



2. The brief facts of the case is that :

The dealer-company in this case deals in motor parts and axil only on wholesale basis. In response to notice, the branch manager of the company appeared and produced books of accounts consisting of purchase and sale registers supported with purchase invoices and sale bills for verification. On verification of books of account, it is found that, during the year under assessment, the dealer-company has disclosed their total purchases of motor parts and axil to the tune of Rs.1,44,69,872.61, out of which the company has shown purchases of goods from outside the State against 'C' declaration forms for an amount of Rs.9,72,673.80 against Form - XXXIV from the registered dealers of the local market to the tune of Rs.1,31,62,861.58 and purchase of axil from inside the State on payment of first point tax paid basis for an amount of Rs.3,34,337.23.

On examination of the accounts, it is observed by the learned AO that, the dealer has purchased axil worth Rs.3,34,337.23 as first point tax paid goods from M/s. Gajara Gears Ltd., Link Road, Cuttack and sold the said goods as first point tax paid goods for Rs.3,02,091.59. The dealer in the instant case, is an automobile spare parts dealer and it is obvious on the part of the dealer to deal with axil which is one of the items under broad entry of automobile spares. Hence, the item axil comes under 12% tax group and last point sale goods. So, the sale of axil as first point tax paid sale cannot be accepted. Hence, the sale value of axil is now determined at Rs.3,67,770.95 by adding 10% margin of profit on the purchase value of axil (i.e. Rs.3,34,337.23 + 10% profit = Rs.3,67,770.95). So, the differential sale value of axil is now determined at

Rs.65,679.36 and the same is now added to the GTO, TTO and taxed @12%.

The gross turnover of the dealer is now determined at Rs.1,55,43,225.26. The dealer has claimed Rs.84,88,467.51 towards sales to registered dealers against Form-XXXIV. But he has furnished Form-XXXIV of Rs.80,36,481.35, which are placed on the file. He has not produced Form-XXXIV of Rs.4,51,986.16. So, the same is now disallowed from the sales to registered dealers and added to the taxable turnover and taxed @12%. Deductions of Rs.7,16,467.80, Rs.3,02,091.59 and Rs.80,36,481.35 are allowed towards collection of sales tax, sale of axil as tax paid sale and sale to registered dealers against Form-XXXIV respectively. So, the TTO is determined at Rs.64,88,184.82, which is taxed @12%. Tax due comes to Rs.7,78,582.17. Surcharge @15% on the tax due comes to Rs.1,16,787.32. Total tax and surcharge comes to Rs.8,95,369.49. Dealer has already paid Rs.8,22,865/- u/r.36 of the OST Rules. Hence, he is now required to pay the balance amount of Rs.72,504.49 or Rs.72,504/- as per the terms and conditions of the demand notice.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Cuttack-I Range, Cuttack, who in turn, dismissed the appeal and confirmed the order of assessment on ex-parte.

4. Being further aggrieved with the order of the learned FAA/ACST Cuttack-I Range, Cuttack, the dealer-appellant has knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed

by the ld.FAA/ACST is unjust, improper and not based on facts and law.

5. Cross objection has been filed by the State-respondent in this case.

6. Despite affixture service of hearing notice on the dealer, for reasons best known to it, he neither engaged a counsel nor anybody on its behalf to remain present before this Tribunal on the schedule date of hearing. This Tribunal, therefore, left with no other alternative except to hear the argument of Mr. S.K. Pradhan, learned Addl. Standing Counsel appearing on behalf of the State and to dispose of the matter accordingly.

7. Perused the assessment order as well as first appeal order, all the materials available in the record, grounds of appeal submitted by the dealer-appellant, cross objection filed by the State-respondent. During the course of hearing, Mr. Pradhan, Addl. Standing Counsel for the State argued that, the order of the learned FAA appears to be just and proper. The order of learned ACST confirming the order of assessment is just, proper and sustainable as per the provision of law. In spite of opportunity allowed, the dealer-appellant did not respond for appeal hearing. So, the learned ACST rightly passed appeal order ex-parte on merit. The dealer has failed to submit Form-XXXIV declaration for an amount of Rs.451986.16 as such deduction for the same rightly disallowed and taxed appropriately. The learned STO has rightly held that 'axil' dealt in and sold by the dealer comes under motor spare parts and as such to be taxed @12% at last point of sale. The allegation of dealer-appellant that he was not given sufficient opportunity by learned ACST for submission of

wanting declaration Form-XXXIV for Rs.451986.16 is not at all correct because the dealer-appellant did not appear before the learned ACST for appeal hearing and submission of wanting Form-XXXIV declaration. So, the learned Addl. Standing Counsel has prayed to dismiss the appeal filed by the dealer-appellant and to confirm the order of the learned FAA.

8. Heard the learned Addl. Standing Counsel, Mr. S.K. Pradhan on behalf of the State in absence of participation of the dealer in hearing of this appeal. Gone through the grounds of appeal, the impugned orders of appeal and assessment and argument of the learned Addl. Standing Counsel at the time of hearing. The dealer has not adduced any evidence on his behalf nor he has appeared before this Tribunal to substantiate the grounds of appeal filed by him. No reasonable excuse is also explained by the dealer. Though in his grounds of appeal, the dealer-appellant has mentioned that he will submit the wanting 'D' Forms of Rs.451986.16 before the Tribunal at the time of appeal hearing, but he has failed to do so. It is also observed that the dealer neither participated himself nor through his counsel and no documentary evidence was produced to the effect that the dealer is in possession of declaration Form-XXXIV. Hence, it is evident that the dealer has no declaration form to furnish in support of his stand. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, we are of the considered opinion that, the argument advanced by the learned Addl. Standing Counsel is quite genuine and we don't find any defect in the order passed by the learned ACST warranting interference of this Tribunal. Accordingly, it is ordered.

9. The appeal filed by the dealer is dismissed. The order of the learned First Appellate Authority is hereby confirmed. The cross objection filed by the state-respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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

I agree,

Sd/-  
(A.K. Dalbehera)  
Judicial Member-I

I agree,

Sd/-  
(S. Mishra)  
Accounts Member-II