

2. The relevant facts of the case are that the dealer-Company is a manufacturer of High Carbon Ferrochrome (HCFC) and Silica Manganese. In course of assessment proceeding u/S. 10 of the OET Act, the books of account of the dealer-Company for the years 2007-08 and 2009-10 were cross verified alongwith returns filed. The assessment was completed by the assessing officer taking into consideration the Fraud Case Report submitted by Asst. Commissioner of Commercial Taxes, Enforcement Range, Balasore, with allegation of sales suppression. Accordingly, he (the assessing officer) concluded total sales suppression at `10,97,48,100.00 against the dealer-Company for the relevant periods and after computation of entry tax and penalty, he raised a demand of `32,92,443.00 in his order of assessment.

Being aggrieved with the order of assessment, the dealer-Company preferred appeal before the first appellate authority, who in turn rejected the appeal summarily u/R. 23(2) of the OET Rules and pay 20% of the tax demand as per the requirement envisaged u/S. 16(4) of the OET Act despite the same being pointed out to it.

3. However, none appeared from the side of the dealer-appellant despite notice. Learned Addl. Standing Counsel (CT) was present for the State. Hence, the matter was heard and disposed of exparte on merits.

4. It is submitted in the grounds of appeal, inter alia, that against the order of assessment the dealer-Company preferred first

appeal before the JCST, Jajpur Range for relief but due to financial constraints, the dealer could not deposit 20% of the tax amount assessed u/S. 16(4) of the OET Act for which it prayed time to deposit the same. But without allowing reasonable opportunity to the dealer for the same the appeal was rejected summarily.

Learned Addl. Standing Counsel (CT) appearing for the Revenue, however, supported the summary rejection order of the first appellate authority as just and proper in the facts and circumstances of the case since the dealer-Company did not comply the statutory provisions while preferring the appeal.

5. It is not disputed that the appeal preferred by the dealer-Company against the order of assessment was rejected summarily by the first appellate authority on the ground of non-removal of defects including non-payment of 20% of the tax demand. It is revealed from the impugned order that there was no response from the dealer-assessee despite grant of time twice on its (the dealer-Company) prayer for which learned first appellate authority rejected the appeal summarily. Before this forum also the dealer-Company neither appeared nor produced any document showing compliance of the defects as pointed out in the first appeal in the meanwhile. However, the Tribunal can entertain appeal against the order which has been passed by the first appellate authority under sub-Sec. (7) of Sec. 16 of the OET Act and not u/S. 16(4) of the OET Act or otherwise as happened in the present case. Therefore, the

party has to seek remedy on the present issue before the appropriate authority and not before this Tribunal.

6. In the result, the appeal is dismissed not being entertainable by this forum.

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/-
(Ranjit Kumar Rout)
Accounts Member-II