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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.1.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

Tax Case (Revision) No.93 of 2015

Ashok Leyland Limited,
480, Anna Salai,
Nandanam,
Chennai - 600 035.

... Appellant /Petitioner

..vs..

The State of Tamil Nadu,
(represented by the Assistant Commissioner (CT),
Fast Track Assessment Circle III,
Chennai - 600 006.

.. Respondent/Respondent

Prayer : Tax Case Revision filed under Section 38 of the Tamil Nadu General Salex Tax Act, 1959 against the order of the Sales Tax Appellate Tribunal (Main Bench) Chennai - 600 104 dated 9.5.2014 in Tribunal Appeal No.70 of 2006 against the order of the Deputy commissioner (CT) Appeals Chennai dated 8/12/2005 in A.P.No.17/05, 18/05, 84/98 & against the order of the Assistant Commissioner (CT) Central Assessment Circle-III, dated 24/06/1993 in 7NGS7/72027/88-89.

For Appellant : Mr.N.Prasad

For Respondent : Mr.S.Kanmani Annamalai

J U D G M E N T

This tax case revision has been filed, under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, challenging the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, dated 9.5.2014, made in T.A.No.70 of 2006, relating to the assessment year 1988-89.

2. The brief facts of the case, necessary for the disposal of the appeal, are as follows:

2.1. The petitioner is a public limited company, incorporated under the Companies Act. The petitioner is



involved, inter alia, in manufacturing of motor vehicle chassis for heavy vehicles. The petitioner has its factories at Ennore and at Hosur in the state of Tamil Nadu. On 20.2.1989, the petitioner Company had been awarded a contract, by the Madras Port Trust, for designing, manufacturing, supplying and commissioning and for handing over of eight numbers of Yard Tractors with drive clutch unit. Though the vehicle was named as tractor, there was nothing but a cabin built for the driver on the trailer/lorry chassis.

2.2. It has been further stated that G.O.P.No.227, dated 3.3.1984, had provided for concessional rate of tax on the sale of lorry chassis. The petitioner had claimed concessional rate of tax under the said Government Order. The claim made by the petitioner for concessional rate of tax had been disallowed in the assessment, dated 24.6.1998. The petitioner had filed a first appeal before the Joint Commissioner (CT) Appeals, Chennai. However, the demand order made against the petitioner had been confirmed by an order, dated 8.12.2005. Therefore, the petitioner had filed a second appeal challenging the said order before the Sales Tax Appellate Tribunal, under Section 36 of the Sales Tax Act.

3. The learned counsel appearing for the petitioner had submitted that the Sales Tax Appellate Tribunal had committed an error in law, in confirming the levy of higher rate of tax on the sale and delivery of the cabin built on trailer chassis. Without the construction of the cabin for the driver, the vehicle could not be used. It was not a fully built motor vehicle, like a bus, which has to be assessed at 15%. It was only a delivery of chassis and therefore, it had to be assessed at 6%. In respect of four chassis which had been delivered, the first appellate authority had decided the issue in question in favour of the petitioner, by an order, dated 29.12.1998, made in A.P.No.297 of 1995. However, the Sales Tax Appellate Tribunal had committed an error in law, in holding that the petitioner was not entitled for the benefit of concessional rate of tax, under G.O.P.No.227, dated 3.3.1984.

4. The learned counsel appearing for the petitioner had further submitted that the Tribunal had committed an error in law, in erroneously coming to the conclusion that the construction of the cabin was a construction of a fully built motor vehicle. The Tribunal ought to have noted that the chassis did not become a commodity merely due to the adding of a cabin. It had erred in relying on the judgment of the Supreme Court, made in MUNICIPAL CORPORATION OF CITY OF THANE Vs. VIDYUTH METALLICS LTD., (20 VST 680). The said case related to a vehicle



in which case the body had been built on the auto chassis. Similarly, the decision made in STATE OF TAMIL NADU Vs. ASHOKA MOTORS (28 VST 116) could not be applicable to the present case, as in the said case a body had been constructed on the chassis.

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5. The learned counsel appearing for the petitioner had further submitted that the Tribunal had miserably failed in arriving at its conclusion that the concessional rate of tax was not applicable to the vehicles in question. The Tribunal had not considered the evidence on record in its proper perspective. The Tribunal had rendered a perverse finding that the vehicle is not eligible for the concessional rate of tax, even though only a cabin is built on the chassis. In such circumstances, this Court may be pleased to set aside the order passed by the Tribunal, dated 9.5.2014, in T.A.No.70 of 2006, and remit the matter back to the Tribunal for deciding the matter, afresh, based on the evidence placed before it and to render a finding as to whether the vehicle in question is eligible for the concessional rate of tax, as held for the similar vehicles, during the assessment year 1989-90, after giving an opportunity of personal hearing to the assessee, as well as to the Department.

6. In such circumstances, without going into the merits of the matter, the impugned order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, dated 9.5.2014, is set aside and the matter is remitted back to the Tribunal to decide the matter, afresh, based on the evidence placed before it and to render a finding as to whether the vehicle in question is eligible for the concessional rate of tax, as held in the case of similar vehicles, during the assessment year 1989-90, after giving an opportunity of personal hearing to the assessee and the Department. The Tribunal shall pass appropriate orders, on merits and in accordance with law, as expeditiously as possible.

Accordingly, the Tax Case Revision is disposed of with the above directions.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



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To

1.The Assistant Commissioner (CT),
The State of Tamil Nadu,
Fast Track Assessment Circle III,
Chennai - 600 006.

2.The Deputy Commissioner (CT),
Appeals, Chennai.

3.The Assistant Commissioner (CT)
Central Assessment Circle-III.

+lcc to M/S.N.InbaRajan, Advocate Sr.2060
+lcc to Special Government Pleader Sr.2213

Tax Case (Revision) No.93 of 2015

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srg 22/03/2016