

Tax Act, 2004 (OVAT Act) for the tax period from 01.04.2005 to 31.05.2008.

2. The facts relevant to the context are that the dealer being a proprietorship concern deals with business of all types of bags, belts, caps and suitcases etc. There was a Fraud Case Report against the dealer-assessee bearing No. 26/2008 submitted by the STO (Vigilance), Cuttack Division with the allegations of purchase and sale suppression by the dealer. Learned assessing officer in course of confronting the FCR during the assessment proceeding found that the dealer had suppressed an amount of ₹77,39,997.95 towards purchase and sale suppression. Accordingly, he determined the GTO and TTO and thereafter calculated the VAT liability of the dealer at ₹29,79,706.00 including penalty for the relevant period under assessment. Being aggrieved with this order of assessment, the dealer preferred first appeal without depositing 20% of the disputed tax as per the statutory provision. In response to show-cause notices issued, learned Counsel for the dealer had appeared before the first appellate authority and expressed his inability to deposit 20% of the disputed tax on the ground of financial constraints. Consequently, learned first appellate authority summarily rejected the appeal on that score.

Against such order of the first appellate authority, the dealer-appellant preferred the present appeal before this forum. State has also filed cross-objection in this case.

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 *ex parte* on merits.

4. As contended by the dealer-appellant in the memo of his appeal depositing of 20% of the disputed tax may not arise if the preliminary objection regarding jurisdiction of the Circle Officer would be considered before passing any order of assessment. Further it has also been averred that a notice was issued to the dealer-assessee without enclosing any report of escaped turnover. Therefore, learned first appellate authority should have remanded the matter for fresh adjudication. Learned Addl. Standing Counsel (CT) appearing for the Revenue objected the aforesaid contentions of the dealer-appellant in course of hearing the matter and submitted that this forum is precluded from entering into the merit of the case and the finding, if any, should be confined to the impugned order of summary rejection only.

5. Before delving into the case, it is felt proper to refer the statutory provisions under the OET Act and Rules thereof in this regard which are as follows :-

Quote : **“Sec. 77.** Appeals –

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- (4) No appeal against any order shall be entertained by the appellate authority, unless it is accompanied by satisfactory proof of payment of admitted tax in full and

twenty per centum of the tax or interest or both, in dispute.”

“Rule 88. Summary rejection of appeal –

- (1) If the memorandum of appeal is not in the prescribed form or if all the requirements of the form are not fully complied with, the appellate authority may reject the appeal summarily, after giving the appellant such opportunity, as it may think necessary to rectify the defects.
- (2) The appeal may also be summarily rejected on other grounds for which an order in writing shall be passed by the appellate authority :
Provided that before an order rejecting an appeal is passed, the appellant shall be given a reasonable opportunity of being heard.”

In the present case, there is no dispute that the dealer-appellant had not complied the pre-condition of depositing 20% of the disputed tax for entertainment of its appeal despite opportunities being given to it and as such learned first appellate authority rejected the appeal summarily. Having regard to the above statutory provisions for entertainment of appeal and the fact of non-payment of statutory deposit of 20% of the disputed tax by the dealer-appellant, we find no illegality committed by the learned first appellate authority in rejecting the appeal preferred by the dealer-appellant summarily. Next so far as disposal of appeal on merit is concerned, it is the settled position of law that though non-consideration of the matter on merit may cause hardship and

injustice to a party yet it may not make possible for an authority to stretch too far to give benefit to an indolent party or to the defaulting dealer as in the present case and as such the Tribunal cannot go into the merit of the case in case of rejection of the first appeal summarily for the aforesaid reason. However, it can only examine the legality of the order passed by the first appellate authority in view of the decision of Hon'ble High Court of Orissa in the case of Sri Natabar Sahoo Vs. State of Orissa, [1983] 52 STC 194 (Ori.).

6. In the result, the appeal is dismissed being devoid of merit. Cross-objection 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/-
(Rabindra Ku. Pattnaik)
Accounts Member-III