



12(4) of the Odisha Sales Tax Act, 1947 (in short 'OST Act') for the period 2004-05.

2. The facts as revealed from the case record are that the dealer-assessee named and styled as "M/s. Kinetic Engineering Ltd., Berhampur" is involved in purchase and sale of two wheelers and its spare parts of kinetic brand. A notice was issued to the dealer u/S. 12(4) of the OST Act for production of books of account but it failed to produce the same before the authority concerned. Then intimations were issued to the dealer-assessee to produce the accounts which also it failed to do but at times sought adjournments by filing petitions. Having no other option the assessing officer completed the assessment exparte on the basis of materials available on record. The dealer had filed periodical returns for the year 2004-05 disclosing its GTO at `9,32,14,747.14 and TTO at `8,48,63,566.64. The OST and surcharge were shown as `10,18,362.56. The TTO comprises sales value of `8,08,70,482.00 and entry tax collection of `39,93,084.64. The assessing officer could find from the materials available in the record that the firm had 608 nos. of two wheelers of different models worth `1,25,05,728.00 as on 01.04.2004. It got 5380 nos. of vehicles on stock transfer basis and sold 5197 nos. of vehicles while transferring 294 vehicles to other branches outside the State dealers on stock transfer basis during the

assessment while leaving balance 497 numbers of vehicles worth `75,31,735.00. On verification of statement available in the record the assessing officer could notice that the dealer-firm had not reflected the true and correct picture of its business transactions as it had shown less numbers of purchase and more number of sale which led the assessing officer to doubt its transaction during that relevant period. Ultimately after due calculation the assessing officer determined its tax liability for the relevant period and since the dealer had already paid some amount towards tax he required it to pay the balance amount of `20,35,152.00 as per the terms of the demand notice sent for the relevant assessment period.

Being aggrieved with this order the dealer preferred an appeal before the first appellate authority. But the first appellate authority also came to the same conclusion as the assessing officer so far as tax liability of the dealer-assessee is concerned and confirmed the order of assessment.

3. The dealer-assessee then came up with the present appeal before this forum on the ground that the first appellate authority was unjustified in confirming the order of assessment without deciding the vital points raised before him at the time of hearing of the appeal. He categorically challenged the order of assessment on the ground of

the same being ante-dated and contended that the forums below had erred in law by not granting the benefit of set off of entry tax already paid by the dealer on the opening stock of vehicles which were sold during the relevant period. The authorities below without pointing out a single instance of purchase and sale suppression enhanced the amount of turnover which is absolutely illegal and they should not have drawn adverse inference in respect of its business transaction when it had offered plausible explanation for sale of 60 nos. of Safari V260 Code o.v28 model vehicles before the first appellate authority.

4. In course of hearing learned Counsel appearing on behalf of the dealer-assessee emphasized only one of the grounds advanced by the dealer-assessee i.e. the order passed by the assessing officer is hopelessly barred by limitation and as such lost its force. In this regard he brought to the notice of this forum the date on which the order of assessment was passed by the assessing officer. Admittedly the order of assessment which was challenged before the first appellate authority was passed on 31.03.2008 pertaining to the period of assessment 2004-05. Learned Counsel for the dealer again submitted that as per the provision contained u/S. 12(7) of the OST Act the order should have been passed by 31.03.2008 but at the same time it should have been served on the dealer-assessee within 30 days from the date of order. But in the instant case the said order was served on the dealer

nearly 11 (eleven) months after for which the State had no explanation to offer as yet. Under such circumstances while citing the decision rendered by the Hon'ble Apex Court in the case of State of Andhra Pradesh Vs. M. Ramakishthaiah & Co., [1994] 93 STC 406 (SC) and the decision rendered by the Hon'ble High Court of Orissa in the case of Delhi Footwear Vs. Sales Tax Officer, Vigilance, Cuttack and others, 77 VST 146 (Ori.), he urged before the Court to hold that the impugned order as well as the order of assessment passed against it (dealer-assessee) have to be set aside as the order of assessment was barred by limitation and as such has no force for execution.

5. The State has filed cross-objection to this appeal stating that the second appeal filed by the dealer is not sustainable legally since the assessing officer as well as the first appellate authority had rightly held the assessment to be correct basing upon the statutory provisions under the relevant Act and Rules. The dealer-assessee rather failed to produce the books of account before the authorities below and further did not produce any evidence in support of his assertions before this forum.

6. Sec. 12(7) of the OST Act provides –

Quote : “Any assessment made under this Section shall be without prejudice to any prosecution instituted for an offence under this Act :

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Provided further that no order assessing the amount of tax due from a dealer in respect of any year or part thereof shall be passed later than thirty-six months from the expiry of the year :” Unquote.

7. In the instant case the establishment of the dealer- assessee was assessed for the period 2004-05 u/S. 12(4) of the OST Act. Thereafter the assessing officer determined its tax liability on proper calculation of its TTO. The first appellate authority confirmed the said order of assessment vide order dated 09.01.2013 which is now challenged before this forum. On perusal of the case record it could be gathered that this order of assessment was sent to the dealer- assessee on 07.02.2009 vide issue No. 883. No explanation has been offered by the State as to why there was a delay of more than 10 (ten) months in communicating the order of assessment to the dealer- assessee. Opportunity was also given to the State to explain this delay in communication of the order of assessment to the dealer- assessee in course of hearing of this second appeal by giving time to the learned Addl. Standing Counsel (CT) on his request as he submitted that the State would explain the matter before this forum. However, ultimately no explanation whatsoever has been offered by the State as to why and under what circumstances this delay in communication of the order of assessment occurred in the instant case.

8. In this regard i.e. the effect of service of order of assessment on the dealer-assessee at a belated stage, the decisions rendered in the case of Chandrika Sao Vs. Sales Tax Officer, Balasore Range, Balasore and another, reported in [2015] 81 VST 86 (Ori.) as well as the decisions cited by the learned Counsel for the dealer as mentioned above clearly envisage that such order of assessment should be held as bad in law. Following the above decisions in the instant appeal we have no hesitation to hold there is every possibility that the said order was dated 31.03.2008 in order to give an impression that the impugned order was passed within the period of limitation though it might have been passed much after that. This presumption that the order was not made on the date it was purported to have been made is found to be quite tell tale from the fact that there is absolutely no explanation forthcoming from the State justifying the delay of more than ten months in issuance of the order of assessment.

9. In the circumstances as per the discussion made in the foregoing paragraphs we have no other option but to set aside the order of assessment as well as the order passed by the first appellate authority confirming the said order of assessment vide his order dated 09.01.2013.

10. In the result, the appeal is allowed. The cross-objection is disposed of accordingly.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Smt. Sweta Mishra)**  
**2<sup>nd</sup> Judicial Member**

I agree,

**Sd/-**  
**(Ranjit Kumar Rout)**  
**Accounts Member-II**