

convenience, these appeals are disposed of by this common order as these appeals arose out of common order of the first appellate authority passed in four numbers of appeal being upon similar facts and circumstances with different periods of assessment only in respect of the same dealer-assessee.

2. The facts as revealed from the record are that the dealer-assessee runs a Roller Flour Mill and in the process of carrying on its business it purchases wheat and after converting the same to atta, maida, suji etc. in the said Mill, it sells those items. The dealer was originally assessed for the year 1998-99 vide order dated 18.10.2000; for the year 1999-2000 vide order dated 10.01.2000; for the year 2000-01 vide order dated 28.01.2002 and for the year 2001-02 vide order dated 30.11.2002. Subsequently on the objection raised by A.G. (Audit) which alleged under assessment of tax dues by the dealer-assessee, the cases were reopened u/S. 12(8) of the OST Act in respect of the dealer's business establishment. As per the allegation against the dealer-assessee, the A.G. (Audit) in all these cases noticed that the dealer had made inflated claim regarding the outturn of bran which had consequential effect of reducing the outturn of atta, maida, suji etc. sold by it and resulted in understatement of taxable turnover which the dealer did for the purpose of evading the tax. Pursuant to this observation by the A.G. (Audit) in respect of the above assessment periods, the cases against the dealer-assessee were reopened u/S. 12(8) of the OST Act and notices were issued to him (the dealer-assessee) accordingly. In response to the

notices, the Director of the dealer appeared before the assessing officer and produced the books of account which were examined. The allegation of A.G. (Audit) that the dealer had claimed receipt of bran out of milling of wheat at a higher side than the norm fixed by the Department of Food, Supplies and Consumer Welfare, Govt. of Odisha in the Circular No. EC.I.WA.7/94- 43861 dated 06.12.1994 regarding the ceiling in respect of generation of bran from milling of wheat. Thus, keeping the ratio of the aforesaid circular in view, the assessing officer determined the GTO afresh at `1,47,69,144.63 and after allowing necessary deductions, demanded a sum of `1,15,041.00 for the year 1998-99. Similarly, the assessing officer determined the GTOs at `2,40,50,380.00, `1,21,03,905.50 and `2,04,92,809.00 and after allowing necessary deductions, demanded `2,06,945.00, `1,54,524.00 and `1,79,175.00 for the years 1999-2000, 2001-01 and 2001-02 respectively. Accordingly, fresh demand notices were issued to the dealer-assessee for making payment of tax dues as aforesaid.

Being aggrieved with the aforesaid findings of the assessing officer, the dealer-assessee preferred appeals before the first appellate authority. Learned first appellate authority took up all the four appeals together for hearing and disposed of the same by a common order dated 28.04.2006, which is now under challenge before this forum when State being the appellant. While disposing of the appeals preferred

by the dealer-assessee, learned first appellate authority came across that the assessing officer had reopened the assessments in respect of the aforesaid periods on the report of the A.G. (Audit) which suggested under assessment even though the assessing officer himself had not detected any of the aforesaid aberrations with the dealer-assessee during the assessment held u/S. 12(4) of the OST Act. The assessing officer subsequently changed his opinion when a Circular of the Food Supplies and Consumer Welfare Department dated 06.12.1994 specifying the percentage of outturn of bran in the milling of wheat while preparing atta, maida, suji etc.. Learned first appellate authority after perusing the said circular, however, came to know that the same was neither valid for the relevant periods under assessment nor could be accepted as a reasonable one for best judgment assessment because the percentage of outturn of bran in milling of wheat more often depends on several factors including the quality of wheat milled; the quality of products i.e. atta, maida, suji etc. coming out of the said wheat and also upon the technology used for milling. Thus, in the result, learned first appellate authority held that the difference between the outturn of bran in the audit report and that claimed by the dealer-assessee for the years in question without any other supporting evidence of under assessment did not justify the rejection of accounts and he (the first appellate authority) thus, allowed the appeals preferred by the dealer-assessee.

3. The State being aggrieved with the aforesaid findings of the first appellate authority came up with these appeals while asserting

that the order of Asst. Commissioner of Sales Tax is wrong, illegal and prejudicial to the interest of revenue. Further, the Sales Tax Officer after going through the norms envisaged in the Circular dated 06.12.1994 of the Food Supplies and Consumer Welfare Department concluded about the suppression on the part of the dealer-assessee when he (the Sales Tax Officer) found that the outturn ratio of bran in the dealer's establishment was more than 19% and then raised demand of tax dues holding this excess outturn relatable to atta, maida, suji etc. which are taxable goods. But the first appellate authority without any material discarded the aforesaid Circular of the Government as well as the finding of the assessing officer which is not legally tenable. Thus, learned Addl. Standing Counsel (CT) appearing for the State urged before this forum to set aside the order of the first appellate authority and restore the orders of the assessing officer. Cross-objection has not been filed by the dealer-assessee in these appeals.

4. In course of hearing the argument, learned Addl. Standing Counsel (CT) for the State reiterated the grounds of appeal whereas the learned Counsel for the respondent besides filing a written note of argument contended that the reassessment is not permissible on the drop of a pin or merely on change of opinion on similar facts. He apprised this Tribunal that when the materials and situation are same during the assessment u/S. 12(4) of the OST Act, reopening of assessment is not permissible. To fortify his argument, he cited the decisions of Hon'ble Apex Court rendered in the cases of State of Uttar

Pradesh & others Vs. Aryavertha Chawal Udyog & others, reported in [2016] 91 VST 1 (SC); Ravi Prakash Refineries (P) Ltd. Vs. State of Karnataka, reported in [2016] 93 VST 441 (SC); Binani Industries Ltd. Vs. ACCT, Bangalore & other, reported in [2007] 6 VST 783 (SC); and the decision of Hon'ble High Court of Orissa rendered in the case of Voltas Limited Vs. State of Orissa & others, reported in [2008] 15 VST 401 (Ori.).

5. There is no denial in the instant case that reassessment proceedings against the dealer-assessee were drawn up on the report of A.G. (Audit) who concluded suppression of tax dues by taking note of the percentage of bran relatable to taxable items in the establishment of the dealer during the relevant assessment years. The A.G. (Audit) arrived at such conclusion in terms of the aforesaid Circular issued by the Food Supplies and Consumer Welfare Department in the year 1994 which was supposed to remain in force only for one year. On perusal of the said Circular it can be gathered that the said Circular was issued to divert some stock of public distribution system wheat for conversion into suji, maida and resultant atta for onward distribution in RPDS (ITDP/DPAP Blocks) and PDS through Fair Price Shops and further that scheme was to continue for one year with a stipulation that further continuation of the said scheme would be considered after a review of the performances. In the said Circular, the percentage of bran, in terms of extraction ratio as per Government of India guidelines, was taken as 19%. Except this Circular which has already outlived its validity no other information

regarding its renewal has been placed before this forum. On the other hand, the business establishment of the dealer-assessee is found to have been assessed u/S. 12(4) of the OST Act in all the aforesaid relevant years and at that time no anomaly was noticed with the assessee either in respect of percentage of bran or otherwise in any manner whatsoever. There was absolutely no fresh material before the assessing officer to conclude that he had a justification to reopen the assessment except the fact that the Audit Report had pointed out understatement of some taxable items in terms of the percentage of bran only. The assessing officer had not made any effort to find out the quality of wheat utilized for conversion of the same to atta, maida, suji etc. and the process of milling carried on in the dealer's establishment at that time. Therefore, some difference in the percentage of bran only cannot justify that the dealer-assessee had actually suppressed the quantity of taxable items in order to evade tax during the relevant periods of assessment. In the aforesaid circumstances, it seems that the reassessments u/S. 12(8) of the OST Act were initiated against the dealer without proper application of mind on the part of the assessing officer and as such in the line of above decisions of Hon'ble Apex Court and Hon'ble High Court of Orissa it has to be held that learned first appellate authority had rightly set aside the orders of assessing officer by allowing the appeals preferred by the dealer-assessee for the aforesaid periods under assessment.

6. In the result, as discussed in the foregoing paragraphs, we find no reason to interfere and disturb the aforesaid findings of the first appellate authority. Accordingly, the appeals are dismissed.

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