In the High Court of Judicature at Madras

Dated: 24.01.2017

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The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition Nos.1645 and 1646 of 2017
& WMP Nos.1620 and 1621 of 2017

Concorde Motors (India) Limited
represented by K.Karuppasamy
.... Petitioner in the above W.P.s

Vs.

1. The Joint Commissioner of Commercial Taxes,(Appeals)
3rd Floor, PAPJM Building,
Greams Road, Chennai - 600 006.

2. The Deputy Commissioner (CT),
Large Taxpayers Unit,
No.34, Dugar Towers, 5th Floor,
Marshalls Road, Egmore,
Chennai - 600 008.

3. Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

4. Government of Tamil Nadu,
represented by its Secretary,
Commercial Taxes Department,
Fort St. George, Chennai - 600 009.
.... Respondents in the above W.Ps

W.P.No.1645 of 2017:

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records relating to the impugned order in A.P.No.8/2016 dated 25.10.2016 to the extent of tax demand of Rs.55,33,489/- and penalty of Rs.27,66,745/- on disputed turnover of Rs.4,42,67,907/- passed by the 1st respondent and quash the same.

W.P.No.1646 of 2017:

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records relating to the impugned order in A.P.No.11/2016 dated 25.10.2016 to the extent of tax demand Rs.76,08,514/- and penalty of Rs.38,04,257/- on disputed turnover of Rs.6,08,68,112/- passed by the 1st respondent and quash the same.

For Petitioner : Mr.Raghavan Ramabadran
For Respondents: Mr.K.Venkatesh, G.A.

C O M M O N O R D E R

1. These are Writ Petitions, which assail the common order dated 25.10.2016, passed by the Joint Commissioner (CT) Appeals, Chennai.

2. To be noted, the challenge laid in these Writ Petitions, is, with respect to only one issue, ie., "sale of vehicles at price lower than the purchase value assessed to tax".

3. The contention made before me by the learned counsel for the petitioner is, that the impugned order, on this issue, is pivoted on the provisions of Section 24 of the Tamil Nadu Value Added Tax Act, 2006 (in short 'the 2006 Act'). According to the learned counsel for the petitioner, the said provision can be invoked, only if, the sale price is "abnormally low as compared to the prevailing market price".

3.1. The petitioner's counsel submits that the variation in the price, at which the vehicles are available to the petitioner, and, the price, they are sold to the ultimate customer, is on account of the discounts offered.

3.2. Counsel for the petitioner further says, that tax has been levied via the impugned order, on the value of the discount, which is not permissible.

4. On the other hand, Mr.Venkatesh, who appears on advance notice on behalf of the respondents, says that via the impugned order, several issues were decided, and that, it is only vis-a-vis the issue, referred to above, qua which, the respondent ruled against the petitioner.

4.1. Mr.Venkatesh, thus, says that, the petitioner should avail of the alternate remedy available, by way of filing an appeal with the Tribunal.

5. I have heard the learned counsels for the parties and perused the record.

6. I am inclined to agree with Mr.Venkatesh, that an appeal would be an appropriate remedy in the facts of the present case.

6.1. The issue raised in the Writ Petitions would require examination of facts as well as the provisions of law.

7. In these circumstances, in my view, the petitioner should

avail of the remedy available under the 2006 Act.

8. Accordingly, the Writ Petition is dismissed, with liberty to the petitioner to approach the Tribunal, albeit, in accordance with law.

9. Resultantly, connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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represented by its Secretary,
Commercial Taxes Department,
Fort St. George, Chennai - 600 009.

+2 ccs to M/s.Lakshmi Kumaran Advocate sr 4373
+1 cc to Special Government Pleader (Taxes) sr4603

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aa13/02/2017