

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

S.A. No. 369 of 2003-04

(Arising out of order of the learned ACST, Appellate Unit,
Bhubaneswar in Sales Tax Appeal No. AA- 175/BH.I/02-03,
disposed of on dated 14.01.2003)

Present: **Shri A.K. Das, Chairman**
Smt. Sweta Mishra, 2nd Judicial Member
&
Shri M. Harichandan, Accounts Member-I

M/s. Vijay Motors (Maruti Division),
Cuttack Road, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl.SC (CT)

Date of hearing: 15.11.2021 *** Date of order: 18.11.2021

O R D E R

The dealer-appellant has preferred this appeal assailing the order dated 14.01.2003 passed by the learned Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar (hereinafter called as 'first appellate authority') in Sales Tax Appeal No. AA- 175/BH.I/02-03 thereby confirming the order of assessment dated

15.07.2002 passed by the Sales Tax Officer, Bhubaneswar-I Circle, Bhubaneswar (in short, 'assessing authority') raising tax demand of ₹11,39,050.00 u/s. 12(8) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the assessment period 1996-97.

2. The relevant facts leading to the filing of the present appeal are that the dealer-appellant was assessed u/s. 12(4) of the OST Act on 21.12.1997. Subsequently on the basis of Fraud Case Report (FCR) submitted by the IST of the Circle, the case was reopened u/s. 12(8) of the OST Act and accordingly notice was issued to it. In response to such notice, the dealer appeared on 15.07.2002 and produced the books of account consisting of purchase register, sale register, purchase bills and sale memos, on verification of which purchase suppression of ₹15,87,304.12 was detected. It is pertinent to mention here that on 27.07.1999 the dealer applied for issue of Form-XXXIV following which the assessing authority issued a letter to the dealer to produce the books of account for the years 1996-97, 1997-98, 1998-99 and Q/e. 30.06.1999. The dealer produced the books of account through his authorized representative. At that time, the assessing authority directed

one of the ISTs to cross-verify the Form-XXXIV transactions with purchase registers for the years 1996-97, 1997-98, 1998-99 and Q/e. 30.06.1999. On verification of the accounts, it was noticed that the dealer has suppressed purchase of ₹15,87,304.12 although it effected purchases by utilizing different departmental way bills. The contents of the FCR were confronted to the dealer, who explained that by mistake they had not reflected the purchase in the purchase register although goods were purchased on the basis of Form- XXXIV and departmental way bills.

2(a). The assessing authority on scrutiny of the materials on record held that the plea of the dealer was not convincing and not acceptable. The dealer having not reflected the purchase of goods amounting to ₹15,87,304.12 in the purchase register, the only inference is that such suppression was with malafide intention to evade tax. Keeping in view the margin of profit at 15%, determined the sales suppression at ₹18,25,399.73. It also determined the annual turnover at ₹36,50,799.46 which is double of the purchase suppression . The assessing authority raised the tax demand to the tune of ₹11,39,050.00.

2(b). The dealer-appellant being aggrieved with the aforesaid findings of the assessing authority preferred appeal before the first appellate authority, who also concurred with the findings of the assessing authority and confirmed the order of assessment. The dealer-appellant being further aggrieved with the order of the first appellate authority preferred the present second appeal.

3. When the matter was called on for hearing, none appeared on behalf of the dealer-appellant despite due service of notice. So, the matter was taken up for hearing *ex parte* in the absence of the dealer-appellant and in the presence of the learned Standing Counsel (CT) representing the State.

4. It appears from the memorandum of appeal the dealer has challenged the impugned orders of both the forums below mainly on the ground that the purchase against declaration forms though not entered in the purchase register, it was reflected in the way bill and 'D' form register, which had not been appreciated by the learned first appellate authority for which the orders of the authorities below were highly arbitrary, whimsical and against the sanction of law.

5. Learned Standing Counsel (CT) for the State supporting the impugned orders of both fora below vehemently urged that the dealer having admitted about purchase of ₹15,87,304.12 and not reflecting the same in the purchase register, the forums below were correct in their approach in holding that there was purchase suppression of ₹36,50,799.46, which was taxed appropriately. There is no illegality in the impugned orders of the forums below warranting interference of this Tribunal.

6. We have heard the learned Standing Counsel (CT) for the State, gone through the memorandum of appeal, impugned orders of the forums below vis-a-vis the materials on record. It transpires from the impugned orders of the forums below that in course of verification of books of account by the IST, purchase suppression of ₹15,87,304.12 was detected, which fact was also admitted by the authorized representative of the dealer-appellant. The dealer neither before the assessing authority nor before the first appellate authority could give any satisfactory explanation about the non-reflection of such purchase amounting to ₹15,87,304.12 in the purchase register and in the absence of any explanation, the fora below accepted the allegations

made in the FCR and determined the tax liability of the dealer-appellant u/s. 12(8) of the OST Act. In the second appeal also the dealer neither appeared himself nor produced any material through his authorized representative to explain the allegations made in the FCR about purchase suppression of ₹15,87,304.12. Both the forums below on thorough scrutiny of the materials on record rightly held that there was purchase suppression of ₹15,87,304.12 for the year 1996-97, which was not reflected in the books of account maintained by the dealer. It was pleaded before the first appellate authority by the dealer-appellant that such omission was due to inadvertence and not intentional. It cannot be believed for a moment that the dealer-appellant inadvertently could not reflect the purchase amount of ₹15,87,304.12 in the books of account maintained by him even though was fully aware of such transactions. If at all such mistake was due to inadvertence, it could have filed revise return at the time of assessment u/s. 12(4) of the OST Act. But such fact was not brought to the notice of the authority during initial assessment. The purchase suppression of ₹15,87,304.12 was only detected after cross verification of the transactions covered under

Form-XXXIV with the purchase register for the years 1996-97, 1997-98, 1998-99 and Q/e. 30.06.1999. The forums below were correct in their approach in holding the purchase suppression at ₹15,87,304.12, determining the sales suppression at ₹18,25,399.73 and the annual turnover at ₹36,50,799.46 and calculating the tax liability of the dealer-appellant on the said amount. There is no illegality or impropriety in the orders of the assessing authority as well as first appellate authority warranting interference of this Tribunal. When the purchase suppression was detected by the IST in course of cross verification of transactions under Form-XXXIV and the purchase registers, the burden was on the dealer-appellant to explain such suppression but it failed to give any satisfactory explanation. The explanation offered by the dealer-appellant is also not acceptable to this Tribunal. Accordingly, we are not inclined to interfere with the impugned orders passed by the forums below.

7. In view of the discussions made above and for the foregoing reasons, we are of the unanimous view that both the forums below have correctly determined the tax demand against the present appellant and there is no illegality or impropriety in such assessment warranting

interference of this Tribunal. Accordingly, the appeal filed by the dealer-appellant being devoid of any merit stands dismissed and the impugned orders of the forums below are hereby confirmed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(Sweta Mishra)
2nd Judicial Member

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I