

These appeals by the State are directed against the separate orders dated 31.03.2009 passed by the Asst. Commissioner of Sales Tax, Balangir Range, Balangir (in short, "first appellate authority") in First Appeal Case Nos. AA- 21 (BPII) of 2008-09, AA- 22 (BPII) of 2008-09, AA- 23 (BPII) of 2008-09, AA- 24 (BPII) of 2008-09, AA- 25 (BPII) of 2008-09, AA- 26 (BPII) of 2008-09, AA- 27 (BPII) of 2008-09, AA- 28 (BPII) of 2008-09, AA- 29 (BPII) of 2008-09 and AA- 30 (BPII) of 2008-09 summarily rejecting the appeals preferred by the dealer-assessee against orders of assessment passed by Sales Tax Officer, Kantabanji Circle, Kantabanji (in short, "assessing officer") u/S.7(4) of the Odisha Entry Tax Act, 1999 (in short, "OET Act") for the years 2000-01, 2001-02, 2002-03, 2003-04, 2004-05, 2005-06 and for the periods 01.04.2006 to 30.11.2006, 01.012.2006 to 31.03.2007, 01.04.2007 to 31.07.2007 and 01.08.2007 to 30.09.2007 respectively. For the sake of convenience, these appeals are disposed of by this common order as these appeals arose out of separate orders of the first appellate authority passed in ten numbers of appeal basing upon similar facts and circumstances with different periods of assessment only in respect of the same dealer-assessee.

2. The brief facts as revealed from the case records are that the dealer-assessee had purchased High Speed Diesel (HSD) from M/s. Indian Oil Corporation, Visakhapatnam (AP) terminal for use/consumption by the East Coast Railway, Titilagarh which was subsequently put to use in the locomotives for running the passenger/

goods train. After obtaining the figures in respect of purchased HSD, learned assessing officer issued show-cause notice to the dealer with advice to get itself registered and further to furnish monthly statements, file annual return for the relevant periods and to pay due entry tax/penalty. There being no response from the side of dealer-assessee besides non-payment of entry tax and non-furnishing of returns, the assessing officer completed the assessments exparte considering the purchase figures of HSD. Accordingly, GTOs and TTOs were determined for the periods under assessment and after levying entry tax @ 1% and penalty at the rate of one and half times of the tax assessed for failure to submit the returns, demands of `19,60,480.00 for the year 2000-01, `23,33,913.00 for the year 2001-02, `21,57,623.00 for the year 2002-03, `26,15,250.00 for the year 2003-04, `30,73,273.00 for the year 2004-05, `43,77,040.00 for the year 2005-06, `18,20,970.00 for the period 01.04.2006 to 30.11.2006, `15,79,175.00 for the period 01.12.2006 to 31.03.2007, `23,76,739.00 for the period 01.04.2007 to 31.07.2007 and `9,65,303.00 for the period 01.08.2007 to 30.09.2007 were made against the dealer-assessee.

Challenging the above orders of assessment, the dealer-assessee preferred appeals before the first appellate authority causing delay of 677 days in all those appeals. Further despite notice to the

dealer-assessee, he neither appeared nor produced any compliance to the notice issued. Therefore, learned first appellate authority considering the delay in preferring the appeals which remained unexplained despite opportunity being afforded to him (the dealer-assessee) rejected the appeals summarily u/r. 23(2) of the OET Rules vide exparte orders.

3. The dealer-assessee preferred these appeals before this forum, inter alia, on the grounds that levy of entry tax on the goods i.e. HSD being under dispute before the Hon'ble High Court of Orissa for a long time, the dealer-assessee could not file returns and pay the due entry tax. It is averred that learned assessing officer without considering this aspect levied penalty for failure to submit the returns in time. It is further contended that learned first appellate authority while passing the impugned orders considered the delay in filing the appeals before him and rejected those appeals summarily instead of disposing of the appeals on the dispute raised by the dealer on levy of penalty even though the dealer-assessee had relied on the decision of the Hon'ble Apex Court rendered in the case of State of M.P. Vs. Bharat Heavy Electricals, reported in [1997] 106 STC 604 (SC) while addressing his grievance before the first appellate authority. Learned Counsel appearing for the dealer-assessee contended that the dealer is a Government of India concern and the default with regard to filing of returns and payment of entry tax cannot be attributed to be willful on its part, but it is due to only pendency of matter relating to levy of entry tax on such goods before the Hon'ble Court. Furthermore, he contended that the dealer-assessee

having deposited the admitted entry tax for the relevant periods under assessment, the authorities below should have considered the propriety of levy of penalty only. Accordingly, learned Counsel prayed before this forum to allow another opportunity to explain the delay before the first appellate authority by setting aside the impugned orders in the interest of justice as there was no willful and deliberate default on the part of the dealer-assessee. On the contrary, learned Addl. Standing Counsel (CT) appearing for the Revenue in terms of cross-objections submitted that the orders of learned first appellate authority being just and proper in the facts and circumstances of the case, should not be interfered with.

4. There is no dispute that the dealer-assessee was saddled with entry tax and penalty for non-filing of returns alongwith admitted tax on the HSD purchased by it for the relevant periods under assessment. Learned first appellate authority also summarily rejected the appeals filed by the dealer-assessee being barred by limitation. Both the assessment orders and the first appeal orders were passed ex parte due to non-appearance of the dealer-assessee. However, it is revealed from the documents on record that the dealer-assessee has already deposited the admitted entry tax due on it. He challenged the orders of assessment with regard to levy of penalty by the assessing officer for all the periods under assessment. His aforesaid grievance was not considered since the appeals were rejected summarily by the first appellate authority on the point of limitation as per ex parte orders. Law is well settled that matters having merit for proper adjudication should not be rejected at the threshold on

technical ground. Having regard to the contentions raised on behalf of the dealer-assessee and also the facts and circumstances of the present case, we deem it proper to afford another opportunity to the dealer-assessee to appear before the first appellate authority with relevant documents and furnish the explanation with regard to delay in filing of the appeals who in turn after due consideration of the same shall dispose of the appeals on merit after condoning the delay as per law.

5. Accordingly, the appeals are allowed and the orders of the first appellate authority are set aside. The dealer-appellant is directed to appear before the first appellate authority with proper explanation in respect of delay in preferring the appeals before the first appellate authority on the date fixed by him. Learned first appellate authority shall dispose of the matters in accordance with law within a period of four months from the date of receipt of this order. Cross-objections are disposed of accordingly.

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/-
(Ranjit Kumar Rout)
Accounts Member-II