

This is an second round of litigation between the parties as on earlier occasion vide S.A. No.310 of 2009-10 and 311 of 2009-10, this Tribunal had remanded the impugned matter back to the assessing authority to consider the questions like, whether the assessment order was passed beyond the period of limitation and consequently in remand case, the first appellate authority has held that, the orders are antedated passed beyond the period of limitation and accordingly quashed.

4. The contention of the dealer is, the assessing authorities are working under pressure. When there is involvement of huge public money, the orders of assessment should not be scratched on technical grounds and the findings of the first appellate authority is perverse. The first appellate authority should has properly enquire into the cause of delay but quashed the assessment mechanically.

The appeal is heard without cross objection.

5. The main contention of the dealer before the first appellate authority touching the sustainability of the orders are, the orders were passed beyond the period of limitation though those were shown to have passed within the period of limitation. Further, the orders were passed exparte on the printed forms by filling up the blanks, so the orders are otherwise not sustainable in law.

6. In the impugned order the first appellate authority has held that, in the light of the provision u/r.28(3) of the OST Rules as it has been inserted to the text book w.e.f. 21.07.2001. The cases pending under sub-section (5) or (8) of Sec.12 shall be disposed of within one year from the date of commencement of the OST Rules, 2001, whereas the cases under said sub-section instituted thereupon shall be disposed of within two year from the date of such institution.

7. In the case in hand, on verification it is found that, the notice u/s.12(5) of the OST Act was issued on 21.06.2004 and 07.11.2005 relating to tax period 12/2003 to 03/2004 and 06/2004 to 03/2005 respectively. The notices were served by the dealer on 02.07.2005 and 17.11.2005 respectively. Impugned order of assessment was passed on 17.06.2006. The claim of the

dealer was, the assessment orders were antedated and in fact passed beyond the statutory period of limitation of two years. It is found that, the order of assessment was shown to have passed on 17.06.2006 but it was issued on 17.05.2007 i.e. after a period of eleven months. Such delay in dispatch of notice indicates that, the assessment orders were not prepared within the stipulated period of limitation. With this finding, the first appellate authority has quashed both these orders.

8. Rule 28(3) of the OST Act reads as follows:-

“(3) The cases pending under sub-section (5) or sub-section (8) of Section 12 of the Act shall be disposed of within one year from the date of the commencement of the Orissa Sales Tax (Amendment) rules, 2001 and cases under the said sub-section instituted thereafter shall be disposed of within two years from the date of such institution.”

9. Drawing attention of the Bench to the date of institution, disposal and communication of the order passed in the proceeding u/s.12(5) of the OST Act, learned Counsel for the dealer argued that, the order is passed beyond the period of limitation as contemplated u/r.28(3) of the OST Rules and there was inordinate delay in dispatch of the order to the dealer to establish that, the order was an antedated one. He placed reliance in the matter of **State of Andhra Pradesh Vrs. M. Rama Kishtaiah & Co. 93 STC P. 406** and **Chandurika Saw Vrs. STO, 81 VST P. 83**. In the earlier judgment, the Hon'ble Apex Court has held that, when there is no reasonable explanation whatsoever regarding the ten and half months delay in service of assessment order on the dealer, Court must presume that the order was not made on the date it purports to have been made whereas, in the later decision the Hon'ble Court discarded the assessment order treating it to be an antedated one, as there was a delay of more than eleven months in communicating the order of assessment to the dealer. In the case in hand, it is found that the order was passed on 17.06.2006 but issued on 17.05.2007. In the case in hand, there is no reasonable explanation by Revenue under what circumstances, the order passed on 17.06.2006 was not dispatched till 17.05.2007. In the light of the observation of the Hon'ble Court and Apex

Court, when the delay in dispatch of the order in the case in hand is considered, a definite presumption can be drawn that, the order was not passed even on 17.06.2006 as it purports to have been prepared.

10. Learned Addl. Standing Counsel Mr. Raman broadly argued that: The provision is not mandatory but directory, when technically is pitted against substantive justice, cause of letter must override the former, Court should be liberal in the matter of delay caused by Government officials.

11. It is settled law that, in a case where the statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. There always exists a presumption that the Legislature has not used any superfluous words. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the Legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used which are disabling in nature the Courts will presume that the intention of the Legislature was that the provisions are mandatory in character. Reference may be had in this regard to the decision of the Apex Court in the case of **E. Palanisamy Vrs. Palanisamy (Dead) by Lrs. and others, (2003) 1 SCC 122.**

To sum up, from the order sheet and from the final order in original record, we are, inclined to accept the submission of the learned counsel for the dealer that the order was not passed within two years from the date of initiation/institution. Be that as it may, it is held that the order is rightly vitiated as barred by limitation. Accordingly, it is ordered.

12. Both the appeals are dismissed on contest as devoid of merit.

Dictated & corrected by me,

(S. Mohanty)
1st Judicial Member

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