

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL:CUTTACK

S.A.No.245/2003-04

(Arising out of the order of the learned ACST, Puri Range,
Bhubaneswar, in First Appeal Case No. 491/BH.II/2001-2002,
disposed of on 28.02.2003)

Present: Shri Sashikanta Mishra
Chairman

Shri Subrat Mohanty
Judicial Member-II

Shri P.C. Pathy
Accounts Member-I

M/s. Venire Motors,
Khandagiri, Bhubaneswar.

... Appellant.

-Versus-

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

... Respondent.

For the Appellant:

: None.

For the Respondent:

: Mr. S. K. Pradhan, Addl. S.C. (C.T.)

Date of Hearing: 03.05.2018

***** Date of Order: 05.05.2018

ORDER

This second appeal has been preferred by the dealer-appellant under Section 23 of the Odisha Sales Tax Act, 1947 (in short, 'the OST Act') against the impugned order passed on 28.02.2003 by the learned Assistant Commissioner of Sales Tax, Puri Range, Bhubaneswar (in short, 'the ld. ACST') confirming the demand of Rs.15,54,706.00 raised by the learned Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar (in short, 'the ld. STO') in the order passed on 31.01.2002 for the assessment year 1999-2000 under Section 12(4) of the OST Act.

2. The brief facts of the case is that the dealer-appellant is a limited company engaged in trading of different models of Maruti vehicles, vehicles spares, accessories and lubricants on retail basis. The books of accounts for the purpose of business was produced for the impugned period before the ld. STO for necessary verification for assessment

showing purchases of goods worth Rs23,55,525.12 from dealers inside the state out of which purchase of first point tax paid lubricants amounts to Rs.4,71,054.00 and the rest relates to purchase of spare parts and accessories on the strength of declaration Form XXXIV from registered dealers inside the State. Total purchases and total sales disclosed for the period stand at Rs.28,93,02,433.09 and Rs.33,05,85,420.01 respectively. The Ld. STO considered the allegation of purchase suppression reported by the sales tax officer, Bhubaneswar-I circle, Bhubaneswar communicated vide letter no.4167 dated 28.04.2000.It's revealed from the aforesaid report that the instant company has caused entry of one no. of Maruti Gypsy bearing Chasis no.200711 and Engine No.250514 which was sold to the Chief Conservator of Forest, Ministry of Environment & Forest, Bhubaneswar by M/s. Maruti Udyog Ltd., Gurugoan. The instant company has collected entry tax amounting to Rs.37,188.00 @12% on the amount of Rs.3,47,121.00 from the C.C.F, Ministry of Environment of Forest, Bhubaneswar vide Voucher No.3/1068/99 dated 08.03.2000. Thus the reporting Sales Tax Officer was of the view that the instant dealer was engaged in collecting entry tax as well as sales tax from the vehicles which was directly sold on D.G.S &D rate contract by M/s. Maruti Udyog, Gurugoan without disclosing the same in it's books of accounts and referred the case for cross verification. On cross verification of this transaction as well as other similar transactions it came to the notice of the ld. STO that the instant dealer had caused entry of four nos. of Maruti Gypsy including the vehicle reported by the sales tax officer, Bhubaneswar-I Circle which were subsequently delivered to the Govt. department which fact was confronted to the authorised agent of the dealer-appellant in the presence of ld. Advocate Shri R.C. Das. On confrontation Shri Das admitted these transactions have never been routed through their books of accounts. The ld. STO was of the opinion that the four numbers of vehicles worth Rs.14,60,776.00 was sold to different Govt. departments on out of account which constitute intrastate sale for which the instant dealer is liable to pay sales tax and entry tax. As the books of accounts produced did not reveal true and correct picture of the business, the ld. STO rejected the same as not reliable and completed the assessment to the best of judgment

raising demand of Rs.15,54,706.00 allowing entry tax set off and adding surcharge @15% on tax due.

3. Being aggrieved with the assessment order the instant dealer preferred first appeal before the ld. ACST, Puri Range, Puri. As the dealer-appellant failed to appear for hearing the ld. ACST carefully considering the assessment order and the grounds of appeal filed by the appellant, passed the appeal order exparte confirming the order of the ld. STO as the dealer appellant could not furnish any documentary evidence to rebut the charges of purchase/sale suppression for which the grounds of appeal merited no consideration.

4. Dissatisfied with the orders of the ld. JCST the instant dealer approached this forum on the following grounds:-

The demand of Rs.15,54,706.00 raised by the ld. STO is not acceptable. It is contended that the dealer-appellant is not liable to collect sales tax on vehicles directly sold by M/s. Maruti Udyog limited under D.G.S and D rate contact. The turnover of four vehicles in question are properly transacted through the books of accounts maintained by the company which the ld. STO had overlooked. The surcharge calculation on the sales tax payable is not acceptable as the same is to be calculated on reduced sales tax amount after set off of entry tax amount due. It is further contended that the dealer-appellant is entitled for refund of tax amounting to Rs.1,21,624.77 paid in excess.

5. The dealer-appellant did not appear on the date fixed for hearing on 3.5.2018 despite due service of notice. However, the matter was heard exparte on merits by considering the grounds urged by the dealer in its memorandum of appeal.

6. Mr. S. K. Pradhan, the ld. Addl. Standing Counsel (C.T.) appeared on behalf of the State took the contention that the confirmation of the order of the ld. STO by the ld. ACST is just and proper in view of the involvement of the dealer-appellant in suppression of purchase and sale. However, no cross objection was filed.

7. As the matter is as old as 1999-2000 and the dealer-appellant stated in the grounds of appeal filed that the dealer

company has closed all business activities and has not contested the appeal filed, it is considered not proper to prolong the matter any further. Furthermore, the grounds urged by the dealer do not appear to be cogent or otherwise tenable for this Tribunal to interfere.

8. In view of the facts stated above the appeal is dismissed and the order passed by the ld. ACST is confirmed.

Dictated and Corrected by me,

Sd/-
(P.C. Pathy)
Accounts Member-I

I agree,

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I

Sd/-
(Sashikanta Mishra)
Chairman

Sd/-
(Subrat Mohanty)
Judicial Member-II