

Berhampur u/R. 12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short 'CST (O) Rules') 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 engaged in purchase and sale of two wheelers in course of inter-State trade and commerce. Notice u/R. 12(5) of the CST (O) Rules and subsequent intimations were issued to the dealer for production of books of account for the year 2004-05 before the authority concerned but it did not respond to the aforesaid notice and as such failed to produce the books of account before the assessing authority. Having no other option the assessing officer completed the assessment *exparte* on the basis of materials available on record. During the aforesaid period the dealer-Company had transferred total 294 nos. of two wheelers for `76,68,051.00 against Form 'F' condition. One original Form 'F' towards transfer of 52 nos. of vehicles to Guwhati for `13,69,248.00 which was submitted by the dealer was accepted by the assessing officer as the same was found to be in order. Since the dealer failed to produce Form 'F' towards transfer of 100 nos. and 142 nos. of two wheelers for `24,66,300.00 and `38,32,503.00 respectively tax was levied @ 12%. Ultimately after due calculation the assessing officer determined its (the dealer-assessee's) tax liability for the

relevant period and as the dealer had not paid any tax for that relevant period the assessing officer required him to pay the entire amount of tax dues amounting to `8,31,442.00 as per the terms of the demand notice sent to it.

Being aggrieved with this order the dealer preferred an appeal before the first appellate authority. Since the dealer-assessee could not produce the declaration in Form `F' as envisaged under the Act, 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 most vital point raised before him at the time of hearing of the appeal. He challenged the order of assessment categorically on the ground of the same being ante-dated. The dealer-assessee further submitted that despatches of vehicles to branches having been admitted by the forums below no tax @ 12% should have levied since furnishing of `F' form for the same is not mandatory.

4. In course of hearing learned Counsel appearing on behalf of the dealer-assessee emphasized only the ground taken by the dealer-assessee regarding the time barred order passed by the

assessing officer while contending that the said order has lost its force being hopelessly barred by limitation. 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/R. 12(7) of the CST (O) Rules 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 (thirty) days from the date of order. But in the instant case the said order was served on the dealer nearly after 11 (eleven) months 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. Ramakishtaiyah & 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 declaration Form 'F' towards the claim of stock transfer of goods before the authorities below and further did not produce any evidence in support of his assertions before this forum.

6. Rule 12(7) of the CST (O) Rules, as it stood then, provides –
Quote : “No order assessing the amount of tax due from a dealer in respect of any period shall be passed later than three years from the expiry of the year to which period of assessment relates.” Unquote.

7. In the instant case the establishment of the dealer-assessee was assessed for the period 2004-05 u/R. 12(5) of the CST (O) Rules. Thereafter the assessing officer determined its tax liability on proper calculation of its NTO. 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. 885. 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 decision 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)
2nd Judicial Member

I agree,

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