

2. The facts as revealed from the case record are that the dealer-assessee carries on business of works contract. Since the assessment of this dealer-assessee was pending for disposal notice was issued to it u/S. 12(4) of the OST Act. However, the dealer-assessee did not appear before the assessing officer for which the assessment was completed in its absence by the latter basing upon his best judgment on the materials available on record. Thus, on the basis of return filed by the dealer-assessee the assessing officer determined the GTO at `1,46,97,485.00 and then after allowing deduction of `44,09,245.50 towards labour and service charges, the TTO came to `1,02,88,239.50. On this amount tax @ 8% was calculated at `8,23,059.16 and surcharge @ 10% was calculated to `82,305.91. Then the assessing officer made a demand of `9,05,365.00 from the dealer-assessee in connection with this assessment.

Being aggrieved with this order, the dealer-assessee preferred an appeal before the first appellate authority on the grounds that the amount demanded from the dealer-assessee towards tax and surcharge was quite arbitrary, excessive and illegal and the same was not determined properly. That apart the order of the assessing officer was passed exparte against it without sending a notice to the dealer. Besides the above grounds the dealer-appellant also raised some other points

such as non-consideration of the TDS amount pertaining to its business which resulted in enhancement in the demand and since the order was not based in terms of the judgment rendered by the Hon'ble Apex Court in case of Gannon Dunkerly & Co. Vs. State of Rajasthan, reported in (1993) 88 STC 204 (SC), he (the dealer-assessee) pressed for quashing of the said assessment order and to maintain the figures furnished by it in the return. In order to hear the matter the first appellate authority issued a notice to the dealer-assessee fixing the date of hearing of the appeal on 29.12.2009 which was duly served upon the dealer-assessee. On receipt of the notice, the dealer-appellant filed a petition through its Advocate seeking adjournment of the case which was considered and the matter was posted to 22.01.2010 for hearing. On 22.01.2010 learned Advocate for the dealer appeared before the first appellate authority without books of account. Further the dealer was communicated to appear before the first appellate authority with requisite documents fixing the matter for hearing on 23.07.2012. As the dealer-appellant did not appear on that day intimation was given to it fixing the date of hearing of the appeal on 23.11.2013. The said intimation was received by the dealer on 19.11.2013. As neither the dealer nor its authorized representative appeared before the first appellate authority on the scheduled date of hearing, he disposed of the appeal on merit in absence of the dealer-assessee while confirming the order of assessment order passed by the assessing officer.

3. Being aggrieved with the aforesaid decision of the first appellate authority, the dealer-assessee preferred this appeal before the Tribunal on the ground that the assessing officer while passing an exparte order did not reject the books of account of the dealer-assessee and further the first appellate authority though posted the matter to 23.11.2013 for hearing yet disposed of the same on 21.11.2013 i.e. two days prior to the date of hearing which clearly indicates that the order was passed in absence of the dealer without affording it the opportunity of being heard. Therefore, there was a clear violation of natural justice in its case. The dealer-appellant thus urged before this Tribunal that as the assessment in question was not done properly the same should be set aside. The dealer-appellant also claims that it has all the necessary papers and documents in support of its case. Therefore, this case needs to be remanded for fresh assessment by the assessing officer.

Learned Standing Counsel (CT) for the State fairly submitted that in this case as revealed from the record the matter was posted to 23.11.2013 for hearing but the order of the first appellate authority reveals that the same was disposed of on 21.11.2013. Under such circumstances justice would serve its best if the matter would be remanded to the assessing officer for fresh assessment or else it may cause prejudice to the respondent.

4. After perusing the case record, the order passed by the first appellate authority and hearing the submissions advanced by the learned Counsel for dealer-assessee as well as learned Standing Counsel (CT) for the State it is felt that this matter needs proper assessment

keeping in view the decision of the Hon'ble Apex Court in the case of Gannon Dunkerly & Co. (supra).

5. In the circumstances we find good reasons to interfere with the order of the first appellate authority and also feel that it is a fit case which should be remitted back to the assessing officer for making fresh assessment.

6. In the result, the appeal is allowed and the impugned order of the first appellate authority stands set aside. The matter is remanded to the assessing officer for fresh assessment in accordance with law keeping in view the observations made supra within a period of four months from the date of receipt of this order.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Rabindra Ku. Pattnaik)
Accounts Member-III