

this Tribunal had remanded the impugned matter back to the first appellate authority to answer the questions like, whether the assessment order was passed beyond the period of limitation? Consequently, in remand case, the first appellate authority has held that, the orders are antedated passed beyond the period of limitation. Resultantly, the first appellate authority quashed the orders of assessments.

4. The contention of the dealer is, the assessing authorities are working under pressure. There is involvement of huge public money, so the orders of assessment should not be quashed on technical grounds. The findings of the first appellate authority is illegal. The first appellate authority should have 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 is, the orders were passed beyond the period of limitation. Though were shown to have passed within the period of limitation but in fact those were prepared in a later period as it is established from the date of issue of order i.e. 11 months after the so called date of order. Further, the orders were passed exparte on 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. Undisputedly, in the case in hand, the notices u/s.12(5) and u/s.12(8) of the OST Act were 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 to the dealer on 17.05.2007 i.e. after a period of eleven months. Such inordinate delay in dispatch of notices indicates that, the 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) and 12(8) 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 were 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 on 17.06.2006 as those purport to have been prepared.

10. Learned Addl. Standing Counsel Mr. Raman 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. Law is well settled 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.**

With the authoritative pronouncement above reverting to the case in hand, there is not escape from the conclusion that, the orders were not passed within the statutory period. 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,

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

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