



First Appeal Case No. AA 25/JSG/VAT/2016-17 on 20.06.2016. When the matter stood thus, a circular of Commissioner vide No.18034/CT dtd.30.11.2016 was published. Following the said circular, the Dy. Commissioner of Sales Tax, Jharsuguda Circle, Jharsuguda issued a letter No.7630/CT dtd.01.12.2016 to the assessee intimating thereby the fact that, the assessment order passed for the period 01.04.2013 to 31.03.2016 u/s.42A of the OVAT Act with demand of Rs.43,28,146.00 is dropped and the demand notice is withdrawn.

3. When the matter stood thus, the dealer has challenged vires of the circular of the Commissioner dtd.30.11.2016 mentioned above and to quash the letter dtd.01.12.2016 mentioned above. The Hon'ble Court vide its order dtd.16.03.2017 passed the following order.

“In the interim, we direct that no further action shall be taken against the petitioner pursuant to order dated 01.12.2016 vide Annexure-4 and such proceeding shall remain in abeyance until further orders.”

On this backdrop, when the dealer approached the first appellate authority but he did not took cognizance of the development of the dispute in interim and the consequential effect of the said order of the Hon'ble Court mentioned above in particular, proceeded with the hearing of appeal and decided the same on 28.02.2017. The appeal is ended with modification of period of assessment and remand of the matter to the assessing authority for assessment afresh. It is apt to mention here that, the first appellate authority has taken consideration of the direction of the Commissioner in the Circular and in consequence thereof, the tax period ending on/or before 30.09.2015 was kept out of the ambit of account u/s.42A of the OVAT Act thereupon, directed the assessing authority for assessment afresh.

4. When the matter stood thus, the dealer preferred this second appeal. The contention of the dealer is, keeping view the order of the Hon'ble Court in question, the first appellate authority has not kept the hearing of

appeal before him in abeyance instead, proceeded with the hearing of the appeal which is illegal and not sustainable in the eye of law.

5. The appeal is heard with cross objection. In the cross objection the Revenue has contended that, the authority is duty bound in implementation of the instruction issued by the circular of the Commissioner, so the first appellate authority has acted lawfully.

6. In the appeal in hand, it is to be seen that,

(i) whether the first appellate authority is wrong in proceeding with the hearing of the appeal and disposing the appeal without waiting for decision of the Hon'ble Court in W.P.(C) No.3625 of 2017?

(ii) what order?

7. At the outset, it is mentioned here that, the dealer has not raised any plea or not made any submission/argument on merit of the appeal. On the other hand, the impugned order as it revealed, the first appellate authority has also not gone into the merit of the appeal but, he has been swayed by the direction of the Commissioner in the circular and mechanically remanded the matter back to the assessing authority for assessment afresh.

8. A careful reading of the direction of the Hon'ble Court as it revealed, the validity of the circular of the Commissioner is under challenged before the Hon'ble Court. The Hon'ble Court has given a specific direction not to act upon the letter dtd.01.12.2016. The dealer has prayed for quashing of the said letter. In such view of the direction of the Hon'ble Court, it can safely be said that, the first appellate authority has committed gross illegality in proceeding with the hearing of the appeal. He should have kept the hearing of the appeal in abeyance till the decision of the Hon'ble Court in W.P.(C) No.3625 of 2017 preferred by the dealer. Thus, avoiding further discussion on this question, it is believed that, the matter should be remitted back to the first appellate authority with a direction to keep the appeal pending before him awaiting result of the W.P.(C) or any order of the Hon'ble Court whichever is earlier.

In the wake of above, it is ordered as follows.

The appeal is allowed on contest. The impugned order is set aside. The matter is remitted back to the first appellate authority, who will keep the appeal before him in abeyance awaiting/result of the W.P.(C) No. 3625 of 2017 direction from the Hon'ble Court in the matter.

Dictated & corrected by me,

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

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1<sup>st</sup> Judicial Member