

learned Sales Tax Officer, Bhubaneswar I Circle, Bhubaneswar (hereinafter referred to as, the learned STO) for the assessment period 01.10.2014 to 31.12.2014 u/r.12(1)9(b) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules).

2. The brief facts of the case are that:

The dealer-company in the instant case is duly registered under CST Act, 1957 within the territorial jurisdiction of the Deputy Commissioner of Sales Tax, Bhubaneswar I Circle, Bhubaneswar and filed quarterly CST returns in the said circle. During the assessment period the dealer has effected interstate sales through declaration form 'C' and claimed concessional rate of tax u/s.3(a) of the CST Act. During the impugned tax periods, the dealer had disclosed the GTO at Rs.10,50,719.00, NTO at Rs.4,26,069.00 and collection of CST of Rs.20,602.00 @ 2% in the return respectively. In the calculation sheet of assessment order u/r.12(1)(b) of CST(O) Rules, 1957, the STO has determined GTO and NTO at Rs.10,50,719.00 and Rs.10,30,117.00 respectively against interstate sales effected by the dealer through declaration form 'C' u/s.3(a) of the CST Act. It is observed from the calculation sheet of the said assessment

order that the dealer has produced forms 'C' worth of Rs.4,26,069.00 against interstate sale and accordingly the learned STO allowed the claim of concessional rate of tax against interstate sale disclosed on 'C' form production amount. Due to non-submission of balance statutory declaration forms 'C' of Rs.6,04,108.00, the learned STO determined the tax of Rs.30,205.40 @5% at state rate as prescribed u/s.8(2) of the CST Act, 1956 and on production of forms 'C' of Rs.4,26,069.00, there is determination of tax of Rs.8,521.38 @ 2% resulting total tax due of Rs.38,727.00 and raising a demand of Rs.18,115.00 after adjustment of tax paid amount of Rs.20,612.00 at the time of filing of returns..

3. Being aggrieved by the order of the learned STO, the dealer preferred an appeal before the learned JCST who enhanced the demand to Rs.25,354.00.

4. Being further aggrieved by the order of the learned JCST, the dealer has preferred the second appeal.

5. Cross objection has been filed by the State-respondent in this case.

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned first appellate authority. He has vehemently argued that both the assessment order and appeal order are contrary to law and

facts on record. The order of assessment as passed by the learned JCST, Bhubaneswar Range, Bhubaneswar u/r.12(b)(1) of the CST Rules, 1957 is illegal, arbitrary and against the principles of natural justice. The order as passed clearly reflects the vindictive attitude and revenue mindedness of the learned JCST. The imposition of tax u/r.12(3) and interest of the CST Act, 1956 amounting to Rs.25,354.00 of the tax due is illegal. The onus lies on the department to prove that the dealer-appellant produced E-1 form and the learned JCST without any consideration of such issue of forms, which is wrong calculation of adding to the GTO, is not permitted under CST Act but the learned JCST demanded tax and interest at the time of assessment, is grossly illegal. The dealer has filed the CST return regularly but the assessing officer demanded as per non-availability of form E-1 is highly illegal. The dealer has produced E-1 form amounting to Rs.6,16,128.00 along with 'C' form but the learned JCST without applying his mind not considered the submission put forth before him at the time of hearing. The learned Advocate for the dealer has prayed before this Tribunal to allow the appeal filed by the dealer and to set aside the order of the learned first appellate authority.

7. On the other hand, during the course of hearing the learned Standing Counsel Mr. M.L. Agarwal for the State argued that the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The learned first appellate authority has rightly passed the order on the basis of the factual position and as per the provision of law. The dealer-company in the instant case is duly registered

under CST Act in the territorial jurisdiction of Bhubaneswar I Circle, Bhubaneswar and the present demand raised because of non-submission of the statutory declaration forms. The dealer-appellant has utilised the tax due in absence of statutory forms for furtherance of his business. Hence, the learned first appellate authority has rightly imposed interest u/r.8(1) of the CST Rules. Hence the grounds on this score may be rejected. Hence, the learned JCST has rightly determined the tax liability as per the statute and grounds raised by the dealer-appellant are without any legal foundation. The order of the learned first appellate authority is crystal clear which is self-explanatory and requires no further interference. The grounds raised in the appeal petition being erroneous, unreasonable and unfair are liable to be dismissed in toto. So, the learned Standing Counsel has prayed before this Tribunal to dismiss the appeal filed by the dealer-appellant and to confirm the order of the learned first appellate authority.

8. Heard the learned Advocate Mr. M.K. Panda appearing on behalf of the dealer and learned Standing Counsel Mr. M.L. Agarwal on behalf of the State. Gone through the grounds of appeal submitted by the dealer and cross objection filed by the State-respondent, the impugned orders of appeal and assessment and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion that the points raised by the learned Advocate for the dealer is quite genuine and satisfactory and this a fit case where the matter

should be remanded back to the learned first appellate authority to recompute the tax liability of the dealer after making proper verification of the documents filed by the dealer. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the learned first appellate authority is hereby set aside. The matter is remanded back to the learned first appellate authority to recompute the tax liability of the dealer as per the provision of law after giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order. The learned FAA is to verify the genuineness of the documents filed by the dealer thoroughly. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated & corrected by me,

(Sweta Mishra)
2nd Judicial Member

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