BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 439 of 2007-08

(Arising out of order of the learned ACST (Appeal), Puri Range, Bhubaneswar in First Appeal No. AA – 138/BH.II/2005-06, disposed of on 20.03.2007)

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 : 24.01.2023

O R D E R

Dealer assails the order dated 20.03.2007 of the Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A No. AA – 138/BH.II/2005-06 confirming the assessment order of the Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, 'Assessing Authority').

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

The Dealer carries on business in four wheelers, its spare parts, accessories, lubricants, paints and tyres and tubes. The assessment relates to the year 2002-03. The Assessing Authority disallowed the claim of warranty

replacement and raised tax demand of ₹73,039.00 in assessment 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 upheld levy of tax on ₹8,29,250.14 towards supply of spare parts to the customer against warranty claims from the existing stocks purchased on the strength of 'C' form for resale and dismissed the appeal. 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 confirming the assessment order 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 ₹8,29,250.14 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 calculation of surcharge should have done on the basis of judgment rendered by the Hon'ble High Court of Orissa in case of ***M/s. Bajaj Auto Ltd. & another v. State of Orissa*** dated 05.01.2007. So, he submits that the orders of the fora below should be set aside.

5. Per contra, the learned Standing Counsel (CT) for the State vehemently opposes the contention of the Dealer and submits that the First Appellate Authority has not committed any illegality in upholding the levy of tax on spare parts under warranty replacement and also calculation of surcharge before set off of entry tax as per settled law of the Hon'ble Apex Court. In this regard, he relies on the decisions of the Hon'ble Apex Court in case of ***Mohd. Ekram Khan & Sons v. Commissioner of Trade Tax, U.P.,*** reported in **[2004] 136 STC 515 (SC)*;*** **and** ***Commissioner of Commercial Taxes and others v. Bajaj Auto Limited and another***, reported in **[2017] 97**

VST 24 (SC). So, he submits that the order of the First Appellate Authority requires no interference in this appeal.

6. On hearing the rival submissions and on careful scrutiny of the materials on record, the issue involves for adjudication by this Tribunal is whether in the facts and circumstances of the case, the fora below are justified in levying tax on the spare parts supplied by the Dealer under warranty replacement scheme and calculation of surcharge before setting off of entry tax ?

7. The assessment order shows that the Dealer had supplied new spare parts covered under warranty to the tune of ₹8,29,250.14 to different customers out of its own stock purchased under 'C' form. The Company had not supplied the warranty covered parts directly to the customers or through the Dealer. The Dealer could not produce any document to prove any evidence to support the exchange or replacement of parts issued by the manufacturing Company. So, the Assessing Authority levied the tax on it. The First Appellate Authority also confirmed the same.

During the hearing of the appeal, the Dealer also could not produce any document to show that the spare parts were supplied by the Company for replacement/exchange of parts under warranty scheme. The Dealer purchased the spare parts from out of the State on the strength of Form-C. The Dealer cannot claim not to add the same into the turnover against warranty replacement scheme. The First Appellate Authority specifically observed that the Dealer though mentioned in the balance sheet, but did not disclose it in the return. Thus, the First Appellate Authority upheld the finding of the Assessing Authority disallowing the claim of the Dealer not to add the same in the turnover. As the Dealer purchased the spare parts under 'C' form, so, the Dealer cannot claim the benefit on the ground that he utilized the goods under warranty replacement scheme.

8. As regards the claim of calculation of surcharge, it is well settled principle laid down by the Hon'ble Apex Court in the case of ***M/s. Bajaj***

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

> "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 the case at hand, the Assessing Authority computed the tax and levied surcharge thereon before allowing set off of entry tax paid by the Dealer, which is in consonance with the principles enunciated in ***Bajaj Auto Ltd.*** case *ibid*. Hence, the claim of the Dealer to levy surcharge after setting off of entry tax paid, merits no consideration.

9. On the foregoing discussions, we are of the unanimous view that the First Appellate Authority commits no wrong in confirming the order of the Assessing Authority in computing the tax liability of the Dealer for the period under assessment, which requires no interference in the appeal.

10. In the result, the appeal at the instance of the Dealer stands dismissed and impugned order of the First Appellate Authority confirming the order of assessment 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