

furniture, almirah, chair, table, multiflex systems, typewriters, electronic security items, safex etc. on wholesale and retail basis. In response to the notice issued u/S. 12(4) of the OST Act for the year 2000-01, the Sr. Branch Manager of the Company appeared and produced the relevant books of account of the business for verification of the assessing officer. In the assessment proceeding, learned assessing officer observed that against the deduction claimed on account of sales to registered dealers for `1,58,48,576.47, the dealer-assessee could produce the required declarations in Form-XXXIV to the tune of `1,04,75,407.36 only and thus, he (assessing officer) allowed some deductions on account of sales to registered dealers to the extent of declaration forms filed by the dealer-assessee but disallowed his claim for the balance amount of `53,73,169.11 and taxed the same at appropriate rate. Learned assessing officer also disallowed the claim of exempted sales and concessional sales since the dealer-assessee could not submit the required declarations in Form-II and Form-IV respectively and levied tax on the turnover appropriately. That apart, learned assessing officer in absence of any agreement treated the contract works to be supply contract and taxed the materials @ 16%. This resulted in extra demand of `9,54,266.00 on the dealer-appellant for the period under assessment.

Being aggrieved with the order of assessment, the dealer-appellant preferred first appeal contending that reasonable

opportunity had not been given to it to produce the declarations in Form-XXXIV, Form-II and Form-IV and further the assessing officer had arbitrarily disallowed the works contract transaction with Interim Test Range, Chandipur and taxed the goods as supply contract. However, learned first appellate authority considering the declarations in Form-XXXIV covering transaction worth `23,08,714.23 and Form-IV covering sale of goods to the tune of `84,381.60 filed by the dealer-assessee in course of hearing of appeal, had allowed the claim to that extent. Further, learned first appellate authority after considering two bills showing labour and service charges and materials supplied opined that the supply of goods being an unspecified item, it should be taxed @ 12% instead of 16% as done by the assessing officer. Accordingly, the tax demand was reduced to `5,60,453.00 on computation in the impugned order. However, not being satisfied with the aforesaid order of the first appellate authority, the dealer-assessee has come up with this second appeal before this forum.

3. Restricting the argument in course hearing of this appeal, learned Counsel for the dealer-appellant furnished 13 nos. of declaration in Form-XXXIV amounting to `9,83,961.87 with a prayer to accept the same on the ground that those forms could not be collected from the purchasers despite sincere efforts made by it then and as such, could not be produced before the authorities below for acceptance of its

claim. Learned Addl. Standing Counsel (CT) for the Revenue did not raise any objection for acceptance of the same but he submitted that the dealer-appellant should furnish the declarations in Form-XXXIV in original before the assessing officer for computation of tax liability only after the same are duly verified and found to be in order.

4. In the above premises, we deem it proper to remit the matter to the assessing officer with a direction to verify the Forms-XXXIV in original as regards genuineness of those and thereafter, to proceed for calculation of tax liability of the dealer-appellant in accordance with law.

5. In the result, the appeal is allowed and the impugned order is set aside. The matter is remanded to the assessing officer for consideration of Forms-XXXIV to be filed by the dealer-appellant in original and recomputation of tax liability afresh in accordance with law within a period of four months from the date of receipt of this order.

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