

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

S.A. No. 12 of 2015-16

(Arising out of order of the learned JCST, Angul Range,
Angul in First Appeal No. AA – 346/DL/07-08,
disposed of on 30.12.2014)

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

M/s. Tara Udyog Limited,
South Balanda, Talcher, Angul
At present- M/s. Kamaz Motors Ltd.,
Vectra House, No. 15, 1st Main, 6th Cross,
Gandhi Nagar, Bangaluru, Karnataka ... Appellant

-Versus-

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

For the Appellant : Sri K.R. Mohapatra, Advocate
For the Respondent : Sri M.L. Agarwal, S.C. (CT)

Date of hearing : 19.10.2022 *** Date of order : 15.11.2022

ORDER

The Dealer is in appeal against the order dated 30.12.2014 of the Joint Commissioner of Sales Tax, Angul Range, Angul (hereinafter called as 'First Appellate Authority') in F A No. AA – 346/DL/07-08 confirming the assessment order of the Sales Tax Officer, Angul Circle, Angul (in short, 'Assessing Authority').

2. The case of the Dealer, in short, is that –

M/s. Tara Udyog Ltd. deals in dumper, spare parts and accessories thereof on retail basis. The assessment period relates to 2003-04. The Assessing Authority in exparte assessment raised tax demand of ₹2,16,544.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the assessment order and dismissed the appeal exparte. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection supporting the orders of the fora below to be just and proper.

3. The learned Counsel for the Dealer submits that the order of the Assessing Authority is not based on law as well as facts and circumstances of the case. He further submits that the enhancement of ₹50,000.00 in determination of GTO and TTO is without any material on record and so, the same is arbitrary and illegal. He further submits that the fora below did not give sufficient opportunity to the Dealer to defend its case. So, it is clear violation of natural justice. On such circumstances, he prays for annulment of the demand.

4. On the other hand, learned Standing Counsel (CT) for the State vehemently objects contentions of the Dealer and submits that the Dealer did not turn up during the assessment proceeding as well as the appellate authority despite opportunities given to it. He further submits that the surcharge should be added to the tax computed and thereafter the set off of ET paid should be allowed as per the decision of the Hon'ble Apex Court in the case of *Commissioner of Commercial Taxes and others v. Bajaj Auto Ltd. and another*, reported in [2017] 97 VST 24 (SC). So, he submits that

the matter may be remitted to the Assessing Authority for recomputation of tax liability of the Dealer as per the ratio laid down by the Apex Court in *Bajaj Auto Ltd.* case cited supra.

5. Having heard the rival submissions and on going through the materials available on record, the record shows that the Assessing Authority and the First Appellate Authority passed the exparte orders due to non-appearance of the Dealer. The Assessing Authority completed the assessment applying best of judgment principle, which was confirmed by the First Appellate Authority. The Dealer does not dispute his non-appearance before the fora below. He only claims that an enhancement of ₹50,000.00 in the GTO and TTO in guess work is arbitrary. The Dealer offers no satisfactory explanation during hearing of the appeal regarding non-appearance and non-production of books of account before the fora below. Therefore, the enhancement by the Assessing Authority on best judgment principle cannot be said to be arbitrary for non-appearance and non-production of books of account by the Dealer.

6. On scrutiny of the impugned orders of the fora below, it reveals that the Assessing Authority computed the tax liability of the Dealer @8% on the TTO, added surcharge on the tax and thereafter allowed deduction of tax already paid. The First Appellate Authority also confirmed the finding of the Assessing Authority. The Dealer raised the issue of deduction of entry tax at the time of hearing of appeal. On scrutiny of the grounds of appeal, it reveals that the Dealer has not taken any such ground. The Dealer has not placed any material on record before us regarding payment of any entry tax relating to this assessment period. In absence of such material and such ground in the grounds of appeal, we cannot direct the Assessing Authority to allow deduction on that score. We do not find any infirmity or illegality in

the order of the fora below to call for any interference in appeal. Hence, it is ordered.

7. Resultantly, the appeal is dismissed and the orders of the First Appellate Authority and the Assessing Authority are hereby confirmed. Cross-objection is disposed of accordingly.

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**