

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

S.A. No. 1731 of 2005-06

(Arising out of order of the learned ACST, Cuttack I Range,
Cuttack in First Appeal No. AA – 155/CUIC/2005-06,
disposed of on 28.10.2005)

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

M/s. J.M.G. Automobiles,
Mahatab Road, Cuttack ... Appellant

-Versus-

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

For the Appellant : Mr. Mukesh Agarwal, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 20.12.2022 *** Date of order : 17.01.2023

ORDER

Dealer is in appeal against the order dated 28.10.2005 of the Asst. Commissioner of Sales Tax, Cuttack I Range, Cuttack (hereinafter called as 'First Appellate Authority') in F A No. AA – 155/CUIC/2005-06 confirming the assessment order of the Sales Tax Officer, Cuttack I Central Circle, Cuttack (in short, 'Assessing Authority').

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

M/s. JMG Automobiles is a partnership firm and it carries on business in motor cycle (Hero Honda), its spare parts and accessories. The assessment period relates to 2004-05. The Assessing Authority in

assessment raised tax demand of ₹7,62,674.00 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 dismissed the appeal and confirmed the assessment order. Being further 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 in the facts and circumstances of the case.

3. Learned Counsel for the Dealer submits that the learned Assessing Authority and the First Appellate Authority are legally not justified to levy surcharge on the tax collected on motor cycles as the Dealer has paid surcharge as per Section 5-A of the OST Act after setting off of the entry tax paid on motor cycle being covered under Schedule appended to Part-III of the OET Act. He further submits that levy of tax on ₹11,06,434.11 representing replacement of spare parts under warranty scheme by the forums below is illegal and unwarranted. So, he submits that the orders of the fora below are liable to be quashed being arbitrary and without jurisdiction.

4. On the contrary, learned Standing Counsel (CT) for the State submits that surcharge is payable on tax due and the same has been rightly calculated by the Assessing Authority u/s. 5-A of the OST Act. He further submits that the value of spare parts representing replacement of spare parts under warranty scheme has been rightly taxed as the goods have been purchased against Form-C. So, he submits that the orders of the forums below being just and proper need no interference in appeal. In support of his submission, learned Standing Counsel (CT) relies on the decision of the Hon'ble Apex Court in the case of *Commissioner of Commercial Taxes and others v. Bajaj Auto Limited and another*, reported in (2016) 16 SCC 83, [2017] 97 VST 24 (SC).

5. On hearing the rival submissions and on careful scrutiny of the materials available on record, it transpires from the record that the Dealer had purchased spare parts against 'C' form. The Dealer has replaced spare parts worth of ₹11,06,434.11 under the warranty scheme. The Assessing Authority observed in the assessment order that the Dealer purchased the goods against Form-C, but received the consideration value towards replacement of spare parts under warranty scheme by way of credit note from the Company. So, the Assessing Authority treated the amount received by the Dealer in shape of credit note as sale price.

The First Appellate Authority concurred with the finding of the Assessing Authority and dismissed the appeal of the Dealer on this score. In this regard, law is well settled in case of *Mohd. Ekram Khan & Sons v. Commissioner of Trade Tax, U.P. and another*, reported in [2004] 136 STC 515 (SC), wherein Hon'ble Apex Court were pleased to observe that since the assessee had supplied the parts and received the price therefor, the transaction was subject to levy of sales tax under the Act.

In the case in hand, the Dealer purchased the goods against Form-C and received the consideration value towards replacement of spare parts under warranty scheme against credit notes from the Company. So, in view of the decision in case of *Mohd. Ekram Khan* cited supra the alleged transaction is subject to levy of sales tax under the Act. Therefore, the Assessing Authority and the First Appellate Authority committed no wrong in levying tax on such alleged transaction.

6. As regards levy of surcharge, the Assessing Authority determined the GTO of ₹40,02,53,628.56 and allowed deduction of ₹25,18,889.63 towards sale of first point tax paid goods, ₹4,16,55,366.16 towards collection of sales tax and ₹33,71,406.41 towards collection of surcharge. Thereafter, the Assessing Authority determined the TTO and calculated tax and surcharge thereon. It is settled principles of law in the case of *Bajaj*

Auto Ltd. cited supra, wherein the Hon'ble Apex Court were pleased to observe as follows :-

“22. Thus, on a conjoint reading of Section 5 of the OST Act, Section 4 of the OET Act and Rule 18 of the Rules, we are of the considered opinion that the amount of surcharge under Section 5A of the OST Act is to be levied before deducting the amount of entry tax paid by a dealer.”

In view of the decision cited supra, the set off shall be allowed after computation of tax and surcharge. In the present case, the Assessing Authority has allowed the set off after computing the tax liability of the Dealer. So, the Assessing Authority and the First Appellate Authority committed no wrong in allowing the set off of entry tax after computation of tax and surcharge. Therefore, the argument advanced by the Dealer merits no consideration.

7. On the foregoing discussions, we are of the unanimous view that both the forums rightly assessed the tax liability of the Dealer for the period under assessment, which require no interference in appeal. Hence, it is ordered.

8. Consequently, the appeal is dismissed being devoid of merit and the order of the First Appellate Authority confirming the assessment order of the Assessing Authority is hereby upheld. 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**