

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

S.A. No. 32 (ET) of 2015-16

(Arising out of order of the learned JCST, Angul Range,
Angul in First Appeal No. AA – 468/ET/DL/04-05,
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 – 468/ET/DL/04-05 enhancing the assessment order of the Assessing Authority, Dhenkanal Circle, Angul (in short, 'Assessing Authority').

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

M/s. Tara Udyog Ltd. deals in earth moving machine, i.e. dumper, spare parts and accessories thereof on retail basis. The assessment period

relates to 2001-02. The Assessing Authority allowed refund of ₹36,38,002.00 under the Odisha Entry Tax Act, 1999 (in short, 'OET Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority enhanced the assessment order and directed the Assessing Authority for recomputation of the tax liability of the Dealer in exparte proceeding. 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 order of the forum 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 determination of GTO and TTO is arbitrary and illegal. He further submits that the Assessing Authority has wrongly calculated the ET @ 2% on the entire purchase value as the goods are falling under entry at Sl. No.9 of Schedule-II of the OET Act by disallowing the claim of set off of ET as claimed by the Dealer. He further submits that the fora below should have allowed the set off as per law. So, he submits that the orders of the fora below warrant interference in appeal.

4. Per contra, the learned Standing Counsel (CT) for the State submits that levy of 8% tax under Part-III of the Schedule of the OET Act holding dumper, tipper, excavator etc. as motor vehicles has already been settled by this Tribunal in case of *State of Odisha v. D.B. Balbantray* (S.A. No. 104 (ET) of 2008-09 decided on 29.03.2022) and *M/s. B. Seenaiah & Co. (Projects) Ltd. v. State of Odisha* (S.A. No. 139 (ET) of 2005-06 decided on 08.10.2021).

5. Having heard the rival submissions and on careful scrutiny of the materials available on record, it shows that the Assessing Authority has not assessed tax liability as per the decision of this Tribunal in *M/s. B. Seenaiah*

& Co. (Projects) Ltd. case cited supra. The order of the First Appellate Authority shows that the matter has been remitted to the Assessing Authority for recomputation of tax liability of the Dealer after imposing ET @ 8% on the TTO. We do not find any illegality in the order of remand by the First Appellate Authority. Hence, it is ordered.

6. In the result, the appeal stands dismissed and the order of the First Appellate Authority is hereby confirmed. The Assessing Authority is directed to complete the reassessment in accordance with law within three months from the date of receipt of this order after allowing due opportunity to the Dealer. 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**