

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 25 of 2014

State of Odisha

....

Petitioner

Mr. Sunil Mishra, Addl. Standing Counsel

-versus-

M/s. Dua Auto Agency

....

Opposite Party

Mr. S.K. Dwivedy, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

Order No.

**ORDER
04.01.2023**

08. 1. Admit.

2. The following revised questions of law are framed for consideration by this Court:

“(i) Whether on the facts and in the circumstances of the case, the surcharge under Section 5A of the Orissa Sales Tax Act, 1947 is to be levied after deducting the amount of entry tax paid by the dealer pursuant to the Orissa Entry Tax Act as decided by the learned Tribunal, when Section 5A of the OST Act is a self-constrained provision and is leviable on the tax payable under the OST Act and the tax payable under the OST Act is independent of the provisions of the OET Act ?

(ii) Whether on the facts and in the circumstances of the case the Tribunal is justified in determining the surcharge is to be levied after giving set off- of the entry tax paid by the dealer, when on the conjoint reading of Section 5 of the OST Act, Section 4 of the OET Act and Rule 18 of the Rules, the surcharge under Section 5A is to be levied before deducting the amount of entry tax paid by the dealer ?

3. As far as the first question is concerned, the matter is no longer *res integra*. It stands covered against the dealer and in favour of the Department in view of the judgment of the Supreme Court of India in *Commissioner of Commercial Taxes v. M/s. Bajaj Auto Ltd. AIR 2016 SC 5014*. Consequently, question No.(i) above is answered in favour of the Department by holding that the surcharge under Section 5A of the OST Act is to be levied before deducting the entry tax paid by the dealer pursuant to the Orissa Entry Tax Act, 1999.

4. As a result to the above answer to question No.(i), question No.(ii) is answered in the negative i.e. in favour of the Department and against the Dealer/Assessee.

5. The impugned order of the Tribunal is accordingly set aside. The matter will now be remitted to the Assessing Officer to re-compute the demand in the light of the above judgment of the Supreme Court.

6. The revision petition is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S.Raman)
Judge