

**BEFORE THE JUDICIAL MEMBER: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

S.A. No.49 (ET) of 2015-16

(From the order of the Id. JCST (Appeal), Cuttack II Range, Cuttack,
in First Appeal Case No. AA/CUII/VAT/42/2008-09,
disposed of on 30.03.2015)

**Present: Sri S. Mohanty,
2nd Judicial Member**

M/s. Pasupati Ispat (Pvt.) Ltd.,
At/P.O.- Jagatpur,
Dist.- Cuttack. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. R. Chhapolia, Advocate
For the Respondent ... Mr. S.K. Pradhan, A.S.C.

Date of hearing: 23.02.2019 **** Date of order: 23.02.2019

ORDER

The conforming order of reassessment u/s.10 of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) is under challenge in this appeal by the dealer as appellant on following grounds that,

- (i) the assessing authority has reopened assessment u/s.10 of the OET Act in gross violation of the mandate of the provision since there was no assessment preceded to this reassessment.
- (ii) the assessing authority has classified the item under wrong head as 'silicon magnesium', whereas, the goods are

bathroom fittings and are non-schedule goods not exigible to tax under OET Act.

(iii) the first appellate authority has not passed any reasoned order and thereby the principle of natural justice has not been duly extended to the dealer by the first appellate authority.

2. The facts in brief giving rise to the present appeal are, assessment for the period from 01.04.2007 to 31.03.2008 relating to the dealer M/s. Pasupati Ispat Pvt. Ltd., a dealer was reopened on the basis of fraud case report dtd.25.07.2008 received from ACCT, Enforcement Range, Cuttack. The allegation against the dealer was it had received/purchased/imported goods like FE (iron), SL (silicon) and MG (magnesium) for 4,33,855 MT from China amounting to Rs.1,63,64,426.20 during this tax period. But, it has accounted for only 16755 MT as imported goods i.e. FE, SL and MG amounting to Rs.2,41,578.00 vide bill of entry No.344609342007. In the reassessment proceeding, learned assessing authority confronted the allegation to the dealer and then on verification the dealer's plea like, the goods were bathroom fittings and were delivered in their branch office at Kolkata. Thereafter, the assessing authority on verification of the import figures received from Kolkata port found the goods were addressed to the present dealer's, so he treated the same to the tune of Rs.253657.00 as escaped turnover and then the taxing authority imposed ET @1% on the escape turnover calculated to Rs.2,536.57. Thereafter, penalty u/s.10(2) of the OET Act i.e. twice of the tax due calculated at Rs.5,073.14 was added to it and thus the total demand became raised to Rs.7,609.71.

3. Being aggrieved with such assessment, the dealer has preferred appeal before the First Appellate Authority/learned JCST (Appeal), Cuttack II Range, Cuttack as appellate authority vide impugned order dtd.30.03.2015 confirmed the order of assessing authority, thereby, the demand remained undisturbed.

4. On this backdrop, the dealer had preferred this appeal on the grounds mentioned above.

The appeal is heard without cross objection by the Revenue. However, Revenue has supported the impugned order as lawful and binding on the dealer in argument.

5. Before delving into the merit of the case in hand, it is felt necessary to go through the impugned order keeping view the ground taken in the appeal that, the first appellate authority has not passed any reasoned order as it goes to the root of the sustainability of the impugned. The appellant has claimed that, the order of the first appellate authority is cryptic and unreasoned one. Bare perusal of the impugned order, it is manifest on record that, the first appellate authority has not given any reason behind his conforming order. It appears, the first appellate authority has disposed of the whole matter glibly and briefly in few sentence. The first appellate authority being an extended forum of assessment, therefore, a litigant is entitled to a full and fare and independent consideration of the disputed questions before him. anything less than this is unjust to the dealer. There is no doubt that, in the present case the first appellate authority has fallen far short of what is expected of him as an appellate court and extended forum of assessment as well. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. The rule requiring reasons to be given in support of an order is like the principle of *audi alteram partem*, a basis principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with, it would not satisfy the requirement of law.

From above, the irresistible conclusion is, the case in hand should be remitted back to the first appellate authority with a direction to dispose of the appeal afresh by a reasoned order on judicious application of mind independence of the assessing authority.

6. Regard being had to the finding above, I am of the considered view that, findings on other questions raised in this appeal is redundant. Accordingly, it is ordered.

7. The appeal is allowed on contest. The matter is remitted to the first appellate authority for assessment afresh.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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