BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 267 (V) of 2017-18

(Arising out of the order of the learned Addl.CST (Appeal), South Zone, Berhampur, in Appeal Case No. AA(VAT)-03/2016-17, disposed of on dtd.28.07.2017)

P r e s e n t: **Shri S. Mohanty,**
1st Judicial Member

M/s. United Electricals & Engineering Pvt. Ltd.,
At:- NH-5, Ankuli Bye Pass, Berhampur,
Dist.- Ganjam. ... Appellant

- V e r s u s -

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

For the assessment period: 01.04.2012 to 31.03.2014

For the Appellant ... Mr. C.R. Das, Advocate
For the Respondent ... Mr. M.L. Agarwal, S.C.

Date of hearing: 31.05.2019 ******** Date of order: 31.05.2019

O R D E R

This appeal is against a confirming order of first appellate authority in an assessment u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) relating to the dealer, a registered TIN dealer under the name and style of M/s. United Electricals & Engineering Pvt. Ltd. for the tax period 01.04.2012 to 31.03.2014.

2. The facts giving rise to this appeal are, on the basis of audit visit report the dealer was subjected to audit assessment. The audit reported suggested for the assessment for reasons like, (i) the dealer, in the execution of works contract has calculated output VAT at a flat rate of 5% which is

wrong. The output tax should be appropriate with the rate of goods used in the works contract, (ii) the dealer though claimed payment of tax by way of TDS amounting to Rs.10,54,808.00 but could furnish the TDS certificate showing deduction of tax of Rs.9,85,222.00 only, (iii) the dealer is guilty of late filing of return attracting penalty u/s.34(2) and 34(3) of the OVAT Act and (iv) the dealer is liable to pay interest u/s.34(1) of the OVAT Act for delay payment of admitted tax and the dealer is liable to the differential tax for non-filing of TDS certificates and on imposition of rate of tax at a flat rate.

3. In the assessment, the assessing authority determined the tax due from the dealer, then imposed penalty u/s.42(5) and ultimately the demand against dealer raised at Rs.35,63,848.00. As against the aforesaid assessment, the dealer preferred appeal before the first appellate authority. Learned Addl. Commissioner of Sales Tax (Appeal) as first appellate authority vide impugned order confirmed the order of assessment.

4. Thereafter, being unsuccessful before both the fora below, the dealer preferred this second appeal challenging the sustainability of the confirming order of first appellate authority.

5. The main contention of the dealer is, there is no discrepancy in the maintenance of books of account by the dealer. The dealer has executed works contract as awarded. The materials used in the said job work falls under different tax group i.e. tax free goods to the extent of 5% of the work, 5% taxable goods to the extent of 65% of the work and 13.5% rate of tax to the extent of 30% of the job work. Under bona fide belief, the dealer has discharged the tax liability @ 5% at a flat rate. So, the issue involves in this case is the classification of the goods and the appropriate rate of tax and for no willful or intentional act to avoid the payment tax, the dealer should not be levied with penalty in the case in hand.

6. The appeal is heard with cross objection from the side of the Revenue, whereby the Revenue has supported the case of the dealer.

7. Before delving into the disputed questions raised by the dealer in this appeal bare perusal of the impugned order as it revealed, a fair lengthy more to say, an order of sixteen pages by the first appellate

authority culminates with a finding and reasons thereof with few lines. The order is very cryptic one. For better appreciation the findings portion of the impugned order is reproduced herein below.

> "On going through the assessment order it is noticed that the ld. A.O. has completed the audit assessment basing on the observation of audit team with reference to the supporting documentary evidences produced by the dealer company. In the orders of assessment in the absence of detail statement of materials used in the work i.e. tax group wise the ld. A.O. levied tax @ 13.5% & @ 5% equally on the net sale value of the taxable good against the disclosed tax rate of 5% of the appellant company. At the appeal hearing stage the ld. Advocate of the appellant company could not furnish statement of materials utilized in tax group-wise and in the contest the opinion of the forum is that the ld. A.O. has rightly assessed the appellant company under the OVAT Act which needs no interference."

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 has cited so many judgments regarding the situation where penalty should not be imposed. But in the result, without giving any finding whether penalty is to be imposed in the case in hand or not, he has simply confirmed the order of assessing authority on the question of penalty. In the similar manner, the first appellate authority has also held that, the assessing authority has completed assessment on the basis of observation of the audit team with reference to the documents. In absence of the detail statement of the materials tax group-wise used in the work, the levy of tax by the first appellate authority is appropriate.

8. 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. Faij Mohammad & Ors. (2009) 3 SCC 513; and State of Himachal Pradesh Vs. Sada Ram & Anr. (2009) 4 SCC 422].

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

10. 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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