

Court No. - 7

Case :- SALES/TRADE TAX REVISION No. - 162 of 2007

Revisionist :- M/S Sardar Auto Engineering Co.Through Its Partner

Opposite Party :- Commissioner Trade Tax

Counsel for Revisionist :- P.Agarwal

Counsel for Opposite Party :- C.S.C.

And

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Hon'ble Alok Mathur,J.

1. Heard Shri Pradeep Agarwal, learned counsel for revisionist, Shri Sanjay Sarin, learned Standing Counsel appearing for the State-respondent and perused the material available on record.
2. By means of the present Trade Tax Revision, the revisionist has challenged the order dated 6.7.2007 passed by the Trade Tax Tribunal in Appeal No. 135 of 2006 for the assessment year 2002-03, which has been assailed by him in T.T.R. No. 161 of 2007 while challenge to the judgment and order dated 6.7.2007 passed by the Trade Tax Tribunal has been made in Appeal No. 136 of 2006 for the assessment year 2003-04.
3. In light of the fact that the question involved in both the revisions is same, accordingly, the same are being decided together.
4. The revisionist is registered under the U.P. Trade Tax Act, 1948 as well as under the Central Sales Tax Act, 1956 and is

authorized dealer of TVS Motors Company Ltd for the manufacturer of the Motorcycle, Mopeds and parts thereof and are sold under the various brand names. The assessment year 2002-03 was completed vide order dated 18.12.2004 under Rule 41 (8) of the U.P. Trade Tax Rules, 1948 and subsequently notice under Section 21 of the Trade Tax Act was issued to the petitioner for levy of the tax on the turnover of Rs.7,90,790.19/-, which related to the replacement of defective parts during the warranty period. It is submitted that the replacement of parts were made in the vehicles sold by the revisionist and exemption was granted by the Assessing Authority. According to the revisionist, these parts are provided by the manufacturer of the vehicles and the replacement was made by the revisionist free of costs. Accordingly, the exemption was allowed to the revisionist. On the basis of the judgment of the Supreme Court in the case of ***Mohd. Ekram Khan and sons Vs. Commissioner of Trade Tax U.P., which was decided on 21.7.2004***, notice under Section 21 of the Act was issued asking the revisionist to respond as to why tax should not be assessed on the replacement of the part during warranty for which the exemption was previously granted. The petitioner had filed his objection to the notice under Section 21 of the Act and the same was rejected by the Deputy Commissioner Sales Tax, Faizabad on 2.8.2005 relying upon the judgment of the Supreme Court in the case of Mohd. Ekram Khan and sons Vs. Commissioner of Trade Tax U.P. The Assessing Authority held that the revisionist was liable to pay sales tax on the value of the goods, which was replaced during the period of warranty, accordingly, held that the revisionist was liable to sales tax.

5. Against the said order, the revisionist had filed first appeal before the Joint Commissioner (Appeals) Vth Trade Tax,

Gorakhpur with Headquarter at Faizabad. The first appeal was also rejected by means of order dated 20.02.2006. The appeal of the revisionist with regard to the assessment year 2002-03 and 2003-04 were decided together and rejected by means of order dated 20.02.2006. Against the said order, second appeal was filed before the Trade Tax Tribunal, which was decided on 06.07.2007, which has been impugned by the revisionist in both the revisions, which have been heard together and are being decided by a common judgment.

6. Learned counsel for revisionist has firstly submitted that with regard to the assessment pertaining to the assessment year 2002-03 recourse to section 21 of the Trade Tax Act could not have been taken by the authorities concerned, inasmuch as, the exemption was granted to the revisionist with regard to the transaction pertaining to replacement during the period of warranty. He submits that once due exemption was granted by the Assessing Authority, proceedings under Section 21 of the Act, could not have been undertaken as the same would amount to review/change of opinion of the previous assessment.

7. In this regard, Shri Sanjay Sarin, learned Standing Counsel appearing for the State has opposed the contention of the learned counsel for the revisionist. He has submitted that according to the provisions contained in Section 21 of the Act, resort can be had to be an assessment where the Assessing Authority has reason to believe that the whole or any part of the turnover of a dealer had escaped assessment to tax or has been under-assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act or any deduction or exemptions has been wrongly allowed in respect thereof, the Assessing Authority may, after issuing notice to the dealer and making such inquiry, as it may consider necessary, assess or re-assess the dealer to tax according to law.

8. He further submits that in the present case, the assessment pertaining to replacement of the parts during period of warranty was not assessed by the Assessing Authority, which clearly falls under the mischief of Section 21 of the Act and exemption has been granted to the revisionist wrongly, therefore, the Prescribed Authority was within its competence to resort to provisions of Section 21 of the Act to reopen the assessment in the aforesaid matter.

9. After considering the rival submissions of learned counsel for parties, this Court is of the considered view that the Assessing Authority has rightly resorted to the provisions of Section 21 of the Act of 1948 and as the revisionist has been given the benefit of exemption which according to the Assessing Authority was wrongly given and was within his competence to issue notice and re-initiate proceedings under Section 21 of the Act of 1948 and therefore, there is no infirmity in the same and accordingly, the objection raised in this regard by the revisionist is rejected.

10. The second aspect of the matter urged by the revisionist with regard to the imposition of tax on the replacement made by the assessee during the period of warranty. In this regard, he has relied upon the judgment of the Supreme Court in the case of ***M/s Tata Motors Ltd. Vs. Deputy Commissioner of Commercial Taxes (SPL) and another*** reported in ***(2023 U.P.T.C.[VOL.114]-873) Supreme Court***, after considering the various judgments, has summarized its finding in paragraph no. 70 of the said judgment, which reads as under:-

“70. In the circumstances, the reference is answered in the following terms:

(i) The judgment of this Court in Mohd. Ekram Khan is applicable to a situation where a manufacturer issues a credit note to a dealer acting under a warranty given by the manufacturer pursuant to a sale of an automobile in the following situations. The dealer replaces a defective part of the automobile by a spare part maintained in the stock of the dealer or when the same is purchased by the dealer from the open market.

In such situations, the credit note issued in the name of the dealer is a valuable consideration for a transfer of property in the spare part made by the dealer to the customer and hence a sale within the meaning of the sales tax legislations of the respective States under consideration. The value in the credit note is thus exigible to sales tax under the respective sales tax enactments under consideration.

(ii) The judgment in Mohd. Ekram Khan does not apply to a case where the dealer has simply received a spare part from the manufacturer of the automobile so as to replace a defective part therein under a warranty collateral to the sale of the automobile. In such a situation also, the dealer may receive a consideration for the purpose of the service rendered by him as a dealer under a dealership agreement or any other agreement akin to an agent of the manufacturer which is not a sale transaction.

On the above understanding of the judgment of this Court in Mohd. Ekram Khan, we are of the view that the same does not call for any interference.

In light of the above, in our view, overruling of the judgments in the case of Prem Motors and Geo Motors in Mohd. Ekram Khan, is just and proper.

(iii) It is reiterated that a credit note issued by a manufacturer to the dealer, in the situations explained above, is a valuable consideration within the meaning of the definition of sale and hence, exigible to sales tax under the respective State enactments of the States under consideration. In the result, appellants-dealer/assessee are liable to pay sales tax under the respective State enactments under consideration.

(iv) In view of the above, the appeals filed by the dealers are dismissed. The appeals filed by the revenue are allowed. Parties to bear their respective costs.”

11. In paragraph no. 70 (i) of the said judgment, it has been held that whenever the manufacturer issue a credit note to the dealer acting under a warranty pursuant to a sale of an automobile and the dealer replaces a defective part of the automobile by a spare part maintained in the stock of the dealer or when the same is purchased by the dealer from the open market would constitute a sale within the meaning of the Sales Tax Legislation.

12. In the present case, the parts, which were replaced by the revisionist, he had received consideration from the manufacturer and accordingly, such a transaction falls within the meaning of sale and accordingly, as per the judgment of ***M/s Tata Motors Ltd. Vs. Deputy Commissioner of Commercial Taxes (SPL) and another***, the revisionist has

rightly been held liable for payment of tax and the said transaction amounted to sale.

13. This Court is of the considered view that issuance of credit note in lieu of spare parts amount to contract of sale since credit note is a valuable consideration. The Trade Tax Tribunal is the final fact finding authority and this fact has been duly established by it at various stages. After perusal of the aforementioned set of facts, this Court does not find any infirmity in the orders of tribunal and categorically holds that petitioners are liable to pay tax on the transaction.

14. Accordingly there is merit in the revision, which are therefore, dismissed.

(Alok Mathur, J.)

Order Date :- 9.7.2024

Virendra