

authority") in First Appeal Case Nos. AA- 27/BGH/ET/08-09, AA- 28/BGH/ET/08-09 & AA- 29/BGH/ET/08-09 dismissing the appeals and confirming the orders of assessment for the years 2001-02, 2002-03 and 2003-04 passed by the Sales Tax Officer, Sambalpur-II Circle, Bargarh (in short, 'assessing officer') u/S. 7 of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') read with Rule 15 of the OET Rules. These second appeals as mentioned above having common facts and law involved therein are taken up together for disposal vide this order for the sake of convenience.

2. The facts as revealed from the case records are that the dealer-assessee named and styled as "M/s. IDCOL Cement Ltd., now known as M/s. ACC Limited, Bargarh Cement Works" was assessed in the years 2001-02, 2002-03 and 2003-04 u/S. 7 of the OET Act by the assessing officer. In those assessments it was ordered to pay the balance entry tax of `6,11,399.00 for the year 2001-02, `4,93,683.00 for the year 2002-03 and `4,71,633.00 for the year 2003-04 as per the terms and conditions of the demand notices respectively issued by the assessing officer. However, being dissatisfied with these orders of assessment the dealer-assessee preferred first appeals which were dismissed and the orders of assessment were confirmed.

3. Being aggrieved with the said orders of first appellate authority the dealer-appellant came up with these appeals while contending that the orders of the assessing officer are wrong and illegal. The first appellate authority without affording the dealer-assessee any opportunity decided the appeals preferred by it *ex parte*. Further despite the order of Hon'ble Court he did not admit the appeals preferred by it on the ground that those were not filed within one month as directed by the Hon'ble High Court. At that time the first appellate authority did not consider its petition for condonation of delay. Thus, there was violation of principle of natural justice while deciding the appeals by the first appellate authority.

4. In course of hearing the appeals learned Counsel for the dealer-assessee relied upon the judgment of the Hon'ble Allahabad High Court rendered in the case of *William India Ltd. Vs. C.S.T. (U.P.)*, [1987] 67 STC 255 and the decision rendered by the Hon'ble High Court of Orissa in the case of *Gandharb Misra Vs. State of Orissa*, [1975] 36 STC 466. Further learned Counsel for the dealer-appellant also cited the decisions of the Hon'ble Supreme Court of India rendered in the case of *Collector, Land Acquisition Vs. Mst. Katiji*, reported in [1987] 66 STC 228 (SC), and then apprised the Court the views of the Hon'ble Apex Court in the decision rendered in the case of *Sankar Rao Vs. Chandrasen Kumar*, reported in [1987] Supp SCC 338, to the effect that

the Court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay.

5. Learned Counsel for the appellant submitted that in the instant case the first appellate authority did not consider the petition filed by the dealer-appellant for condonation of delay which was absolutely unjustified then in the facts and circumstances that the Hon'ble High Court of Orissa in W.P. (C) No. 6515 of 2006 while upholding the validity of the Odisha Entry Tax Act, 1999 also observed that –

Quote : “However the State has no jurisdiction to impose tax on such goods imported from outside and are not manufactured within the State of Orissa. Therefore, the opposite parties may make scrutiny of the same and not realize entry tax on such goods.” Unquote.

In the instant case as the dealer-assessee had imported goods from outside the State of Odisha and those goods were not manufactured within the State of Orissa he was not liable to pay entry tax but the Revenue wanted to levy entry tax illegally. Since it was a case of misconception of facts and law till pronouncement of the decision by the Hon'ble High Court of Orissa in W.P. (C) No. 6515 of 2006, reported in 2008 (I) OLR 620. The dealer-appellant while relying upon the judgment of the Hon'ble Supreme Court rendered in the case of Kamala Mills Ltd. Vs. State of Bombay, [1965] 16 STC 613 pressed

before this forum that the claim of the appellant for refund should have been considered on merit on account of decision of the Hon'ble High Court of Orissa in the aforesaid writ petition as the State was held to have no jurisdiction to impose tax and entry tax on the goods involved in the case. Therefore, levy of tax amounting to `9,58,676.00 for the year 2001-02, `1,36,978.00 for the year 2002-03 and `15,35,035.00 for the year 2003-04 is unauthorized and illegal and as such those have to be refunded.

6. Learned Addl. Standing Counsel (CT) appearing on behalf of the Revenue submitted that in the instant case the dealer-assessee did not file the appeals within the period specified by the Hon'ble High Court vide orders passed in W.P. (C) Nos. 9514 of 2006, 9515 of 2006 and 9516 of 2006 which were disposed of alongwith batch of matters in Reliance Industries Ltd. Vs. State of Odisha, [2008] 16 VST 85 (Ori.). Therefore, the first appellate authority was justified in rejecting the appeals. He also pointed out that the second appeals relating to the assessment years 1999-2000 and 2000-01 being S.A. No. 39 (ET) of 2009-10 and S.A. No. 40 (ET) of 2009-10 respectively pertaining to this dealer-assessee were dismissed on 24.05.2014. The present appeals being identical in nature to those appeals this Tribunal should dismiss the same. Further as the Hon'ble Apex Court allowed the

appeals preferred against batch of matters disposed of alongwith the case i.e. Reliance Industries Ltd. in Civil Appeal No. 6474 of 2017 vide order dated 28.03.2017 holding the Odisha Entry Tax Act to be intra vires the Constitution of India, this dealer-Company having been correctly assessed to tax is required to discharge its liability in accordance with law. Learned Addl. Standing Counsel (CT) appearing on behalf of the State, however, also contended at the same time that the impugned orders may be set aside and the matters may be remanded to the assessing officer for carrying on fresh assessment.

7. In course of hearing learned Counsel appearing on behalf of the dealer-assessee submitted that the matter should be remanded to the first appellate authority with a direction to hear the matter afresh after condonation of delay in preferring the appeals before him as per the provision contained under the Limitation Act. The State through its Counsel also urged before this forum to set aside the orders of the first appellate authority and to remit the matter to the assessing authority for carrying on fresh assessment in the case. In the facts and circumstances of the case, it is felt that the matters certainly require to be remitted back for proper adjudication and it is also felt that the confusion with regard to the assessment and levy of entry tax in these cases can be reconciled in a proper manner if there would be fresh assessment in those cases. Accordingly, the matters are remitted

back to the assessing officer for fresh assessment in accordance with law.

8. In the result, the appeals are allowed. The impugned orders of the first appellate authority are hereby set aside. The matters are remanded to the assessing officer for fresh assessment in accordance with law keeping in view the observations made supra within a period of four months from the date of receipt of this order.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Rabindra Ku. Pattnaik)
Accounts Member-III