

purchase was only Rs.1,57,719.00. Since the explanation of the Managing Director who appeared before the Sales Tax Officer was not satisfactory, STO accepted the above mentioned amount as suppression of purchase leading to suppression of sales. He multiplied the above suppression ten times and arrived at a figure of Rs.30,00,000.00 which comprises the bulk of enhancement to the gross turnover of sales admitted by dealer in periodic return. The assessing officer also found that the dealer has claimed deduction to the tune of Rs.52,90,614.00 on account of sale of scrap as first point tax paid goods. The assessing officer reasoned that since the dealer is producing scrap himself, he is the first point of sale inside the State and he cannot himself claim deduction from the turnover on account of first point tax paid goods. Thirdly, the assessing officer discussed a fraud case report bearing no. 10/2004-05 dated 31.07.2004 submitted by the STO, Investigation Unit, wherein charges of suppression of sale and purchase had been levelled against the present appellant dealer. According to the investigation, they have verified the physical stock of ingots, scrap and raw material and have found shortage against each category amounting to Rs.3,93,096.00. The assessing officer noted that the investigating officer have found the above discrepancy by eye estimation without resorting to actual way bill.

3. As per the prevailing law, i.e. note-1(a) of the list C of the OST Rate chart, the dealer is entitled for set off (adjustment) of tax paid on raw materials as per serial no.87 of the said list. Though the dealer has claimed set off of Rs.36,87,917.00 being the tax paid on purchase of raw material, the STO reduced it to Rs.27,71,138.00 to the extent of the interstate sale effected by the said dealer for which he is not entitled to avail adjustment under the OST Act.

4. Being aggrieved by the said order, the dealer filed the first appeal raising the issue stated above and the first appellate authority having found no merit in the appeal, dismissed it. Against this dismissal order, the appellant has filed this appeal on issues narrated supra.

5. The Advocate appearing on behalf of the appellant vehemently argued that the term 'other items' appearing in page no.3 of the assessment order, only represent nut bolts, welding rod, valves and screws which have nothing to do with raw materials or consumables or items which go into the composition of the finished product leading to suppression of sales. He further added that the term 'other items' are store items and are evaluated at the market price. He further added that the eye estimation of the visiting officials finding shortage of raw materials of 26.965 MT and scraps of 9 MT, finished product of pencil ingots of 1.976 MT are valued at Rs.3,93,096.00 which correspond to 33.231 MT of finished product. The finding of the officials on the basis of eye estimation is only .001% of the turnover of the dealer which is too negligible to be considered as a suppression.

On the issue of reduction of set off from Rs.36,87,917.00 to Rs.27,71,138., the appellant says that at the time of calculation, the learned assessing officer has taken into account tax paid on raw materials without taking into account tax paid on consumables.

6. Per contra, Mr. D. Behuria, the learned Counsel on behalf of the revenue vehemently urged that the enhancement of the turnover on the basis of purchase and sale suppression is justified and reduction of the total amount of set off on the basis of proportion to interstate sale is also justified, being based on good law.

7. We have gone through the assessment as well as the appellate order and have heard the rival parties. We have found that the allegations of purchase suppression emanates from the finding of the assessing authority in page-3 of his order wherein, an item namely 'other items' have been mentioned as having no opening balance but closing balance as Rs.3 lakhs. The assessing officer surmised that since the total purchase of the item is only Rs.29,091.00, the closing balance can never be Rs.3 lakhs under any circumstances. Therefore, the above category is

taken as purchase suppression. As stated above, the appellant has argued that the other items are in the nature of goods like nut bolt, screws, etc. which are neither raw material nor consumable which go into the composition of finished product or can represent as sale of goods. We find an inherent flaw in the reasoning of the assessing authority that 'other items' are in the nature of the raw material and consumables which go into composition of finished product and sold thereafter. He had taken no pains to find out whether the 'other items' are raw materials or consumables which are liable for levy of tax under the OST Act. Due to this fundamental error in the findings of the fact by the assessing authority, we are not able to persuade ourselves to accept the finding as a suppression of purchase or sale.

The second point of controversy is related to the claim of deduction on account of sale of scraps as first point tax paid goods. There is a finding of fact from the books of account of the dealer that he has purchased scraps worth Rs.3,33,61,220.00 and he has himself had produced scraps worth Rs.52,90,614.00. It has been alleged that the appellant has not paid any tax on the value of scraps generated by himself as by-product. On the contrary, he has claimed deductions as first point tax paid sale of scrap at Rs.5,03,288.00. We find that the appellant has no specific grievance against the above mentioned finding of the assessing authority and appellate authority and, therefore, the appeal is not to be accepted on that issue. Both the assessing and appellate authority are justified in not permitting to the dealer to avail deductions on account of sale of first point tax paid goods i.e. scrap, on the ground that the dealer uses scrap as a raw material which are purchased by him and sales scraps which are produced by him. Therefore, he is the first point himself inside the State and is liable to pay tax as per the provisions of the OST Act. He cannot claim deductions for the sale of scrap as first point tax paid goods as he is not a trader of scrap but a manufacture of MS ingots.

In so far as the reduction of set off from the claimed amount of Rs.36,87,917.00 to Rs.27,71,138.00 is concerned, we found that the dealer has a turnover under the OST Act at Rs.13,97,72,167.00, and under CST Act at Rs.4,22,21,304.00. The set off is available only in respect of sales inside the State of Odisha as per entry 87 of List-C of the OST tax rate. We have found that while arriving at the permissible set off, the learned assessing officer has adapted a ratio basing on total OST sales to total production multiplied by total OST paid on raw materials. The ratio arrives at Rs.27,71,138.00 which is in accordance with law.

On the basis of above discussions, we delete the enhancement of turnover Rs.30 lakhs from the enhanced turnover of Rs.14,32,75,455.00 as not being founded on correct findings of fact by the assessing and appellate authority. The other claims of the appellant on the issue of availing deductions on grounds of sale of scraps as first point tax paid goods and claim of entire tax paid on purchase of raw materials and consumables are rejected as having no merit.

8. On the whole, the appeal is allowed in parts.

Dictated and Corrected by me,

Sd/-
(Shri S.M.Dash)
Accounts Member-III.

Sd/-
(Shri S.M.Dash)
Accounts Member-III.

I agree,

Sd/-
(Shri A.K.Das)
Chairman.

I agree,

Sd/-
(Smt. S.Mishra)
Judicial Member-II

