

relevant documents like sale statement, stock statement, payment details, returns filed by the dealer (as reflected in the assessment) found the dealer has paid less VAT of Rs.5,343.00. Similarly, on account of mismatch of ITC, the assessing authority found the dealer has availed ITC wrongly to the tune of Rs.46,798.00. Thus, the total tax payable by the dealer was calculated at Rs.5,436.00 (+) Rs.46,798.00 = Rs.52,141.00. Penalty at two times of the tax due at Rs.1,04,282.00 was also imposed, thereby the total demand against the dealer was raised at Rs.1,56,423.00.

3. Being aggrieved with such assessment, the dealer knocked the door of the first appellate authority who in turn vide impugned order did not interfere with the order of assessing authority, as a result, the tax due and penalty as determined by the learned assessing authority remained undisturbed. Being unsuccessful before both the fora below, the dealer knocked the door of this Tribunal by way of second appeal.

It is contended by the dealer that, disallowance of ITC due to mismatch of the figure between the selling dealer and the instant purchasing dealer is illegal and not sustainable. The tax due and penalty as imposed being not in accordance to law should be deleted.

4. The appeal is heard with Cross Objection from the side of the Revenue. In the cross objection, the Revenue has supported the confirming order of first appellate authority and urged for confirmation of the same.

5. From the rival submissions, the following questions framed for decision in this appeal.

- (i) if the first appellate authority is wrong in confirming the order of learned assessing authority that, the dealer has paid less payment of VAT of Rs.40,243.00;
- (ii) if the first appellate authority has committed wrong in confirming the order of learned assessing authority in

denying the ITC due to mismatch of figure between selling dealer and purchasing dealer.

6. With regard to the less payment of VAT, the allegation as per the AVR was, the dealer has made a less payment of VAT of Rs.40,243.00. However, the assessing authority has re-determined the same and found the less payment is at Rs.5,343.00. There is no discrepancy found in calculation of the VAT as it revealed from the chart appended to the order. Learned Counsel for the dealer could not point out any defect in the calculation of the VAT payable by the dealer. So far as the mismatch of ITC and disallowance of ITC thereon is concerned, it can safely be said that, the impugned order is a non-reasoned one, so to say the order of the assessing authority is also a non-reasoned one. The assessing authority has disallowed the ITC due to the reason of mismatch but has not elaborately discussed who is at fault and how this mismatch was calculated and on the basis of reconciliation of the tax collected by the selling dealer and tax paid by the present dealer. The impugned order is a mechanical one and it is found that, the first appellate authority has not even bothered to apply his mind to the grounds in appeal. So, it only can be said that, the findings of the first appellate authority cannot withstand in the eye of law.

7. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, 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].

8. Further, it is pertinent to mention here that, arithmetical error and calculation mistake are noticed in the order of the first appellate authority which needs to be rectified.

9. Similarly, it is also apt to mention here that, law is well settled that, in the event of mismatch of ITC figure, the purchasing dealer could not be denied to avail ITC for the fault of selling dealer in depositing the output tax in his return.

From the discussion hereinabove, in this case it is found that, this is a fit case where the matter should be remitted back to the assessing authority for determination of tax liability afresh. Hence it is ordered.

10. 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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