Tuesday, 24.4.2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MAHARASHTRA VALUE ADDED TAX APPEAL NO. 48 OF 2017
IN
VAT APPEAL NOS. 14 AND 15 OF 2016 DT. 28/02/2016

ALONGWITH

MAHARASHTRA VALUE ADDED TAX APPEAL NO. 49 OF 2017
IN
VAT APPEAL NOS. 14 AND 15 OF 2016 DATED 28/02/2017

M/s. Auto Hanger India Pvt. Ltd. ....Appellant
V/s.
The State of Maharashtra
(Through Commissioner of
Sales Tax), Mumbai. .....Respondent

* * * * *

Mr. C.B. Thakar, Advocate for the appellant.

Mr. Aditya Bapat, Special Counsel a/w. Ms. Jyoti Chavan, Advocate for the State-respondent.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 24TH APRIL, 2018.

P.C. :-

1. These Appeals under Section 27 of the Maharashtra Value Added Tax, 2002 (the Act) challenges the order dated 28th February, 2017 passed by the Maharashtra Sales Tax Appellate Tribunal (the Tribunal). The common impugned order dated 28th February, 2017 disposes of the appellant's appeals of Financial Year 2006-07 and 2009-10. Therefore, the two Appeals.

2. The appellant-assessee has urged the following identical questions of law in the two Appeals for our consideration:

> *"1. On the facts and circumstances of the case whether Tribunal is justified in holding that "depot charges" are liable to MVAT Act, 2002 ?*

2. When the sale is complete by raising invoice and acceptance of ascertained car by the buyer, whether "depot charges" charged for subsequent period till registration under Motor Vehicles Act is obtained by buyers, are liable to be included in sale price under Section 2(25) of the MVAT Act, 2002 ?"

3. As is evident from the proposed questions, the basic issue involved in these Appeals is whether the depot charges i.e. handling and warehouse charges collected by the appellant would be a part of the sales price of Motor Vehicles chargeable to tax under the Act.

4. The appellant is a dealer engaged in the sale of Motor Vehicles. It is the appellant's case that the depot charges are recovered from the customers for keeping the Motor Vehicles i.e. cars, post sale till its registration is obtained. Therefore, being consideration received from post sale activity, it is not a part of sale price under Section 2(25) of the Act. Thus, not chargeable to tax

under the Act, particularly so as the issue stands covered in its favour by the decision of this Court in the case of **The Additional Commissioner of Sales Tax VAT-III, Mumbai Vs. Sehgal Autoriders Pvt. Ltd, 43 VST 398 (Bom)**. In the above case, this Court held that the registration charges being a post sale event cannot be considered to be a part of the sale price under the Act.

5. The definition of sale price under Section 2(25) of the Act is as under :-

> "*sale price" means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged.*
>
> *Explanation I.-* The *amount of duties levied or leviable on goods under the Central Excise Act, 1944 or the Customs Act, 1962 or the Bombay Prohibition Act, 1949, shall be deemed*

> *to be part of the sale price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person."*

5. The impugned order of the Tribunal after making note of the definition of "sales price" as provided under Section 2(25) of the Act holds that it would not only include the amount of valuable consideration paid or payable to a dealer, but it also includes any sum charged for anything done by the seller at the time of or before delivery thereof. Admittedly, depot charges are recovered for things done before delivery of the Motor Vehicles. The impugned order of the Tribunal holds that the decision of this Court in *Sehgal Autoriders Pvt. Ltd*. (supra), would not apply in view of the Supreme Court decision in **Commissioner of Commercial Taxes Vs. M/s. KTC Automobiles, 88 VST 257**. In the above case, after having taken into account the decision of this Court in *Sehgal Autoriders* (supra) the Apex Court held that, in law, the motor vehicle become an ascertained

goods only at the time of registration. Prior thereto, the Motor Vehicles would continue to remain in the category of unascertained goods till its appropriation to the contract of sale by the seller at the time of registration. The impugned order followed the Apex Court decision and dismissed the Appeal of the appellant.

6. It is an undisputed position before us that, the issue involved in this case is only with regard to the depot charges and not with regard to the registration charges. The decision of this Court in the case of *Sehgal Autoriders Pvt. Ltd* (supra), admittedly dealt with registration charges and not depot charges. Therefore, will not apply to the present case. In any event, as observed by the Apex Court in *KTC Automobiles* (supra), particularly, in paras-14 and 16 thereof which has been relied upon in the impugned order of the Tribunal, the sale of motor vehicle becomes 'ascertained goods' only at the time of its appropriation to the contract of sale at or near the office

of the Registering Authority where the vehicle is registered. The Apex Court has further observed that :

> *"In the light of circumstances governing motor vehicles which may safely be gathered even from the Motor Vehicles Act and the Rules, it is obvious that the seller or the manufacturer/dealer is bound to transport the motor vehicle to the office of the registering authority and only when it reaches there safe and sound, in accordance with the statutory provisions governing motor vehicles it can be said to be in a deliverable state and only then the property in such a motor vehicle can pass to the buyer once he has been given notice that the motor vehicle is fit and ready for his lawful possession and registration."*

Moreover, the depot charges are recovered for things done before delivery of the Motor Vehicles and would be included in the meaning of 'sale price' under Section 2(25) of the Act. This is self-evident from the plain meaning of the definition of 'sale price'.

7. In our view, the question proposed stands concluded by the decision of the Apex Court in *KTC*

Automobiles (supra) and in view the self evident position in law against the Revenue. Therefore, the questions as proposed do not give rise to any substantial question of law. Thus, not entertained.

8. Both Appeals are dismissed. No order as to costs.

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