

Act, 1999 (hereinafter referred to as, OET Act) are taken up together in the peculiarity of the circumstance detailed below vide this common order.

2. The dealer was assessed u/s.12(4) of the OST Act for the assessment year 2003-04. The dealer is a trader of gold ornaments under the name and style of M/s. Tarini Jewellers. For the period under assessment, the dealer had affected total purchase of Rs.3,08,582.00 and sale of Rs.1,91,900.00. Out of the total purchase, purchases from outside the state is Rs.71,365.00 and interstate purchases was Rs.2,37,217.00. On verification of the relevant documents, the assessing authority found the dealer had not added making charges while calculating the turnover for payment of tax. The making charges ascertained from the dealer was Rs.22,650.00 and the same was added to the sales turnover as disclosed by the dealer, thereby the GTO was determined at Rs.2,14,550.00, deduction of Rs.1,900.00 was given, resulting thereby the TTO determined at Rs.2,12,650.00. Tax under OST Act @ 1% on it was calculated at Rs.2,12,650.00, surcharge @ 10% of the tax due was levied at Rs.212.65. Thus, the total tax and surcharge became calculated to Rs.2,339.15. The dealer having paid tax at Rs.1,000.00, he was found required to pay the balance tax of Rs.1,339.00.

Similarly, in the OET assessment the dealer was found liable to pay tax at Rs.3,086.00.

3. Being aggrieved with the aforesaid assessment and demand, the dealer knocked the door of first appellate authority by way of two separate appeals challenging, in one, the OST assessment and in the other the OET assessment. The first appellate authority in the impugned orders confirmed the order of assessing authority, thereby the demand as raised under the OST Act and under the OET Act remained undisturbed.

4. On the above backdrop of the case, the dealer preferred these two numbers of second appeals. One against the continuing order of assessment under the OST Act and other one is against the confirming order of assessment under the OET Act both by the first appellate authority.

The questions raised by the dealer in the OST appeal are, the dealer is not a manufacturer. The addition of manufacturing cost to the TTO by the assessing authority and confirmation of the same by the first appellate authority is also illegal. Further, it is claimed that, payment of admitted tax of some amount was not duly taken into consideration while calculating the total tax due, for which recalculation is necessary.

On the other hand, in the appeal against the OET assessment, the dealer's plea is, the very initiation of the OET assessment without notice of OET assessment vitiates the entire assessment under OET Act. The determination of TTO under the OET Act which is a consequential to OST Act is also not sustainable in view of the incorrect calculation of the TTO.

5. **Findings**

At the outset, it is pertinent to mention here that, while going through the impugned orders passed by the first appellate authority, it is felt necessary not to enter into detail discussion of the dispute questions raised for decision on the basis of the grounds in appeal. It is found that, the first appellate authority has simply confirmed the order of assessing authority. The impugned orders are very cryptic. The pleas raised by the dealer were not dealt with by the first appellate authority but only confirming the assessment order.

6. For better appreciation the findings portion of the impugned order is reproduced herein below.

OST Appeal

“Heard the case, perused the assessment order, gone through the grounds of appeal. As learned STO has rightly and correctly assessed tax payable by the dealer appellant, I am not inclined to interfere in the assessment order passed by the learned STO.”

OET Appeal

“In the result, the order of assessment being appeared correct and proper is confirmed and appeal failed.”

Law is well settled that, relief/reliefs granted by an order of judgment is to be gathered from the reading of the entire order.

Here, it is found that, the first appellate authority without giving any finding has simply confirmed the order of assessing authority.

7. A fact finding authority is under statutory obligation to consider with due care, every fact for and against the petitioner and to record its finding in a manner which would clearly indicate as to whether the facts on which the order was passed have been established? Absence of the findings to disclose reasons in an order in the manner indicated above would render the order to be indefensible/unsustainable. Reason is the heart beat of every conclusion. In the absence of reasons the order becomes lifeless. Non recording of reasons renders the order to be violative of principles of natural justice. Reasons ensures transparency and fairness in decision making. It enables litigant to know reasons for acceptance or rejection of his prayer. It is statutory requirement of natural justice. Reasons are really linchpin to administration of justice. It is link between the mind of the decisi. In the case of CCT Vs. Shukla & Bros. (2010) 4 SCC 785 (paras 20, 24 to 27) Hon'ble Supreme Court held as under:

"20. A Bench of Bombay High Court in the case of M/s. Pipe Arts India (P) Ltd. V. Gangadhar Nathuji Golamare (2008)6 Mah LJ 280, wherein the Bench was concerned with an appeal against an order, where prayer for an interim relief was rejected without stating any reasons in a writ petition challenging the order of the Labour Court noticed, that legality, propriety and correctness of the order was challenged on the ground that no reason was recorded by the learned Single Judge while rejecting the prayer and this has seriously prejudiced the interest of justice. After a detailed discussion on the subject, the Court held: (Mah LJ pp.283-87, paras 8,10 & 12-22) "8. The Supreme Court and different High Courts have taken the view that it is always desirable to record reasons in support of the Government actions whether administrative or quasi-judicial. Even if the statutory rules do not impose an obligation upon the authorities still it is expected of the authorities concerned to act fairly and in consonance with basic rule of law. These concepts would require that any order, particularly, the order which can be subject-matter of judicial review, is reasoned one. Even in the case of [Chabungbambohal Singh v. Union of India](#) 1995 Suppl (2) SCC 83, the Court held as under: (SCC pp. 85-86, para 8) '8. ...His assessment

was, however, recorded as "very good" whereas qua the appellant it had been stated "unfit". As the appellant was being superseded by one of his juniors, we do not think if it was enough on the part of the Selection Committee to have merely stated "unfit", and then to recommend the name of one of his juniors. No reason for unfitness, is reflected in the proceedings, as against what earlier Selection Committees had done to which reference has already been made."

Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Reliance is placed in the matter of Raj Kishore Jha Vs. State of Bihar & Ors. AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors. (2008) 3 SCC 172; Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors. (2008) 9 SCC 407; State of Uttaranchal & Anr. Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana & Ors. (2009) 3 SCC 258; Mohammed Yusuf Vs. Faj Mohammad & Ors. (2009) 3 SCC 513; and State of Himachal Pradesh Vs. Sada Ram & Anr. (2009) 4 SCC 422].

8. A forum cannot be denied to a litigant. So, there is no reason before this Tribunal to decide this appeal on merit as the impugned order does not contain any finding with reasons. It is a fit case where the matter should be remitted back to the first appellate authority for disposal afresh with a reasoned order. Accordingly, it is hereby ordered.

9. The appeal is allowed. The impugned order is set aside. The matter is remitted back to the first appellate authority for disposal afresh by a reasoned order. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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