

**M/s. Tirupati Motors Ltd. Vs. The State of MP & Ors.**  
**28/02/2014**

Shri Rajiv Jain and Shri Sumit Nema, Advocates for the petitioner.

Shri Vivek Khedkar, Deputy Advocate General for the respondents- State.

Heard.

The petitioner has filed this petition against the order dated 25-06-2011 (Annexure P-6) and the order dated 19-04-2012 ( Annexure P-8).

The petitioner is a Company. It is in the business of sale of two-wheelers of M/s. Bajaj Auto Limited. The dispute in regard to tax liability of the petitioner is of the assessment year from 01-04-2000 to 31-03-2001. The petitioner was assessed for the aforesaid period vide assessment order dated 23-12-2005. Subsequently, reassessment proceedings were initiated against the petitioner under Section 28(1) of M. P. Commercial Tax Act, 1994. It was mentioned in the reassessment proceedings that subsequently some information was received from M/s. Bajaj Auto Limited and on the basis of information, the Department came to conclusion that the petitioner had concealed the sale amount of Rs.43,19,894/- in its account books. A show-cause notice was issued to the petitioner. Thereafter, the assessing authority imposed a tax liability against the petitioner and also imposed hundred per cent penalty. Against the aforesaid order, a revision was filed. The revisional authority remanded the matter back on the ground that *ex parte* assessment proceedings were taken against the petitioner. On remand, again same order was passed

by the authority. The petitioner filed a revision, that has also been dismissed with some modification in regard to tax liability of the petitioner.

The question for consideration before this Court is that whether the petitioner was entitled to receive copies of documents, which were received by the Department from M/s. Bajaj Auto Limited to establish the fact that the petitioner had concealed the tax or not ?

In accordance with the Department, the petitioner in its earlier tax return had shown total purchase of two wheelers from M/s. Bajaj Auto Limited of Rs.13,40,29,323/-, however, in accordance with information received from M/s. Bajaj Auto Limited, the petitioner had purchased two wheelers of total amount of Rs.13,83,49,217/- Hence, the petitioner concealed an amount of Rs.43,19,894/- which is said to be amount of purchase of vehicles, purchased by the petitioner from M/s. Bajaj Auto Limited. The petitioner did not submit the original account books before the authority- Assistant Commissioner, Commercial Tax. The petitioner submitted an application, copy of which has been filed as Annexure P-5 that the petitioner was assessed on the basis of documents and bills received from M/s. Bajaj Auto Limited, however, copies of those documents and bills were not supplied to the petitioner. Hence, the petitioner was not able to file proper reply. The tax authority and the revisional authority, both rejected plea of the petitioner in regard to supply copies of documents on the ground that the documents had been shown to the petitioner, hence, it was not necessary to supply copies of documents to the petitioner.

It is a fact that the copies of documents received by the

Department from M/s. Bajaj Auto Limited in regard to excess purchase of vehicles by the petitioner in addition to the amount which was shown in the account books, were not supplied to the petitioner.

Hon'ble Supreme Court in the case of ***State of Kerala Vs. K.T.Shaduli Grocery Dealer etc. reported in (2013) 22 STJ 301(SC); AIR 1977 SC 1627*** has held as under in regard to opportunity to prove the correctness and completeness of the return by the assessee and right of the assessee to cross examine the witnesses:

"The opportunity to prove the correctness or completeness of the return would, therefore, necessarily carry with it the right to examine witnesses and that would include equally the right to cross-examine witnesses examined by the Sales Tax Officer. Here, in the present case, the return filed by the assessee appeared to the Sales Tax Officer to be incorrect or incomplete because certain sales appearing in the books of Hazi Usman Kutty and other wholesale dealers were not shown in the books of account of the assessee. The Sales Tax Officer relied on the evidence furnished by the entries in the books of account of Hazi Usman Kutty and other wholesale dealers for the purpose of coming to the conclusion that the return filed by the assessee was incorrect or incomplete. Placed in these circumstances, the assessee could prove the correctness and completeness of his return only by showing that the entries in the books of account of Hazi Usman Kutty and other wholesale dealers were false, bogus or manipulated and that the return submitted by the assessee should not be disbelieved on the basis of such entries, and this obviously, the assessee could not do, unless he was given an opportunity of cross-examining Hazi Usman Kutty and other wholesale dealers with reference to their accounts. Since the evidentiary material procured from or produced by Hazi

Usmankutty and other wholesale dealers was sought to be relied upon for showing that the return submitted by the assessee was incorrect and incomplete, the assessee was entitled to an opportunity to have Hazi Usmankutty and other wholesale dealers summoned as witnesses for cross-examination. It can hardly be disputed that cross-examination is one of the most efficacious methods of establishing truth and exposing falsehood. Here, it was not disputed on behalf of the Revenue that the assessee in both cases applied to the Sales Tax Officer for summoning Haji Usmankutty and other wholesale dealers for cross-examination, but his application was turned down by the Sales Tax Officer. This act of the Sales Tax Officer in refusing to summon Hazi Usmankutty and other wholesale dealers for cross-examination by the assessee clearly constituted infraction of the right conferred on the assessee by the second part of the proviso and that vitiated the orders of assessment made against the assessee."

In the aforesaid judgment, Hon'ble the Supreme Court enunciated the principle that the assessee is eligible to cross-examine the persons, from whom the Department had received information that the assessee had concealed the transactions.

In the present case, the allegation against the petitioner is that it had purchased vehicles from M/s. Bajaj Auto Limited in excess. However, it had shown less amount in its account books. In that circumstances, in our opinion, the petitioner was entitled to receive the copies of documents which were received by the Department from M/s. Bajaj Auto Limited to substantiate its claim. Hence, this petition is disposed of with the following directions:-

(I)That, the impugned orders dated 25-06-2011 (Annexure P-6) and dated 19-04-2012 (Annexure P-8) are hereby quashed.

(II)The matter is remanded back to the assessing authority.

(III) The authority shall supply copies of documents to the petitioner as mentioned above in the order within a period of two weeks and thereafter, the petitioner shall file its reply.

(IV)The assessing authority shall complete the proceedings within a period of four months thereafter.

(V) Both the parties shall appear before the assessing officer on 18<sup>th</sup> March, 2014.

It is hereby clarified that this Court has not opined about the merits of the case.

No order as to costs.

**(S. K. Gangele)**  
**Judge**

**(D. K. Paliwal)**  
**Judge**