

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 60 (ET) of 2017-18

(Arising out of order of the learned Addl. CST (Appeal), South Zone,
Berhampur in Appeal No. AA (ET)- 127/2010-11,
disposed of on 17.06.2017)

Present: **Shri G.C. Behera, Chairman**

M/s. Patel Motors,
At- Gandhi Chhak, PO- Jeypore,
Dist. Koraput ... Appellant

-Versus-

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

For the Appellant : Sri N. Ananda Rao, A/R
For the Respondent : Sri M. L. Agarwal, S.C. (CT)

Date of hearing : 04.04.2023 *** Date of order : 21.04.2023

ORDER

Dealer assails the order dated 17.06.2017 of the Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (hereinafter called as 'First Appellate Authority') in F A No. AA(ET)- 127/2010-11 confirming the assessment order of the Joint Commissioner of Sales Tax, Koraput Range, Jeypore (in short, 'Assessing Authority').

2. The facts of the case, in short, are that –

M/s. Patel Motors carries on business in two wheelers of Honda Company along with its spare parts, accessories and lubricants on wholesale-cum-retail basis. The assessment relates to the period 01.11.2007 to 31.01.2010. The Assessing Authority raised tax and penalty of

₹48,20,353.00 in assessment proceeding u/s. 9C of 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 confirmed the demand and dismissed the appeal. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers the appeal. Hence, the appeal.

The State files cross-objection supporting the impugned order of the First Appellate Authority confirming the order of assessment to be just and proper in the facts and circumstances of the case.

3. The learned Counsel for the Dealer submits that the Dealer has already paid the ET dues and thus, the Dealer is not liable to pay any penalty as per the ratio laid down by the Hon'ble Court passed in *M/s. Shree Bharat Motors Ltd. & others v. Sales Tax Officer, Bhubaneswar & others* (WP (C) No. 13736 of 2017 & batch, decided on 15.03.2023). So, he submits that the levy of penalty by the Taxing Authorities is not sustainable in law and the same requires interference in appeal.

4. Per contra, the learned Standing Counsel (CT) for the State submits that imposition of penalty is mandatory and the Dealer is liable to pay the interest for the unpaid ET from the date of due till the payment made. He further submits that the orders of the Assessing Authority and First Appellate Authority are correct in perspective and the same do not require any interference in appeal.

5. Heard the rival submissions and gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. It transpires that the Assessing Authority was aware that the ET matter was pending before the Hon'ble Apex Court, assessed the tax liability. The Assessing Authority determined the GTO and TTO and computed the tax at the appropriate rate, which resulted in demand of

₹48,20,352.51 along with twice penalty. The Dealer was not a party to the proceeding in *Reliance Industries Ltd.* which was pending before the Hon'ble Apex Court and the Dealer is not entitled to get the benefit of stay order.

In the case of *M/s. Shree Bharat Motors Ltd. & others v. Sales Tax Officer, Bhubaneswar & others* (WP (C) No. 13736 of 2017 & batch, decided on 15.03.2023), Hon'ble Court have been pleased to observe at **para-17.3** that no penalty is required to be enforced in respect of subject matter falling within the purview of para-30 of the judgment in *Reliance Industries Ltd.*'s case.

Hon'ble High Court were further pleased to direct at **para-17.2** of the said decision that the unpaid ET is to be paid along with simple interest @ 9% per annum.

6. In the case at hand, the Assessing Authority has raised tax of ₹16,06,784.00 along with penalty of ₹32,13,568.00, in toto ₹48,20,353.00 and the same was confirmed by the First Appellate Authority. So far as levy of penalty is concerned, the same is not sustainable in law in view of the decision of the Hon'ble Court in the case of *M/s. Shree Bharat Motors Ltd. & others* cited supra.

Dealer claims that he has already paid the ET dues on different dates as detailed in the written notes of submission filed before this Tribunal. So, the Dealer is liable to pay interest @ 9% from due date till the date of payment as per law.

7. For the aforesaid reasons, the levy of penalty of ₹32,13,568.00 by the Authorities below is not sustainable and the Dealer is liable to pay interest from the due date till the tax deposited as per law. Therefore, the orders of the First Appellate Authority and the Assessing Authority require interference in appeal. Hence, it is ordered.

8. Resultantly, the appeal stands allowed in part and the impugned order of the First Appellate Authority is hereby modified to the extent of deletion of penalty. The matter is remitted to the Assessing Authority for computation of interest as per law keeping in view the observations made above within a period of three months from the date of receipt of this order. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

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(G.C. Behera)
Chairman**