

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 4 (VAT) of 2008-09

(Arising out of order of the learned Addl. CST (South Zone), Orissa,
Cuttack in First Appeal No. AA – 25/ACST/2007-08,
disposed of on 19.02.2008)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri M. Harichandan, Accounts Member-I

M/s. Gargson Properties Pvt. Ltd.
A-66, Nayapalli, Bhubaneswar ... Appellant

-Versus-

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack ... Respondent

For the Appellant : Sri B.K. Patnaik, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 28.12.2022 *** Date of order : 29.12.2022

ORDER

Dealer is in appeal against the order dated 19.02.2008 of the Addl. Commissioner of Sales Tax (South Zone), Odisha, Cuttack (hereinafter called as 'First Appellate Authority') in F A No. AA – 25 / (ACST)/ 2007-08 reducing demand partly in the assessment order of the Asst. Commissioner of Sales Tax, Puri Range, Bhubaneswar (in short, 'Assessing Authority').

2. Briefly stated, the facts of the case are that –

The Dealer deals in business of passenger cars of Ford India Pvt. Ltd., spare parts, accessories and lubricants at the place mentioned in the cause title. The assessment period relates to 01.04.2005 to 31.12.2006. The Assessing Authority raised tax demand of ₹16,94,806.00 including penalty and interest under the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority allowed the appeal in part and deleted the penalty to the tune of ₹11,25,078.00, but disallowed claim of excess ITC by the appellant to the tune of ₹34,589.47 and levy of interest of ₹7,189.00 besides he justifies levy of tax @12.5% on ₹42,23,844.17 towards supply of spare parts to the customer against warranty claims from the existing stocks purchased on the strength of 'C' forms for resale. Being aggrieved with the order of the First Appellate Authority, the dealer prefers this appeal. Hence, this appeal.

3. No cross objection has been filed by the State.

4. The learned Counsel for the dealer submits that the order of the First Appellate Authority is erroneous, contrary to the provisions of law and fact. He further submits that the First Appellate Authority should not have disallowed the deduction claim of ₹42,23,844.17 against the warranty as the dealer is obliged to replace the spare parts and the company had supplied the spare parts for replacement. He further submits that the First Appellate Authority should have allowed the ITC claim of ₹34,589.47 as the appellant had purchased the same within the State of Odisha. He further submits that the State preferred an independent appeal on the self-same cause of action, which has already been disposed of by this Tribunal. He further submits that the First Appellate Authority went wrong in rejecting the aforesaid claim

which needs interference in this appeal. He relies on the judgment of this Tribunal passed on dated 30.01.2014 in S.A. No. 15(V) of 2008-09.

5. On the contrary, the learned Standing Counsel (CT) for the State vehemently opposes the contention of the dealer and submits that the First Appellate Authority has passed a reasoned order. So, he submits that the order of the First Appellate Authority needs no interference in this appeal.

6. On hearing the rival submissions and on careful scrutiny of the materials on record, it transpires that the Assessing Authority had raised tax demand of ₹16,94,806.00 towards tax, penalty and interest. The First Appellate Authority deleted the penalty of ₹11,25,078.00, but confirmed the tax liability, interest and other claim of the dealer.

7. On the self-same allegation, the State had also preferred independent separate appeal vide S.A. No. 15(V) of 2008-09 against the deletion of penalty by the First Appellate Authority, wherein the dealer (present appellant) had filed cross-objection, which is the subject matter of this appeal. As per order dated 30.01.2014 passed in S.A. No. 15(V) of 2008-09, this Tribunal has already rejected the claim of ITC of ₹4,589.47 and interest of ₹7,189.00. This Tribunal has also upheld the finding of the Assessing Authority regarding levy of tax on spare parts and imposition of penalty by setting aside the order of deletion of penalty in the first appeal by the First Appellate Authority.

8. The record shows that the same has not been challenged by either party in the higher forum. As the subject matter of this present appeal at the instance of dealer was the subject matter in the cross objection of the present appellant (dealer-respondent) in the earlier appeal and the same has already been decided. So, the same cannot be decided afresh in this appeal as per the principle of *res judicata*. Hence, it is ordered.

9. In the result, the appeal at the instance of the dealer is dismissed and the finding of the First Appellate Authority regarding dismissal claim of ITC, imposition of tax on the spare parts and interest is hereby confirmed.

Dictated & Corrected by me

Sd/-
(G.C. Behera)
Chairman

Sd/-
(G.C. Behera)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I