this appeal while advancing its argument on the following ground.

The first appellate authority was wrong in confirming levy of entry tax on the scheduled goods purchased outside the State in view of the judicial pronouncement of the Hon'ble High Court of Orissa in the case of Reliance Industries Ltd. and others, reported in (2008) (1) OLR P-620 (O). Therefore, the order passed by him (first appellate authority) has to be annulled. Further, the deposit of entry tax on purchased scheduled goods out of own source was made by the dealer-assessee by mistake of law. Therefore, the same has to be refunded in particular circumstances of this case.

No cross-objection has been filed by the State in this case.

4. This appeal was heard *ex parte* because the dealer-assessee being the appellant in this case did not appear despite service of notice on him. The first appeal filed by him (the dealer-assessee) was allowed. The first appellate authority had elaborately dealt its grievance while determining its actual liability as admitted by it in its return then. In this situation we do not find any unreasonableness or infirmity in the conclusion arrived at by the first appellate authority who had reduced

the dues determined as per the order of assessment to the extent of figures admitted by the appellant. Thus, the order of the first appellate authority being remained virtually unchallenged and uncontroverted by the dealer-assessee is hereby affirmed.

5. In the result, the appeal is dismissed 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/-
(Rabindra Ku. Pattnaik)
Accounts Member-III