

report (AVR) with two no. of charges, one is excess stock of paddy, shortage of rice of different varieties and bran leading to unaccounted for purchase and sale estimated at Rs.4,60,219.62 and the other one is, suppression of purchase of empty gunny bags of Rs.3,45,344.00 leading to sale suppression of Rs.4,50,000.00. In the assessment, the assessing authority found both the charges brought in by the audit team are established then, he re-determined the GTO and TTO and the tax liability of the dealer after allowing the ITC available to the dealer. Ultimately, the dealer was found to pay balance tax of Rs.49,004.00 and penalty twice of the tax due at Rs.98,008.00 leading to total demand against the dealer raised at Rs.1,47,012.00.

3. Being aggrieved, the dealer knocked the door of first appellate authority who in turn vide impugned order i.e. an ex parte order, not only confirmed the allegation of suppression but also enhanced the tax liability from Rs.1,47,012.00 to Rs.9,08,245.00. When the matter stood thus, the unsuccessful dealer knocked the door of this second appellate forum with the contentions as follows.

The assessing authority in the case in hand was a part and parcel of audit team which submitted the AVR. So, in the case in hand, the assessment was conducted by a person having no jurisdiction to conduct the assessment. The order of the assessing authority is unreasoned order without application of mind. Both the forums below have committed an error by not taking into account the plastic bags purchased by the dealer as a packing material used for packing of paddy and rice. The assessment by the assessing authority and the appellate authority both are based on presumption and the assumption has no nexus with the exact quantity of transactions by the dealer. Once the dealer has produced the details of the sale/purchase statement, necessary documents and registers, the first appellate authority had no jurisdiction to apply best judgment principle. It is also contended that, the order being the ex parte one the dealer was not given proper opportunity of being heard and there was violation of principle of natural justice by not affording the dealer an opportunity to establish his case before the first

appellate authority. It is prayed to set aside the impugned order and the assessment order as well.

4. The appeal is heard with cross objection from the side of the Revenue. In the cross objection the Revenue has supported the findings of first appellate authority and pleaded for no interference with the order of first appellate authority.

5. The questions stuck for decision in this appeal are,

- (i) Whether the order passed by the first appellate authority setting the dealer *ex parte* in the case in hand is wrong and thereby principle of natural justice has been violated and if yes for the reason, the matter should be remitted back to the first appellate authority for disposal afresh;
- (ii) Whether the determination of the suppression by the first appellate authority and enhancement to the suppressed turnover by the first appellate authority is erroneous and liable to be set aside;
- (iii) What order?

6. With regard to the point No.1, learned Counsel for the dealer argued that, it is the first appellate authority has passed order setting the appellant before him *ex parte* intentionally. On the very day notice for passing, the dealer was present and filed show cause to the enhancement notice. The show cause filed by the dealer was duly received by the 'Dak' of the office but, the first appellate authority hurriedly passed the order setting the dealer *ex parte* on the very day.

Learned Addl. Standing Counsel on the other hand argued that, the show cause filed by the dealer which was received by the department on the same day was possibly placed before the concerned Clerk who receives all kinds of letters. The dealer or his authorized agent should have filed the show cause before the first appellate authority itself. The manner in which the show cause notice was submitted, it indicates the dealer has played a mischief by not filing the show cause before the first appellate authority who was supposed to hear the matter on the day. Rather, the show cause was

filed before a clerk of the taxing department and it indicates the dealer was not interested to participate in the hearing. Whether, the first appellate authority has given proper opportunity of being heard or not, the fact remains the dealer was present and filed a show cause to the enhancement notice given by the first appellate authority.

7. It is not the case of the learned Addl. Standing Counsel that, the show cause notice filed before the received clerk is not acceptable. Moreover, the fact remains, by allowing his own appeal heard *ex parte*, an appellant gains nothing. Remaining absent before the first appellate authority, the dealer has got no benefit but, an adverse order. So, a definite presumption cannot be drawn that, the dealer had intentionally remained absent and filed the show cause with the receiving clerk. On the other hand, it is well settled that, any forum, quasi judicial or judicial should make all endeavor for disposal of a dispute before it on merit so as to give a satisfactory, conclusive end to the *lis*.

8. In the case in hand, when we take consideration of the facts and circumstances above, it is found that, fresh opportunity of being heard before the first appellate authority should be given to the dealer by extending an opportunity of being heard to the dealer.

The dealer's contention regarding the suppression and determination of escaped turnover also cannot be taken up by this Tribunal because, thereby, the dealer will be denied one forum in his hand to which he had approached.

Thus, I am of the considered view that, this is a fit case where the matter should be remitted back to the first appellate authority for disposal afresh.

9. So far as the detection and determination of the suppression as held by both fora below, the Tribunal is not going to express any opinion for the simple reason that, the matter is remanded back to the first appellate authority for re-determination of the liability of the dealer on merit. Accordingly, it is hereby ordered.

The impugned order is set aside. The matter is remitted back to the assessing authority for disposal afresh as per the observation above.

Dictated & corrected by me,

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

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