IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV Nos.103 of 2014 and batch

In STREV No.103 of 2014

Senior Divisional Mechanical Engineer, East Coast Railway, Khordha Road Division .... ***Petitioner***

Mr. Chandrakanta Pradhan, Senior Panel Counsel

-versus-

State of Odisha .... ***Opposite Party***

Mr. S.K. Pradhan, A.S.C.

In STREV No.99 of 2014

Senior Divisional Mechanical Engineer, East Coast Railway, Vishakhapatnum .... ***Petitioner***

Mr. Gyanaloka Mohanty, Senior Panel Counsel

-versus-

State of Odisha .... ***Opposite Party***

Mr. S.K. Pradhan, A.S.C.

In STREV No.100 of 2014

Senior Divisional Mechanical Engineer, East Coast Railway, Vishakhapatnum .... ***Petitioner***

Mr. Gyanaloka Mohanty, Senior Panel Counsel

-versus-

State of Odisha .... ***Opposite Party***

Mr. S.K. Pradhan, A.S.C.

In STREV No.101 of 2014

Senior Divisional Mechanical Engineer, East Coast Railway, Vishakhapatnum .... ***Petitioner***

Mr. Gyanaloka Mohanty, Senior Panel Counsel

-versus-

State of Odisha .... ***Opposite Party***

Mr. S.K. Pradhan, A.S.C.

In STREV No.102 of 2014

Senior Divisional Mechanical Engineer, East Coast Railway, Vishakhapatnum .... ***Petitioner***

Mr. Gyanaloka Mohanty, Senior Panel Counsel

-versus-

State of Odisha .... ***Opposite Party***

Mr. S.K. Pradhan, A.S.C.

In STREV No.104 of 2014

Senior Divisional Mechanical Engineer, East Coast Railway, Khordha Road Division .... ***Petitioner***

Mr. Chandrakanta Pradhan, Senior Panel Counsel

-versus-

State of Odisha .... ***Opposite Party***

Mr. S.K. Pradhan, A.S.C.

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
06.12.2022

Order No.	
06.	1. A common question of law has been framed in all these revision petitions by the Petitioners-Railways i.e., whether the imposition of penalty on the Petitioners-Railways by the impugned order of the Assessing Officer as affirmed by the 1st Appellate Authority and the Tribunal was justified?
	2. It is seen that the original assessments were made under the Odisha Entry Tax Act, 1999 (OET Act) upholding the levy of entry tax on high speed diesel received at various Railways consumer depots. The understanding of the Railways was that it would be exempt from payment of such entry tax by virtue of

Article 285 of Constitution of India read with Section 184 of the Railways Act, 1989.

3. The assessment orders raising demands were unsuccessfully challenged by the Railways both before this Court and the Supreme Court of India.

4. Since this was in the early phase of the introduction of the entry tax, the lack of clarity on the part of the Railways was understandable. On dismissal of the appeals by the Supreme Court, penalty under Section 7 (5) of the OET Act was imposed and this has been challenged by the Railways in the present round up to the Tribunal, again unsuccessfully.

5. The failure by the Railways to file returns under the OET Act and to collect entry tax was understandable and cannot be said to be deliberate or willful. Under Section 7 (5) of the OET Act as it then stood, there was an element of discretion in the Assessing Authority to require a Dealer to pay penalty. In other words, it was not automatic or mandatory.

6. Keeping in view the above legal position under the OET Act as it then stood and in light of the facts explained hereinbefore, the Court is of the view that a levy of penalty on the Petitioners by the Department on the Railways for the years in question was not justified.

7. For the aforementioned reasons, the question framed in the present revision petitions stands answered in favour of the Petitioners-Railways and against the Department and the

impugned orders of the penalty imposed on the Petitioner Railways by the Assessing Officer as affirmed by the 1st Appellate Authority and the Tribunal are hereby set aside.

8. The revision petitions are allowed in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Guin