THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.15263 and 15285 2015

COMMON ORDER: (per Hon'ble The Acting Chief Justice Dilip B.Bhosale)

Heard learned counsel for the parties.

2. The principal question raised for our consideration in the instant writ petitions, under Article 226 of the Constitution of India, is 'whether manufacturer of vehicles is liable to pay the tax payable under the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (for short 'the Taxation Act') and the Rules framed thereunder?'.

3. The background facts, against which the question arises for our consideration, are as under:

The petitioner-SML ISUZU Limited is a Public Limited Company incorporated in the name of Swaraj Mazda Limited under the provisions of Companies Act, 1956, which was later renamed as SML ISUZU Limited, hereinafter referred to as the petitioner. The petitioner is engaged, *inter alia*, in the business of manufacturing of commercial vehicles having its body building and assembly plant in the State of Punjab. The petitioner sells its vehicles both in domestic as well as in foreign markets. The petitioner, after manufacturing the chassis and assembling the body and completing its form as a passenger/goods vehicle, according to the user/usage specifications at its assembly plant in Punjab, shifts such fully fabricated vehicles to its depots (stock points) in various States in the Country for supply to the dealers or for inter-state transfer.

3.1 According to the petitioner, while removing the fully fabricated vehicles, they pay excise duty payable against the manufactured stock of vehicles and transport the vehicles to their stock points for onward supply to their dealers in various States including the States of Andhra Pradesh and Telangana. Further, the petitioner states that the State of Punjab do not levy any motor vehicle tax on the motor vehicles that are being transported from Punjab to stock points or to the dealers and then to a final customer.

3.2 The petitioner has one of its depots in Vijayawada since 1989 which now falls in the State of Andhra Pradesh after bifurcation of erstwhile State of Andhra Pradesh. The petitioner, therefore, established another depot at Kukatpalli in Hyderabad, post bifurcation, in order to cater their customers in the State of Telangana. The erstwhile Government of Andhra Pradesh had issued G.O.Ms.No.68 dated 13.04.2006 providing for payment of minimum quarterly tax on various classes of motor vehicles used and kept for use in a public place in the State at the rates specified in Column No.2 of the Schedule given therein. The text of notification/Government Order reads thus:-

"

NOTIFICATION

In exercise of the powers conferred by Section 3 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (Andhra Pradesh Act 5 of 1963) as amended by Act 11 of 1992 prescribing the maximum quarterly tax leviable on various classes of motor vehicles and in supersession of all the notifications issued earlier on the subject, the Governor of Andhra Pradesh hereby directs, a tax for a quarter shall be levied on every motor vehicle used or kept for use in a public place in the State, at the rates specified in column (2) of the Schedule below in respect of the classes of motor vehicles specified in column (1) thereof.

The notification shall come into force with effect from 15th April, 2006."

3.3 Though the above Government Order was issued in 2006, the respondents started collecting tax consequent thereto only in 2012 from the petitioner while entering the State. The petitioner was made to pay quarterly tax for all vehicles brought to the States for sale through their dealers, vehicles being omnibus at the rate of

Rs.396.90 per seat and per quarter as contemplated under G.O.Ms.No.68. Prior thereto, according to the petitioner, the respondents used to issue Trade Certificates till 2010 and in view thereof the tax was not levied under G.O.Ms.No.68. The respondents suddenly stopped issuing Trade Certificate in 2010 and from 2012 onwards made them to pay quarterly tax under G.O.Ms.No.68.

3.4 The petitioner contends that they transfer fully fabricated vehicles to its various depots in the Country including the depots located in the States of Andhra Pradesh and Telangana and for that purpose their vehicles always enter into the States from Saloora Check Post, Bhodan Mandal located in Nizamabad District, which now falls within the territorial limits of the State of Telangana. Their vehicles were permitted to ply on the roads of the erstwhile State of Andhra Pradesh only after collecting road tax from the petitioner at the check posts. Since 2012, before and after bifurcation, their vehicles continued to enter into the State through the Saloora Check Post on payment of quarterly tax as contemplated under G.O.Ms.No.68. Collection of quarterly tax, according to the petitioner, is illegal and contrary to the settled position of law. The petitioner contends that after bifurcation even the State of Andhra Pradesh started levying tax on vehicles that were transferred to the depot located at Vijayawada and as a result thereof, the petitioner had to pay quarterly tax twice on some vehicles. In other words, vehicles to be transported to their depot in Vijayawada need to pass through the State of Telangana and in view thereof both the States at the entry point started collecting quarterly tax for same vehicles without sanction of law.

3.5 The petitioner contends that for bringing the vehicles from Punjab to the States of Andhra Pradesh and Telangana they obtain temporary registration under

Section 43 of the Motor Vehicles Act, 1988 (for short 'M.V. Act') by paying the requisite temporary registration fee to the Punjab Motor Vehicle Department.

3.6 According to the petitioner, the manufacturer, who does not either use or keep the vehicle for use, is not at all liable to pay quarterly tax as per G.O.Ms.No.68. The petitioner, therefore, made a representation dated 11.07.2013 to the 1st respondent requesting not to levy the quarterly tax and the same was rejected with the direction to pay necessary tax as applicable for temporary registration of vehicles at the border of the State while entering into the erstwhile State of Andhra Pradesh. The 1st respondent also rejected the request of the petitioner for issue of Trade Certificate. The text of the communication memo dated 17.07.2013 reads thus:

> "I invite attention to the reference cited it is to inform that Trade Certificate does not permit bringing the vehicle from the manufacturer to the dealer. **The vehicle should be brought from the manufacturer to the dealer on temporary registration certificate. Necessary tax as applicable for temporary registration vehicles need to be paid at the border for entering into the State of Andhra Pradesh**.
>
> This is for your information."

(emphasis supplied)

4. Insofar as the memo is concerned, learned Advocate General for the State of Telangana, submitted that the impugned communication is not drafted properly and the authority never intended the petitioner to obtain temporary registration certificate once again on payment of tax as applicable for temporary registration of vehicles at the border for entering into the State of Andhra Pradesh. In other words what it meant was, the petitioner is liable to pay tax as provided for under Section 3 read with Section 4 of the Act. In view of the contents of the impugned communication dated 17.07.2013 and considering the submissions of the learned Advocate General for the State of Telangana, it is clear that the impugned communication and the actual action of demanding tax, as

contemplated under Section 3 read with Section 4 of the Act is not consistent. Despite this disparity, we proceed to examine the case, overlooking the language employed in the impugned communication dated 17.07.2013, whether the respondents can demand the tax under the provisions of the Taxation Act from the manufacturer.

5. In this backdrop, the petitioner challenged the memo dated 17.07.2013 and sought for declaration that the action of the 3rd respondent demanding quarterly tax from the petitioner as and when they stock transfer their motor vehicles to the depot/stockyard (stock point), the place of their business, in the States as illegal, arbitrary and without jurisdiction. The petitioner prayed for a direction to the 1st respondent to grant the Trade Certificate to the petitioner as per the provisions of the M.V. Act and Rules made thereunder. Mr.Sridharan, learned senior counsel for the petitioner, submitted that the petitioner would be satisfied even if the respondents start issuing trade certificates as defined under Rule 2 (g) of the Central Motor Vehicles Rules, 1989 (for short "Central Rules") to enable them to bring their vehicles to their stockyard in these two States. The petitioner also prayed for refund of the quarterly tax collected by the respondents with interest.

6. We have heard the learned counsel for the parties for quite sometime, unmindful of the amendment by G.S.R.291(E), dated 24-04-2014, whereby the word 'dealer' was substituted by the expression "dealer or manufacturer of automobile or automobile ancillaries or a test agency specified in Rule 126 of the Central Rules, in rule 33 thereof. We, in the midst of the arguments and before we noticed the substitution by G.S.R.291(E), dated 24-04-2014 in Rule 33, framed the following consequential questions for determination: (i) whether a manufacturer of vehicles is liable to pay tax under Section 3 of the Taxation Act?; (ii) whether the word 'dealer' will *ipso facto*

cover manufacturer being a person who is *inter alia* engaged in selling of vehicles?; (iii) whether a manufacturer is entitled for 'trade certificate' as defined by Rule 2(g) of the Central Rules, in Form-17 appended thereto?; and iv) whether the manufacturer is exempted from registration of a motor vehicle in his possession and is entitled for trade certificate?

7. All through out we have heard learned counsel for the parties including Advocates General for the States of Andhra Pradesh and Telangana, unmindful of substitution by G.S.R.291(E), dated 24-04-2014, as aforementioned. There is a reason why learned counsel for the parties and we did not notice the substitution by G.S.R.291(E), dated 24-04-2014. Mr.Sridharan, learned senior counsel for the petitioner had prepared a compilation of photo copies of all relevant provisions of the Taxation Act and the Rules framed thereunder, the M.V. Act and the Central Rules running into about two hundred and odd pages. The compilation, though prepared for convenience, contained photo copies of the Central Rules printed prior to the substitution by G.S.R.291(E), dated 24.04.2014. It would be relevant to reproduce the provision contained in Rule 33 after substitution by G.S.R.291(E), dated 24-04-2014, which reads as follows:-

> "**33. Condition for exemption from registration**.- For the purpose of the proviso to section 39, a motor vehicle in the possession of a [(1)][dealer or manufacturer of automobile or automobile ancillaries or a test agency specified in rule 126] shall be exempt from the necessity of registration subject to the condition that he obtains a trade certificate from the registering authority having jurisdiction in the area in which the [(1)][dealer or manufacturer of automobile or automobiles ancillary or a test agency specified in rule 126] has his place of business in accordance with the provisions of this Chapter".
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> **(1) Subs. By G.S.R. 291 (E), date 24th April, 2014, for "dealer" (w.e.f.24-4-2014).**

7.1 After having noticed this provision, learned Senior Counsel for the petitioner as well as learned Advocates General appearing for the States of Andhra Pradesh and Telangana fairly submitted that these writ petitions may be disposed of with liberty to the petitioner, if so advised, to make a representation to the State Governments for refund of the tax paid by them. The learned Advocates General, however, submitted that if at all such a representation is made, same will be considered strictly in accordance with law. It was further submitted on behalf of the States that in view of the substitution of the word ‘dealer’ in Rule 33, it is open to the petitioner to apply for trade certificate from the registering authority having jurisdiction in the area in which the petitioner has his place of business in accordance with Chapter III of the Central Act. The learned Senior Counsel for the petitioner, in view of the substitution by G.S.R.291(E), dated 24.04.2014, did not press the writ petitions for its decision on merits and prayed for a liberty to the petitioner to apply for trade certificates whenever required. Insofar as the tax paid by the petitioner is concerned, he submitted that the petitioner shall make a representation within a period of eight weeks from today and on such representation being made, with supporting documents, the State Governments may be directed to consider it within time frame. In this backdrop, we are satisfied that these writ petitions can be conveniently disposed of by passing the following order:-

(a) The writ petitions are disposed of as not pressed with liberty as prayed;

(b) It is open to the petitioner to apply for trade certificate(s) from the registering authority having jurisdiction in the area in which it has their place of business in accordance with provisions of the Central Rules, in particular Chapter III thereof, whenever they require the same. The concerned registering authority, having satisfied with compliance of all formalities, may issue trade certificate(s) to the petitioner in accordance with the provisions of the M.V.Act and the Central Rules.

(c) It is open to the petitioner to make a representation seeking refund of the tax paid by it, in particular for the period after 24.04.2014, on which date the word 'dealer' in Rule 33 of the Central Rules came to be substituted by G.S.R.291(E), dated 24.04.2014; and

(d) We hope and trust that the concerned authority shall consider and deal with the representation in accordance with law. We shall not be understood to have issued any direction as such in respect of refund to the petitioner that they claim.

8. With these observations, the writ petitions are disposed of in terms of this order. No order as to costs.

9. Miscellaneous petitions pending in the writ petitions, if any, also stand disposed of.

Dilip B.Bhosale, ACJ

S.V.Bhatt, J

18th September, 2015.
TSNR