BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No.28(V)/2018

(From the order of the ld. JCST (Appeal), Bhubaneswar Range, Bhubaneswar, in First Appeal Case No. AA(VAT)-106221522000149/ BH-I/2015-16, dtd.29.12.2017)

P r e s e n t: **Shri S. Mohanty,**
1st Judicial Member

M/s. Ceramic World,
Plot No.128, Sec.-A,
Mancheswar Industrial Estate,
Bhubaneswar-751010. ... Appellant

- V e r s u s -

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack. ... Respondent

For the assessment period: 01.07.2012 to 28.02.2014

For the Appellant ... Mr. R.C. Jena, Advocate
For the Respondent ... Mr. M.L. Agarwal, S.C.

Date of hearing: 09.10.2019 ******** Date of order: 09.10.2019

O R D E R

A confirming order in escaped assessment u/s.43 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) is under challenge at the instance of the dealer as appellant before this Tribunal, by way of this second appeal, for the prayer, to delete the demand raised towards tax due and penalty.

2. The instant dealer being a registered is engaged in trading of varieties of ceramic tiles and sanitary wares both on retail and

wholesale basis. The STO, Enforcement Range, Bhubaneswar in course of visit to the dealer's unit on 20.02.2014 detected suppressions in purchase and sale and stock discrepancies as well. Thereafter, treating the dealer as self-assessed u/s.39 of the OVAT Act, the assessing authority initiated escaped assessment proceeding u/s.43 of the OVAT Act on the basis of the tax evasion repot as above. During the assessment, the seized/retained documents depicting the clandestine business transactions were confronted to the dealer. Further, the unaccounted for sale in favour of one M/s. R.K. Enterprises was also being substantiated on the basis of statement of the proprietor of M/s. R.K. Enterprises. In the result, the assessing authority held the dealer guilty of suppression more fully described as follows:-

Sl. No.	Document/Items	Suppression related to purchase (in Rs.)	Suppression related to sale (in Rs.)	Total amount (in Rs.)
1	Retained documents Sl. No.1 i.e. 23 nos. of loose slips	NIL	164161.00	164161.00
2.	Retained document Sl. No.2 i.e. 31 nos. of loose slips	275492.00	33497.00	308989.00
3.	Retained document Sl. No.3 i.e. one delivery challan book	NIL	64000.00	64000.00
4.	Retained document Sl.No.4 i.e. one money receipt book	NIL	5000.00	5000.00
5.	Copy of ledger (Rinku ledger Account)	NIL	3792698.86	3792698.86
6.	Physical stock	25932.00	120530.00	146462.00
	Grand Total	301424.00	4179886.86	4481310.86

3. The dealer contentions has not substantiated and as a result, the escaped turnover was determined at Rs.44,81,310.86. The total taxable turnover for the escaped assessment period under question i.e. from 01.10.2012 to 31.03.2014 was determined at

Rs.23,12,02,132.90. Tax on it @ 13.5% was determined at Rs.3,12,12,287.94, adjusting the tax liability was calculated at Rs.2,97,89,509.00. Thereafter, adjusting the tax already paid of Rs.2,91,84,542.00, the balance tax due was calculated at Rs.6,04,967.00. Besides, the tax due penalty at Rs.12,09,934.00 as per sec.43(2) of the OVAT Act was also imposed. Thus, the total due from the dealer was raised at Rs.18,14,901.00.

4. Felt aggrieved by such assessment, the dealer carried the matter in appeal before the first appellate authority. Learned JCST (Appeal), Bhubaneswar Range, Bhubaneswar as first appellate authority vide impugned order confirmed the demand with his findings that, the contention of the dealer before the first appellate forum is not convincing.

Felt further aggrieved, the dealer preferred this second appeal. The contention of the dealer is, all the documents including the books of account were not verified even though the documents were duly produced for verification before the assessing authority and thereafter before the first appellate authority, so, the determination of suppression and enhancement of the GTO as calculated by both the fora below is erroneous. It is prayed for deletion of the demand towards tax and penalty.

5. The appeal is heard with Cross Objection. The Revenue has supported the findings of the first appellate authority as just and proper.

6. The facts raised for decision in this appeal are,

(i) Whether the first appellate authority is wrong in confirming the detection and calculation of suppression in the case in hand?

(ii) Whether the first appellate authority has mechanically rejected the contention of the dealer before him?

(iii) Whether the calculation of suppression is without any basis and without proper verification of books of account and connected documents in spite of the production of those documents before the fora below?

7. At the outset it is pertinent to mention here that, on a close perusal of the impugned order, as it revealed, the first appellate authority has gone in a slipshod manner by confirming the order of assessing authority. He has not analyzed the allegations of suppression on each count on proper scrutiny of the seized incriminating materials in comparison to the books of account and connected documents on production by the dealer. Both the fora below has not reflected what was the exact amount of disclosure by the dealer in its self-assessment. Learned Counsel for the dealer strenuously argued that, the dealer had filed returns in due dates and the returns so filed includes explicitly, all the suppressions as alleged. It is also argued that, both the authorities below have ignored the books of account and connected documents on a plea that, the documents are afterthought. It is well settled that, the particulars of suppression as per tax evasion report are to be supplied or confronted to the dealer only after production of the registers and documents/books of account etc. before the assessing authority. Once the dealer is supplied with the details of suppression then there is every possibility that the dealer can manipulate its' own registers so as to explain the incriminating documents seized by the Enforcement Wing. Likewise, where the dealer is found to have not produced the documents and registers before the assessing authority on being asked there production of those documents and registers in a later period can be treated as afterthought. However, it is not a settled principle but an inference under law in the case of escaped assessment. Here, the case of the

dealer is, in its self-assessment it has disclosed everything. The same could have been scrutinized by the first appellate authority. Similarly, the documents and registers produced also should have been verified by the first appellate authority. Yes, of course the authority below is at liberty to reject those documents if those are found afterthought but it cannot pass order mechanically. Here, the first appellate authority has not assigned any good reason behind the final result.

8. A fact finding authority is under statutory obligation to consider with due care, every fact for and against the petitioner and to record its finding in a manner which would clearly indicate as to whether the facts on which the order was passed have been established? Absence of the findings to disclose reasons in an order in the manner indicated above would render the order to be indefensible/unsustainable. Reason is the heart beat of every conclusion. In the absence of reasons the order becomes lifeless. Non recording of reasons renders the order to be violative of principles of natural justice. Reasons ensures transparency and fairness in decision making. It enables litigant to know reasons for acceptance or rejection of his prayer. It is statutory requirement of natural justice. Reasons are really linchpin to administration of justice. It is link between the mind of the decision.

9. In the case of **CCT Vs. Shukla & Bros. (2010) 4 SCC 785 (paras 20, 24 to 27) Hon'ble Supreme Court** held as under:

> "20. A Bench of Bombay High Court in the case of M/s. Pipe Arts India (P) Ltd. V. Gangadhar Nathuji Golamare (2008)6 Mah LJ 280, wherein the Bench was concerned with an appeal against an order, where prayer for an interim relief was rejected without stating any reasons in a writ petition challenging the order of the Labour Court noticed, that legality, propriety and correctness of the order was challenged

on the ground that no reason was recorded by the learned Single Judge while rejecting the prayer and this has seriously prejudiced the interest of justice. After a detailed discussion on the subject, the Court held: (Mah LJ pp.283-87, paras 8,10 & 12-22) "8. The Supreme Court and different High Courts have taken the view that it is always desirable to record reasons in support of the Government actions whether administrative or quasi-judicial. Even if the statutory rules do not impose an obligation upon the authorities still it is expected of the authorities concerned to act fairly and in consonance with basic rule of law. These concepts would require that any order, particularly, the order which can be subject-matter of judicial review, is reasoned one. Even in the case of Chabungbambohal Singh v. Union of India 1995 Suppl (2) SCC 83, the Court held as under: (SCC pp. 85-86, para 8) '8. ...His assessment was, however, recorded as "very good" whereas qua the appellant it had been stated "unfit". As the appellant was being superseded by one of his juniors, we do not think if it was enough on the part of the Selection Committee to have merely stated "unfit", and then to recommend the name of one of his juniors. No reason for unfitness, is reflected in the proceedings, as against what earlier Selection Committees had done to which reference has already been made."

Reason is the heartbeat of every conclusion. It becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Reliance is placed in the matter of Raj Kishore Jha Vs. State of Bihar & Ors. AIR 2003 SC

4664; Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors. (2008) 3 SCC 172; Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors. (2008) 9 SCC 407; State of Uttaranchal & Anr. Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana & Ors. (2009) 3 SCC 258; Mohammed Yusuf Vs. Faij Mohammad & Ors. (2009) 3 SCC 513; and State of Himachal Pradesh Vs. Sada Ram & Anr. (2009) 4 SCC 422].

In view of the authoritative pronouncement above, the irresistible conclusion in the impugned order is not sustainable in law.

Accordingly, it is hereby ordered.

The matter is remitted back to the assessing authority for assessment afresh as per the observation above. The assessing authority is requested to complete the remand assessment within a period of four months hence. The appeal is accordingly allowed.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

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