

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A. No.1120 of 2007-08

(Arising out of the orders of the learned Asst.CST,
Koraput Range, Jeypore in First Appeal Case
No.AA(KOI)330/04-05, disposed of on 15.11.2007)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri B. Bhoi, Accounts Member-I

M/s. Kalinga Auto Services,
Royal Guest House Compound,
Jeypore, Koraput.

..... Appellant.

-Vs. -

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

..... Respondent.

For the Appellant:
For the Respondent :

: Mr. S. Sundaram, Advocate
: Mr. D. Behura, S.C.(C.T.)
: Mr. S.K. Pradhan, A. S.C.(C.T.)

Date of Hearing : 07.02.2024 * Date of Order : 06.03.2024**

O R D E R

This second appeal is directed against the order dated 15.11.2007 of the Assistant Commissioner of Sales Tax, Koraput Range, Jeypore (hereinafter referred to as 'ld.FAA') passed in First Appeal Case No. AA(KOI)330/04-05 enhancing the demand to ₹9,07,313.00 as against demand of ₹6,61,508.00 raised in assessment passed under Section 12(4) of the OST Act by the Sales

Tax Officer, Koraput-I Circle, Jeypore (hereinafter referred to as 'Id. Assessing Authority') pertaining to the assessment year, 2003-04.

2. The brief facts leading to emergence of this appeal are that M/s Kalinga Auto Services, Jeypore, R.C. No.KOI-3911, a dealer in two wheelers, three wheelers, four wheelers, tractors, trailers, gen sets, pump sets along with tyres, tubes, spare parts, and accessories of these goods and lubricant, PVC pipes was assessed under Section 12(4) of the OST Act for the year, 2003-04. The turnover returned by the dealer-assessee in the year under assessment was enhanced by ₹75,00,000.00 in assessment resorting to best judgment that led to raising of extra demand of ₹6,61,508.00. Although the said enhancement was erased in the first appeal, the Id. FAA as the extended forum of assessment enhanced the turnover disclosed in returns by ₹50,00,000.00 apart from ₹35,28,820.19 alleging under-assessment of the sale of motor vehicles. In result, the tax demand in first appeal escalated to ₹9,07,313.00 in place of ₹6,61,508.00 determined in assessment. On being aggrieved on such outcome in first appeal, the dealer-assessee approached this forum for relief. Hence, this appeal.

3. The orders of the forums below, grounds of appeal, written submission and the materials on record are carefully gone through. There is no cross objection filed by the respondent-State. The dealer-assessee assails the first appeal order as bad in law and arbitrary.

Mr. S. Sundaram, Id. Advocate appearing for the dealer-assessee argues that the Id.FAA has whimsically enhanced the turnover by ₹50,00,000.00 without any detection of suppression either on purchases or sales of goods. There being no discrepancy pointed out in assessment/first appeal, rejection of books of accounts merely on account of non-maintenance of the stock account of spare parts is condemned as illegal and arbitrary. The Id. Advocate places reliance on the decision of the Hon'ble High Court of Orissa delivered in case of **State of Orissa Vs. Gaurab Enterprises** reported in (1993) 90 STC 397. Further, Mr. Sundaram rebuts the allegation of under assessment of the sale of motor vehicles to the tune of ₹35,28,820.00 stating that the dealer-assessee as an agent of M/s Bajaj Auto Limited used to sell two wheeler, three wheeler and four wheeler as per the sale price fixed by the manufacturing company i.e. M/s Bajaj Auto Limited and sales tax paid thereon along with surcharge. It is submitted that entry tax is paid on the purchase value of the vehicles and set off availed against sales tax payable on sale of the vehicles. The allegation of under assessment leveled by the Id.FAA is unfounded.

4. Perusal of the records reveals that the Id. Assessing Authority had enhanced ₹1,19,57,000.00 alleging purchase suppression of 8% taxable goods (Automobile spare parts) for the year,2002-03 and assumed spare parts involving ₹25,00,000.00 to

have been sold during that year. Extra demands were thus raised in assessment under both the Acts. While causing assessment under Section 12(4) of the OST Act for the year,2003-04,the ld. Assessing Authority enhanced ₹75,00,000.00 being the left over purchase suppression alleged for the year,2002-03. The first appeals preferred vide First Appeal Case No.AAE (KOI) 69/2003-04 (under OET Act) and First Appeal Case No. AA (KOI) 386/2003-04 (under OST Act) resulted in deletion of ₹1,19,57,000.00 under the OET Act and ₹25,00,000.00 under the OST Act. Since the base purchase suppression of ₹1,19,57,000.00 for the year, 2002-03 got deleted in first appeal, the consequential sale suppression of ₹75,00,000.00 enhanced in assessment for the year, 2003-04 being rendered baseless was deleted in first appeal by the ld.FAA. There is no dispute on this account. The dispute is on enhancement of ₹50,00,000.00 by the ld.FAA. On perusal of the first appeal order, it is abundantly clear that the ld.FAA has enhanced ₹50,00,000.00 basing on the findings of the ld. Assessing Authority. On the contrary, the ld. Assessing Authority is found to have only enhanced ₹75,00,000.00 being the sale suppression emanated on account of purchase suppression discussed above. Although the books of accounts were rejected in assessment drawing inference to the effect that the dealer-assessee has filed revised returns at a belated stage, non-submission of utilization statement of waybills, withholding

payment of admitted tax, non-availability of the account of certain waybill and non-maintenance of stock account and such other irregularities, there was no enhancement of turnover brought about. The Hon'ble Allahabad High Court has held that turnover cannot be enhanced merely based on rejection of books of accounts. There has to be material as to suppression of turnover by the assessee to indicate evasion of tax. The ld.FAA has rather admitted that the dealer-assessee has disclosed higher turnover in assessment than disclosed in returns. There is no detection of suppression of purchase or sale. There is no prior notice or opportunity of being heard advanced to the dealer-assessee before effecting enhancement. Unilateral enhancement of turnover by the ld.FAA is uncalled for and illegal rendering violation of the principles of natural justice. The ld.FAA therefore went wrong in enhancing the turnover by ₹50,00,000.00 whimsically on presumptive basis without any suppression of purchase or sale. Hence, the impugned enhancement of ₹50,00,000.00 is hereby deleted.

5. As regards under assessment of ₹35,28,820.19 as pointed out in first appeal, it is essential to put down the provision of Rule 18(1) of the OET Rules along with the illustration provided therein

“18. Set off of Entry Tax against Sales Tax.

(1) When the importer of a motor vehicle liable to pay tax under sub-section (2) of section 3 of this Act being a dealer in motor

vehicles becomes liable to pay tax under the Sales Tax Act by virtue of sale of such motor vehicle, his tax liability under the Sales Tax Act shall be reduced to the extent of the tax paid under these rules.

Illustration: Assuming Entry Tax Rate and Sales Tax Rate to be 10%.”

<i>1) Purchase value of Motor vehicle</i>	<i>₹ 2,00,000/-</i>
<i>2) Entry Tax payable @ 10%</i>	<i>₹ 20,000/-</i>
<i>Total :-</i>	<i>₹2,20,000/-</i>
<i>3) Sale Price of the Motor vehicle</i>	<i>₹2,20,000/-</i>
<i>4) (a) Sales Tax due @ 10%</i>	<i>₹22,000/-</i>
<i>Deduct Entry Tax paid</i>	<i>₹20,000/-</i>
<i>Sales Tax payable</i>	<i>₹2,000/-</i>
<i>Total :-</i>	<i>₹2,22,000/-</i>

The above illustration clearly prescribes that sale price of a motor vehicle would be the purchase value of the motor vehicle along with the entry tax paid thereon. Sales tax shall be charged on such sale price and deduction of entry tax paid on the purchase value of the motor vehicle is allowed therefrom to arrive at the amount of sales tax payable. Under this analogy, the ld.FAA is justified in holding the impugned order of assessment as under assessed in respect of sales of motor vehicles as detailed hereunder.

a) Actual purchase value of the motor vehicles:-

₹5,14,29,096.91

b) Added entry tax payable @12% :- ₹61,71,491.63

c) Sale price of the motor vehicle :- ₹5,76,00,588.54

d) Sales tax due @12% :- ₹69,12,070.62

e) Deduct entry tax paid :- ₹61,71,491.63

f) Sales tax payable :- ₹7,40,578.99

g) Surcharge @10% on ₹69,12,070.62 :- ₹6,91,207.06

h) Sales tax and surcharge payable :- ₹14,31,786.05

As against the above sales tax payable as mandated under Rule 18(1) of the OET Rules, the dealer-assessee is found to have discharged less tax liability on account of the sales of motor vehicles as brought forth under:-

(i) Sale price of motor vehicles :- ₹5,40,71,768.35

(ii) Sales tax due @12% :- ₹64,88,612.20

(iii) Surcharge @10% :- ₹6,48,861.22

(iv) Total sales tax and surcharge payable :- ₹71,37,473.42

(v) Deduct entry tax paid :- ₹61,71,491.63

(vi) Sales tax and surcharge payable :- ₹9,65,981.79

In view of the above, it is evident that the dealer-assessee during the assessment year under appeal is found to have paid less sales tax amounting to ₹4,65,804.00 in consequence of irregular determination of sale price of motor vehicles resulting under assessment of ₹35,28,820.19 (₹5,76,00,588.54 - ₹5,40,71,768.35). Accordingly, the observation of the ld.FAA on this score is

unequivocally justified. The contention of the dealer-assessee merits no consideration in view of the above settled principle of law.

6. Resultantly, the appeal filed by the dealer-assessee is partly allowed. The first appeal order is set aside to the extent of deletion of the enhancement of turnover by ₹50,00,000.00. The impugned case is remitted back to the ld. Assessing Authority to re-compute the tax liability of the dealer-assessee in the light of the observation imparted in the foregoing paragraph within three months from the date of receipt of this order. Further, the ld. Assessing Authority is advised to refund the excess tax paid, if any, as per the provision of law.

Dictated and corrected by me.

**Sd/-
(Bibekananda Bhoi)
Accounts Member-I**

**Sd/-
(Bibekananda Bhoi)
Accounts Member-I**

I agree,

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

I agree,

**Sd/-
(S.K. Rout)
2nd Judicial Member**