IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MAH. VALUE ADDED TAX APPEAL NO. 47 OF 2017

Chowgule Industries Pvt. Ltd. ....Appellant
V/s.
The State of Maharashtra ....Respondent

* * * * *

Mr. Sandip D. Ghaterao i/by. Mr. N.V. Tapare, Advocate for the appellant.

Ms. Jyoti Chavan, AGP for the State-respondent.

CORAM :- M.S. SANKLECHA, &
SANDEEP K. SHINDE, JJ.
DATE :- 17TH APRIL, 2018.

P.C. :-

1. This Appeal under Section 27 of the Maharashtra Value Added Tax, 2002 (the Act) challenges the order dated 31st January, 2017 passed by the Maharashtra Sales Tax Tribunal (the Tribunal). The

impugned order relates to financial year 2008-09.

2. The appellant has urged the following questions of law for our consideration :

> *"(a) Whether on the facts and circumstances of the case, the Presiding Members of Hon'ble Tribunal justified in holding that, "the amount received by the assessee/appellant for supply of parts to the customers as a part of the warranty agreement is liable to value added tax"?*
>
> *(b) Whether on the facts and circumstances of the case, the Presiding Members of Hon'ble Tribunal was justified in applying the ratio laid down in Mohd. Ekram Khan and Sons V/s. Commissioner of Tax Trade, U.P. in Appeal (Civil) No. 9618 of 2003, decided by Hon'ble Supreme Court on 21.07.2004 to the appellant's case ?"*

3. The appellant is an authorised dealer of Maruti Vehicles. Each vehicle sold by the appellant is covered by a warranty for a particular time span. During the subsistence of the warranty period, the appellant is

required to replace the spare parts of the vehicle free of cost to the owner. The appellant receives reimbursement for the parts so replaced under the contract of warranty from M/s. Maruti Limited. The authorities under the Act have held that the amounts received from M/s. Maruti Limited is subject to levy of value-added tax (VAT) under the Act.

4. The impugned order of the Tribunal dismissed the appellant's Appeal by holding that the issue urged on behalf of the appellant stands concluded in favour of the Revenue by the decision of the Apex Court in **Mohd. Ekram Khan & Sons v. Commissioner of Trade Tax, U.P., (2004) Vol.136 Sales Tax Cases 515**. The impugned order of the Tribunal also records that the case of the appellant is identical to the facts before the Apex Court in *Mohd. Ekram Khan* (supra).

5. The grievance of the appellant before us is that the issue arising in the present facts is more appropriately covered by the decision of the Rajasthan

High Court in **Commercial Tax Officer, (Anti-Evasion), Jodhpur Vs. Marudhara Motors, [2010] Vol. 29 VST 114 (Raj)**. It is submitted that the above decision of the Rajasthan High Court has distinguished the decision of *Mohd. Ekram Khan* (supra) on the basis of a fundamental difference in the facts before it, where the relationship between the dealer and the manufacturer of the vehicle is on principal to principal basis, while in the decision of the Apex Court in *Mohd. Ekram Khan* (supra) the relationship was between an agent and a principal. Thus, it held that the decision of the Apex Court in *Mohd. Ekram Khan* (supra) will not apply. It is on the basis of the aforesaid foundational difference which also exists in this case, the Learned Counsel for the appellant, submits that the appeal would require consideration.

6. Ms. Jyoti Chavan, the Learned Counsel appearing for the Revenue invites our attention to the decision of this Court in **Navnit Motors Pvt. Ltd. V/s. State of Maharashtra, [2012] 47 VST 511 (Bom)**.

It is submitted that, an identical distinction as sought to be made by the appellant herein was made in that case on behalf of the assessee. However, the Court on consideration found that the distinction sought to be made is not justified.

7. We note that the impugned order of the Tribunal has dismissed the appellant's appeal by following the decision of the Apex Court in *Mohd. Ekram Khan* (supra) on a finding that the facts in this case are identical to that which were on record in respect of *Mohd. Ekram Khan* (supra). Infact, the very distinction which the Learned Counsel for the appellant is seeking to make viz. principal to principal and dealer and principal was considered by this Court in *Navnit Motors Pvt. Ltd* and disposed of as under :

> *"5. Counsel appearing on behalf of the Applicant sought to make a distinction by urging that in Mohd. Ekram Khan's case, the relationship between the parties involved an agency whereas in the present case the transaction was on a principal to principal*

basis. This was based on a sentence in the judgment of the Supreme Court while recording the facts that the assessee was an agent of the automotive manufacturer. The Tribunal has considered this aspect in a significant amount of detail and has noted the submission of the Revenue that this expression was used in the judgment of the Supreme Court in its commercial sense. That apart, the Revenue produced a copy of the dealership agreement between the automotive manufacturer, Mahindra and Mahindra Ltd. and the assessee in Mohd. Ekram Khan's case [2004] 136 STC 515 (SC) which clearly showed that the relationship was not of an agency, but on a principal to principal basis."

8. Thus, in *Mohd. Ekram Khan* (supra) as observed by our Court in *Navnit Motors Pvt. Ltd.* (supra), the relationship was that on a principal to principal basis and not on the basis of the agency which forms the foundational difference according to the Rajasthan High Court in *Marudhara Motors* (supra) for not applying the decision of the Apex Court in *Mohd. Ekram Khan* (supra).

9. In the above view as the issue stands concluded in favour of the Revenue by the decisions of the Apex Court in *Mohd. Ekram Khan* (supra) and our Court in the case of *Navnit Motors* (supra), the questions of law as proposed do not give rise to any substantial question of law. Thus, not entertained.

10. Accordingly, Appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**