

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES: ORISSA; CUTTACK

No. 15666 /CT
IV (I) 286/10

Dated 11-09-12

CIRCULAR

Sub: Issue of statutory notices, conducting assessment proceedings, passing of order under statutory provisions.

It is noticed that in some cases, assessment proceedings are being conducted in a casual manner, inviting adverse remarks from the Hon'ble High Court of Orissa. Some of the common observations of the High Court are, mis-match between order-sheet and order issued; antedating of notice & orders and wrong exercise of jurisdiction by authorities.

Tax authorities when performing quasi judicial functions have the semblance of a court and accordingly they are required to discharge the duties enjoined upon them under the statute in accordance with the norms of the judicial procedure. The statutory proceedings are conducted as per the provisions of Order-V of the Civil Procedure Code which is commonly followed by all other courts of India. The ingredients of Order-V of CPC are built into the frame work of statutory Acts & Rules. The only thing left to the assessing authorities is that such proceeding should be conducted following the rule of fairness and principles of natural justice which are very soul of quasi-judicial proceedings.

It is common knowledge that a statutory proceeding commences with the issue of notice and ends with the passing of order. Wrong issue of notice, mention of wrong section, inordinate delay in service of notice vitiates proceeding. The mode of service should be clearly indicated in the order-sheet and compliance of the order is to be mentioned in the compliance column of the order-sheet by the Bench Clerk. If the notice is affixed, the signature of witness is to be recorded; and a statement of the processor server is to be recorded as to the time, and place of affixture of notice.

The authorities exercising judicial powers are expected to record all the happenings related to a proceeding in an unbiased and dispassionate manner as the event start to arise and unfold before them. They should be mindful to record Sl. No. and date of the order of the proceedings. They must record the names of the persons present and the arguments made by them. The proceedings must be

signed with a date. If the order is of an interim nature, the date of adjournment should be clearly mentioned. The order should be let known to the dealer who had participated in the proceedings. His signature should be obtained in the order-sheet as a token of proof of notice of the order. The Bench Clerk must put up the file on the next date of hearing and the officer will record the proceeding in the similar manner as above. The order should not be reserved for more than 2 (two) weeks which would be the time for dictating, typing and proof reading of the printed order. Any correction in the order as well as in the order-sheet should be signed. No blank page is to be kept in the order as well as in the order-sheet. Every page of the order is to be stamped and signed. The mode of service i.e. process, registered post with AD, service through advocate or through affixture is to be mentioned in the order-sheet. The date of service of the order is also to be mentioned to avoid allegation of antedating.

It is to be borne in mind that tax proceedings must be conducted in a disciplined manner. The records of the proceedings are to be carefully maintained as they are liable to be produced before the High Court in certiorari proceedings as a part of lower court record. If the records are ill-kept or if there are mis-matches between the order-sheet and order, the High Court in exercise of its power under Article 226 of the Constitution of India, apart from quashing the order may draw adverse inference against the officer which may also give rise to disciplinary proceedings by the Department.

It is, therefore, instructed that the statutory proceedings must be conducted following judicial discipline as stated above. Any deviation henceforth will be seriously viewed and will carry disciplinary liabilities.

Sd/-
(Manoj Ahuja)
Commissioner of Commercial Taxes,
Orissa, Cuttack