

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5797 of 2017

M/s. Orbit Motors Pvt. Ltd. *Petitioner*

Mr. Jagabandhu Sahoo, Sr. Advocate.

-versus-

State of Odisha & others *Opp. Parties.*

Mr. Sunil Kumar Mishra, ASC for Revenue Department

CORAM:
THE CHIEF JUSTICE
DR. JUSTICE S.K. PANIGRAHI

ORDER
21.12.2022

Order No.

04. 1. The writ petition is disposed of in terms of the order dated 01.10.2021 passed by this Court in W.P.(C) No.2225 of 2017 (**M/s. Sky Automobiles v. Deputy Commissioner of Commercial Tax, Cuttack-II Circle, Cuttack**). Accordingly, the following directions are issued:
- (i) As regards interest on surcharge, the Petitioner is entitled to the same benefit that was granted to a similarly placed Assessee in **Bajaj Auto (HC-2)**. The same reasoning as is contained in paragraph 10 of this Court's order in **Bajaj Auto (HC-2)** apply here as well and that reads as under:

“10. However, as regards the levy of interest, since the legal position got clarified by the Supreme Court only on 28th October 2016, the Petitioner is justified in contending, on the strength of the judgment of the Supreme Court in **Food Corporation of India v. State of Haryana, (2000)**

119 STC 7 (SC), that such interest is payable only for the period subsequent to the judgment of the Supreme Court and not prior thereto. Consequently, the impugned demand notices are modified only to the extent that the interest on the differential tax amount will be payable by the Petitioner for the period subsequent to the judgment of the Supreme Court i.e. 28th October 2016, till the date of payment.”

(ii) This Court accordingly upholds the impugned re-computation orders of the Department as well as the notice dated 6th March, 2017 except to the extent of interest on surcharge. A direction is therefore issued to the DCST to issue fresh orders re-computing the amount payable on the basis of the limited modification as regards interest, not later than 1st February, 2023. It is made clear that it would not be open to the Petitioner to again challenge the said order as long there is in conformity with the directions issued in the present judgment of this Court.

2. Urgent certified copy of this order be granted as per rules.

(Dr. S. Muralidhar)
Chief Justice

(Dr. S.K. Panigrahi)
Judge