THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.5286 of 2018

ORDER :

Petitioner has filed this Writ Petition aggrieved by the action of respondent in collecting a sum of Rs.51,000/- allegedly in excess towards life tax for registering the vehicle Volvo XC 60 D5 Inscription model purchased by the petitioner on 06-01-2018 from a dealer M/s.Talwar Cars Private Limited, Hyderabad.

2. It is the contention of the learned counsel for petitioner that as per the Circular Memo No.13/4515/R1/2008 dt.30-08-2008 issued by the 2nd respondent, life tax is to be collected from a vehicle produced for registration upon the sale based on the *net invoice price* of the vehicle; that in the present case, the sale invoice issued to the petitioner by the Dealer indicated an amount of only Rs.52,90,000/- as the net invoice price; but the respondents have levied life tax on *ex-showroom price* i.e. Rs.55,90,000/-, though the Dealer had given a discount of Rs.3,00,000/-; that the petitioner was forced to pay the sum of Rs.51,000/- in excess of the life tax on the basis of the said ex-showroom price and the said payment was made *under protest.*

3. Learned counsel for petitioner contends that the demand of excess amount of Rs.51,000/- paid by petitioner was under coercion/economic duress since the petitioner had to get the vehicle registered within 15 days of reserving the number for otherwise the reserved number would be cancelled under Rule 81(6) of the A.P. Motor Vehicle Rules, 1989; and the

petitioner is entitled to refund of the sais amount thus illegally collected from him.

4. Petitioner contends that the action of respondents in insisting that the petitioner to pay life tax on *ex-showroom price* and not on the *net invoice price* as indicated in Circular Memo No.13/4515/R1/2008 dt.30-08-2008 issued by the 2nd respondent is illegal and arbitrary and violates Articles 14 and 300-A of the Constitution of India, and that the petitioner is entitled to seek refund of the same.

5. Counter-affidavit is filed by 3rd respondent opposing the claim of the Writ petitioner.

6. In the counter-affidavit, the 3rd respondent stated that the petitioner purchased the vehicle in question on 06-01-2008 for Rs.52,90,000/-; whereas the *ex-showroom price* list enclosed with the application shows that the ex-showroom cost is Rs.55,90,000/-; that there is a discount offered to the petitioner, which was not mentioned in the invoice; and so it was presumed that tax was not paid on the full ex-showroom price. It is alleged that the petitioner paid lesser amount of tax on the discounted *invoice price* and he ought to have paid life tax on the *ex-showroom price*. It is contended that since there is a difference between the price mentioned in the *invoice* with the price mentioned in the *price list* of the said vehicle enclosed by the applicant, it was determined that there was *under-pricing* of the sale of the vehicle. It is also contended that Memo No.10937/A/2002 dt.02-09-2003 of the 2nd respondent was issued instructing registering authorities to check that there was no loss of revenue for the registering authorities; that a local audit report of the receipts and expenditure accounts of the Joint Transport

Commissioner, Central Zone, Hyderabad for 2014-15 recorded non-inclusion of discounts in calculation of VAT and Life Tax and observed that dealers had allowed discounts on the vehicles sold by them and on the discounted cost, life tax and VAT were being levied and this has resulted in short levy of VAT.

7. On what basis, the levy of life tax is being made on *ex-showroom price* and not on the *invoice price* in spite of Circular Memo No. 13/4515/R1/2008 dt.30-08-2008 issued by the 2nd respondent, is not mentioned in the counter-affidavit.

8. The learned Special Government Pleader for respondents reiterated the stand taken in the counter-affidavit.

9. I have noted the contentions of both sides.

10. The life tax on vehicles is levied under the A.P. Motor Vehicles Taxation Act, 1963 (for short "the Act"). Section 3 of the Act states that the State Government, by a notification, directs that a tax to be levied on every motor vehicle used or kept for use, in a public place in the State. The Sixth Schedule to the Act provides for rates of taxation of new vehicles (either three or four wheeler) including motor cars and jeeps coming under non-transport category. The said Schedule mentioned that the life tax is to be calculated on the *'cost of the vehicle'*.

11. This is not disputed by the learned Special Government Pleader.

12. I am unable to subscribe to the said contention for the reason that life tax can be levied only on the *'cost of the vehicle'* under Sixth Schedule to

the Act. The term "cost" is defined in Concise Oxford English Dictionary Twelfth Edition as *"require the payment of specified sum in order to be bought or obtained"*. It is thus the value of the consideration for transfer of the vehicle.

13. As per common understanding also *'cost of the vehicle'* is the amount actually paid by the purchaser to the Dealer, and is the *consideration* for transfer of vehicle from the Dealer to the purchaser.

14. In **Ku.Sonia Bhatia Vs. State of U.P. and others**[1], the term "*consideration*" was explained as "a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee".

15. In **Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi**[2], a case under the Consumer Protection Act, 1986, the term "consideration" was described as 'meaning a reasonable equivalent or valuable other benefit passed by the promisor to the promisee or transferor to the transferee.' The Bench observed :

> *"10. ….The word "consideration" has not been defined either under the Scheme or the Act. Black's Law Dictionary defines "consideration" thus:*
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> *"Consideration is not to be confounded with motive, consideration means something which is of value in the eye of the law, moving from the plaintiff, either of benefit to the plaintiff or of detriment to the defendant."*
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> *In Vol. 17 of Corpus Juris Secundum (pp. 420-21 and 425) the import of "consideration" has been described thus. Various definitions of consideration are to be found in the textbooks and judicial opinions. A sufficient one, as stated in Corpus Juris and which has been quoted and cited with approval is, "a benefit to the party promising, or a loss or detriment to the party to whom the promise is made …". At common law*

[1] AIR 1981 SC 1274
[2] (2000) 1 SCC 98

every contract not under seal requires a consideration to support it, that is, as shown in the definition above, some benefit to the promisor, or some loss or detriment to the promisee. There is a sufficient consideration for a promise if there is any benefit to the promisor or any detriment to the promisee. It may be laid down as a general rule, in accordance with the definition given above, that there is a sufficient consideration for a promise if there is any benefit to the promisor or any loss or detriment to the promisee. The gist of the term "consideration" and its legal significance has been clearly summed up in Section 2(d) of the Contract Act which defines "consideration" thus:

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promise to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;"

Webster's Third New International Dictionary (Unabridged) defines "consideration" as:

"Something that is legally regarded as the equivalent or return given or suffered by one for the act or promise of another."

11. *In Sonia Bhatia v. State of U.P*[3] *it was held: (SCC p. 595, Para 20)*

"20. From a conspectus, therefore, of the definitions contained in the dictionaries and the books regarding a gift of an adequate consideration, the inescapable conclusion that follows is that 'consideration' means a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee."

16. No decision of any Court has been cited by the learned Special Government Pleader in support of this stand that the term "cost" of vehicle in the Sixth Schedule to the Act means the *published ex-showroom price* and not the *actual sale invoice price* or the cost paid by the purchaser to a Dealer.

17. Since the language of the Taxing statute, as per the settled principles of Interpretation of Statutes, has to be interpreted strictly (**CCE v. Daoba**

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[3] (1981) 2 SCC 585

Steel Rolling Mills[4]), the liberal interpretation of the term "cost of vehicle" to mean the *ex-showroom price* published by the manufacturer or dealer, cannot be accepted.

18. The contention of the Special Government Pleader is that the very sale by giving discounts by a dealer is unethical and immoral and is a fraud on the State exchequer; and the State cannot be deprived of any amount payable to it as life tax merely because the Dealer had sold the vehicle in question to a party at lesser price than one shown in the *ex-showroom price list* by giving a discount. According to him, this amounts to under-invoicing and is not to be permitted.

19. I am unable to agree with this contention. There is no law prohibiting the Dealers from giving discounts and practice of Dealers in giving discounts cannot be said to be unethical or immoral or a fraud on the State. The Court cannot close its mind to such business practices which are permitted and which are not prohibited by law and can take judicial notice that giving of discounts by Dealers is very much prevalent and is a valid trade practice.

20. In **Southern Motors v. State of Karnataka**[5]**,** the Supreme court explained the importance of trade practice of discount sales, in the context of the Karantaka Value Added Tax Rules ,2005 in the following terms:

> "***28.*** *It is a matter of common experience that in the present contemporary competitive market, trade discounts not only are dependent on variable factors but also might be strategically not disclosable at the time of the original sale/purchase so as to be coevally reflected in the tax invoice or the bill of sale, as the case*

[4] (2010) 14 SCC 751
[5] (2017) 3 SCC 467

> *may be. The actual quantification of the trade discount, depending on the nature of the trade and the related stipulations in any contract with regard thereto, may be deferred till the happening of a contemplated event, so much so that the benefit thereof is extended at a point of time subsequent to that of the original sale/purchase. That by itself, subject to proof of such regular trade practice and the contract/agreement entered into between the parties, would not render the trade discount otherwise legal and acceptable, either non est or fictitious for evading tax liability."*

21. So the State cannot be allowed to levy life tax on the ex-showroom price shown in the price list, which is not in fact the actual "cost of the vehicle".

22. There is also no material placed on record by respondents to show that the petitioner paid the ex-showroom cost of Rs.55,90,000/- and not the invoice price of Rs.52,90,000/-. Therefore, the cost of the vehicle for calculation of levy of life tax under the Sixth Schedule of the Act can only be on Rs.52,90,000/- and not on Rs.55,90,000/-. The Circular Memo No.13/4515/R1/2008 dt.30-08-2008 is binding on respondents and they cannot be allowed to deviate from the same and levy life tax on the *ex-showroom price* instead of *net invoice price* as mentioned therein.

23. The Special Government Pleader relied on a Memo No.59/TS/IT/2016 dt.18-02-2016 issued by the 2nd respondent in the case of another dealer, who sold on discount and in that case a view was expressed that on discounted price life tax cannot be collected. The said Memo does not represent the correct legal position and cannot be the basis for the demand of Rs.51,000/- from the petitioner in excess of the actual life tax payable as per Sixth Schedule under the Act.

24. The audit report dt.30-06-2014 relied upon by respondents is also not in accordance with the legal position as stated above. So it is also liable to be rejected.

25. Accordingly, the Writ Petition is allowed and respondents are directed to refund a sum of Rs.51,000/- collected from the petitioner towards life tax in excess of the life tax payable by the petitioner under the Sixth Schedule to the Act on the *invoice sale price*, to the petitioner within four (04) weeks from today. No costs.

26. As a sequel, miscellaneous applications pending if any, in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02.05.2018
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