HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

Writ Petition No.11398 of 2017

Order: (per V.Ramasubramanian, J.)

The petitioner, who is a dealer under the Andhra Pradesh Value Added Tax Act, 2005, has come up with the above writ petition aggrieved by the denial of input tax credit on the purchase value of second hand vehicles.

2. Heard Mr. Dantu Srinivas, learned counsel for the petitioner and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for the respondents.

3. The petitioner was denied the benefit of inclusion of input tax credit in the purchase of second hand vehicles, on the ground that the old vehicles were purchased in the combined State of Andhra Pradesh before 02-6-2014 and that therefore the old vehicles cannot be deemed to have suffered input tax, in the same State to be eligible for credit. But this principle on the basis of which the 2nd respondent has acted, goes contrary to a decision rendered by the Bench of this Court on 19-7-2016 in *Prathul Automobiles Pvt. Ltd. v. Assistant Commissioner*.

4. As rightly observed by the Assessing Officer, two issues arose for consideration before the Division Bench in *Prathul Automobiles Pvt. Ltd.* The first related to the question whether the vehicles originally purchased in the combined State of

Andhra Pradesh before 02-6-2014 can be taken to have suffered tax in the successor State or not. The 2nd question was with respect to production of proof of sufferance of tax.

5. The Division Bench of this Court answered the 1st question in favour of the assessee, but remitted the matter back to the Assessing Officer for a factual finding on the 2nd question.

6. But unfortunately, in the 6th last paragraph of the impugned order, the Assessing Officer has misunderstood the purport of the decision of this Court in *Prathul Automobiles Pvt. Ltd.*, on the 1st question. This can be demonstrated by extracting the 6th last paragraph of the impugned order as follows:

> "Regarding the first condition that is the vehicle is to be purchased in the State is to be seen in the light of the judgment delivered by the Honourable High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in *M/s Prathul Automobile Pvt Ltd vs. The Assistant Commissioner (CT).* The Company while filing their objections has wrongly quoted the para of the judgment which is irrelevant to the above said condition. Actually the Honourable Court has decided on two issues in the said case. One is the interpretation of "vehicles purchased in the State" and the other one is "production of tax invoices as documentary evidence". The Honourable Court has remanded the issue as far as the production of tax invoices is concerned as documentary evidence to the Assessing Authority. The Company has quoted this relevant paragraph in their defence, but this is not correct. What was questioned by the Assessing Authority in the present case is not the non-production of tax invoices but that the vehicles were not purchased in the successor State of Andhra Pradesh that is

> after 02.06.2014 after bifurcation of State of Andhra Pradesh as per the observations of the Honourable Court in the said case. The Company has not offered any explanation in their objections on this point. They have not countered how they are eligible for Input Tax Credit even if the old vehicles sold by them were not purchased in the successor State of Andhra Pradesh. So to reiterate, the eligible Input Tax Credit is to be given on the sale of old vehicles only when such vehicles are purchased in the successor State of Andhra Pradesh that is purchased after 02.06.2014 as per the judgment of the Honourable Court in the said case."

7. The above portion of the impugned order goes contrary to the ratio laid down in *Prathul Automobiles Pvt. Ltd.* The decision in *Prathul Automobiles Pvt. Ltd.*, was also clarified by the same Bench, by a subsequent decision dated 31-8-2016 in W.P.Nos.29390 and 29411 of 2016. The relevant portion reads as follows:

> "As noted, in the aforesaid judgment, it is only if the subject goods have suffered VAT, under the A.P.VAT Act/Telangana VAT Act, is the benefit of input tax credit available. All that has been observed in the aforesaid order is that, in the absence of any specific Rule made under the VAT Act in this regard, the evidence to be produced before the assessing authority must be such as to show that the vehicles, purchased by the dealer, had been subjected to VAT at the time of its initial registration, under the Motor Vehicles Act, 1988, either within the erstwhile composite State of Andhra Pradesh or the State of Telangana. ... ..."

8. Therefore, the writ petition is allowed, the impugned order is set aside and the matter remanded back. Upon the petitioner producing the proof of the old vehicles having suffered tax in the composite State of Andhra Pradesh, the respondents shall grant the benefit of input tax credit to the petitioner.

The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

24th April, 2017.
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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

<u>Writ Petition No.11398 of 2017</u>
(per VRS, J.)

24th April, 2017.
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