

short, 'CST (O) Rules') in respect of the dealer-assessee pertaining to the tax period 2003-04.

2. The facts as revealed from the case record are as follows :

The dealer-assessee M/s. Baba Baidyanath Store carries on business in paddy, green gram, black gram etc. on wholesale basis. Pursuant to a notice issued u/R. 12(5) of the CST (O) Rules the dealer had appeared before the assessing officer through its Advocate and produced its books of account pertaining to the year 2003-04 for latter's verification. Accordingly the assessing officer examined the books of account of the dealer-assessee in detail and found that the dealer had effected purchases both from registered dealers as well as cultivators and sold to different rice mills against 'C' forms. The assessing officer on further scrutiny of the accounts of the dealer found that it (the dealer) had maintained purchase and sale accounts supported by relevant purchase bills and sale memos and further had effected its entire sales in course of inter-State trade and commerce to different rice mills. The dealer, however, could furnish 'C' forms for ₹61,72,759.00 only. The assessing officer had allowed the dealer to rectify the defective declaration as well as to furnish wanting declarations at the stage of its assessment but the dealer could not do so. The assessing officer then in absence of any adverse report against

the dealer had accepted the gross turnover (GTO) as returned by the dealer at ₹2,95,99,095.00 and then after allowing deduction of ₹61,72,759.00 towards sale of tax free goods (declared goods sold against valid 'C' declaration form) calculated its net turnover (NTO) at ₹2,34,26,336.00. Then he worked out the tax due on the above amount @ 8% which came to ₹18,74,106.88. As the dealer had already paid ₹65,000.00 he (the assessing officer) required it to pay the balance amount of ₹18,09,107.00 as per the terms and conditions of the demand notice sent to it.

Being aggrieved by this order of assessment the dealer preferred an appeal challenging the same before the first appellate authority. On perusal of the order of assessment and documentary evidence pertaining to the case vis-à-vis the grounds raised by the dealer in its appeal the first appellate authority held that the dealer could furnish 17 nos. of 'C' form in original before him as well as Government Way Bills which justified exemption for ₹2,84,96,278.00 in favour of the dealer-assessee. So far as the balance amount of ₹1,02,817.00 which was not being supported with Form 'C', he taxed the same @ 4% instead of 8% u/S. 8(2)(b) of the CST Act as the said turnover had suffered tax under the OST Act towards purchase tax @4%. The tax due on this amount thus came to ₹4,113.00. The dealer had paid ₹79,000.00 towards tax under the CST Act but the assessing

officer had accepted ₹65,000.00 only out of this amount as valid payment since PCR number in respect of the balance amount was not submitted to him. Thus on calculation of the tax dues in the aforesaid manner the first appellate authority reduced the demand to ₹4,113.00 with a direction to the assessing officer to adjust the same against any arrear dues to be paid by the dealer and to transmit the 'C' forms submitted before the assessment forum as well as before him to Intelligence Wing of the Department for necessary cross-verification at their forum.

3. The State being dissatisfied with the aforesaid order of the first appellate authority preferred this second appeal before the Tribunal challenging the same as arbitrary, illegal and bad in law. The State also took a plea that the first appellate authority had erred in levying tax @ 4% on sale of goods worth ₹1,02,817.00 which was not supported by 'C' form though the same should have been taxed @ 8% u/S. 8(2)(b) of the CST Act. The order of the first appellate authority, therefore, needs to be modified with a direction for levying tax @ 8% on sale of goods worth ₹1,02,817.00 as those sales were not supported by 'C' form.

No cross-objection has been filed in the instant appeal by the dealer-assessee.

4. In course of hearing of the appeal learned Standing Counsel (CT) appearing on behalf of the State submitted that the first

appellate authority should not have taxed the sale turnover of ₹1,02,817.00 @ 4% when that was not supported with Form 'C'. This sale turnover should have been taxed @8% as per the provisions contained in Sec. 8(2)(b) of the CST Act. After computation of total tax liability of the dealer the purchase tax paid by it should have been deducted as the goods involved in the transactions were declared goods.

Learned Counsel appearing on behalf of the dealer- assessee acceded to the aforesaid submission advanced on behalf of the State while submitting that the dealer has no issue if this forum would prefer to pass an order for levy of tax @ 8% on the sale turnover of ₹1,02,817.00 at this stage.

5. In view of aforesaid submissions in this appeal from both sides we are certain that fresh computation of tax liability of the dealer is required in the instant case. Therefore, even if we find that there would be very little change in the case on recalculation of the tax liability of the dealer for which learned Counsel for the dealer urged before this forum to recalculate the same and dispose of the matter here yet we feel it would be proper to remit the case to the assessing officer for computation of the tax liability of the dealer- assessee afresh by taking into account the only point that the sale turnover of ₹1,02,817.00 which was not supported with Form 'C' should be taxed @ 8% only without disturbing the rest of the observations made by the

first appellate authority in the instant case in any manner. The assessing officer after computing the tax liability of the dealer-assessee in the aforesaid manner for the relevant period would deduct the purchase tax already paid by the dealer in connection with this assessment from the calculated tax dues and require the dealer to pay the balance amount only after such deduction.

6. In the result, the appeal is allowed in part. The case is remitted to the assessing officer with a direction to complete the reassessment as per the directions given by this Tribunal in the foregoing paragraph. The assessing officer is further directed to complete the assessment within two months from the date of receipt of this order. The dealer in the instant case is also directed to cooperate with the assessing officer for completion of this reassessment in terms of this Tribunal's order within the stipulated time.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

I agree,

Sd/-
(Rabindra Ku. Pattnaik)
Accounts Member-III