

**BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK**

**S.A.No. 246/2003-04**

(Arising out of order of the Id.ACST, Puri Range, Bhubaneswar, in  
Appeal No. AA.243/BH.II/2002-2003,  
disposed of on dtd.28.02.2003)

**P R E S E N T :**

Sri Sashikanta Mishra      Sri S. Mohanty      &      Sri P.C. Pathy  
Chairman                      Judicial Member-II                      Accounts Member-I

M/s. Venire Motors,  
Jagamara, Khandagiri,  
Bhubaneswar.

... Appellant

**-Versus -**

State of Orissa, represented by the  
Commissioner of Sales Tax,  
Orissa, Cuttack

... Respondent

**Appearance :**

For the Appellant      ... None

For the Respondent ... Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

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Date of Hearing: 03.05.2018

Date of Order: 04.05.2018  
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**ORDER**

This appeal is directed against the confirming order of learned First Appellate Appellate Authority/Asst. Commissioner of Sales Tax, Puri Range, Bhubaneswar (in short, FAA/ACST) in First Appeal Case No. AA.243/BH.II/2002-2003 dtd.28.02.2003.

2.            The assessee-dealer was a trader of vehicle, spare parts, accessories, lubricants on retail and wholesale basis as an authorized dealer of the company of M/s. Maruti Udyog Ltd. In a proceeding u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act), the Assessing Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, AO) found that the dealer had disclosed the annual gross turnover at Rs.28,34,219.80 and claimed deduction of Rs.18,26,595/- towards sale

of first point tax paid goods, Rs.16,08,589.41 towards sales to registered dealer and Rs.2,99,98,449.36 towards collection of sales tax. The AO accepted the total turnover as declared by the dealer to be correct but declined the claim of deduction towards sale of first point tax paid goods and sales to registered dealer and collection of sales tax as the dealer failed to produce any cogent and supporting evidence in support of his claim. Thus, he held the entire GTO as TTO of the dealer and taxed @12% on sale of Rs.28,16,13,624.80 and @16% on Rs.18,26,595/-. The total thus worked out to Rs.3,40,85,890.17. Surcharge was computed @15% and thereafter allowing set off u/r.18 of the OET Rules, the total due came to Rs.1,44,73,656.70. Adjusting the tax already paid, the balance tax due was calculated at Rs.83,31,324/-.

Being aggrieved by such assessment, the dealer carried the matter before the FAA, but the FAA confirmed the order of the AO. As a result, the dealer put forth his grievance before this forum by way of second appeal with the contention that, proper opportunity of being heard was not given to it by both the fora below and thereby there was violation of principle of natural justice. It is further contended that, the AA had not taken into consideration the return of the turnover submitted by the dealer indicating first point tax paid goods and sales to registered dealer.

3. At the outset, it is pertinent to mention here that the assessment order was an ex-parte order. The impugned order by the FAA was also an ex-parte and unfortunately this appeal is also heard ex-parte. The dealer remained absent before the AO. Though the first appeal was preferred by him but there also he remained absent and in similar fashion, he remained absent at the time of hearing of this appeal despite service of notice issued by this Tribunal. The fact finding authority viz., AA on verification of the return submitted by the dealer and in confrontation of the allegations found no evidence against first

point tax paid goods as also no evidence of sale to registered dealer supported by declaration Form-XXXIV and thus, came to a conclusion that, entire amount shown as sale turnover by the dealer should be taxed at appropriate rate without any concession or exemption. The assessment relates to the period 2000-01. Till date, the dealer failed to procure and produce the supporting documents of first point tax paid or declaration forms against claim of sale to registered dealer. Therefore, the irresistible conclusion is, the appeal preferred by the dealer has no merits for consideration in his favour as we are of the view that, the impugned order suffers from no illegality both in law and in facts. The contentions of the dealer is unfounded hence, not sustainable. Accordingly, it is ordered.

The appeal preferred by the dealer is dismissed ex-parte as of no merit.

Dictated & corrected by me,

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(Sashikanta Mishra)  
Chairman

I agree,

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