<u>**The Hon'ble Sri Justice C.V.Nagarjuna Reddy**</u>

<u>**and**</u>

<u>**The Hon'ble Sri Justice D.V.S.S.Somayajulu**</u>

<u>**Special Appeal Nos.2 and 3 of 2018**</u>

<u>**Dated 01.05.2018**</u>

**Between:**

M/s.Tejaswi Motors Pvt. Ltd.

**... Appellant**

**and**

Commissioner of State Tax,
Telangana State,
Hyderabad

**...Respondent**

**Counsel for the Appellant:** **Mr.S.Ravi for Ms.N.Niyatha**

**Counsel for the respondent:** **Mr.M.Govind Reddy, Spl.SC for Taxes (TS)**

**The Court made the following:**

**Common Judgment:** **(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

These Special Appeals arise out of the orders passed by the Commissioner of State Tax, Telangana State, Hyderabad, whereby he has reversed the assessment orders passed by the Assessing Officer for the tax periods from April, 2011 to March, 2012, and April 2012, to March, 2013, by disallowing the input tax credit allowed in favour of the appellant- dealer.

The admitted facts in these cases are that the appellant is a registered dealer in purchase and sale of second hand motor vehicles. It has claimed input tax credit to the extent of the tax, allegedly, paid by the dealer dealing in new motor vehicles subject to the maximum of the Value Added Tax (VAT) payable by it on the second hand vehicles and the same was allowed by the Assessing Officer. The Commissioner, while reversing the orders of the Assessing Officer, held that the claim of input tax credit by the appellant on the purchase of the used/second hand motor vehicles is improper and incorrect as it has not submitted any documentary proof that the vehicles purchased by it have suffered VAT at the time of their initial registration with the Department of Transport.

Mr.S.Ravi, learned Senior Counsel for the appellant, referred to and relied upon Common Order, dated 19.07.2016, of a Division Bench of this Court in WP.Nos.20186 of 2016 and batch and submitted that as held therein, the appellant is entitled to an opportunity of personal hearing by the assessing authority to produce the documentary evidence to show- (i) the price actually paid by it on the purchase of used/second hand vehicles and (ii) if the vehicles purchased by it have suffered VAT in terms of the Motor Vehicles Act, 1988 (for short 'the Act'), within the State of Telangana and if so, to what extent.

We have perused the aforesaid Order of the Division Bench wherein it was *inter alia* held as under:.

> "Where the legislature has provided a general rule making power to carry out the purposes of the Act, it may be permissible to find out the object of the enactment, and then see if the rules framed thereunder satisfy this test of functionality. This test will determine if the rule falls foul of such a general power conferred on the delegatee. If the rule making power is expressed in the usual general form, then it has to be seen if the rules made are protected by the limits prescribed by the parent Act. (**Kunj Behari Lal Butail** [{2000} 3 SCC 40]; **Pratap Chandra Mehta** [{2011} 9 SCC 573]). A delegate cannot act contrary to the

basic feature of the Act. (**B.K. Industries v. Union of India** [{1993} Supp. 3 SCC 621]); **Kerala Samsthana Chethu Thozhilali Union** [{2006} 4 SCC 327] ) The power of the rule making authority must be interpreted keeping in view the provisions of the Act. (**Pratap Chandra Mehta** [{2011} 9 SCC 573]; **Kunj Behari Lal Butail** [{2000} 3 SCC 40]; **Global Energy Ltd** [{2009} 15 SCC 570]). The language of the statute has to be examined before giving a provision an extensive meaning. The Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed are within the field circumscribed by the parent Act. The language of the rule framed, as well as the purpose sought to be achieved, would be the relevant factors to be considered by the Court. (**Pratap Chandra Mehta** [{2011} 9 SCC 573]).

When any criterion is fixed by a statute or by a policy, an attempt should be made by the authority making the delegated legislation to follow the policy formulation broadly and substantially and in conformity therewith. [**Secy., Ministry of Chemicals & Fertilizers, Govt. of India v. Cipla Ltd** ({2003} 7 SCC 1); **Clariant International Ltd. v. Securities & Exchange Board of India** ({2004} 8 SCC 524); **Kerala Samsthana Chethu Thozhilali Union** ({2006} 4 SCC 327)]. The power of delegated legislation cannot be exercised for the purpose of framing a new policy. The power can be exercised only to give effect to the provisions of the Act. While considering the "carrying out of the provisions of the Act" requirement, the court must see to it that the rule framed therefor is in conformity with the provisions thereof. (**Kerala Samsthana Chethu Thozhilali Union** [{2006} 4 SCC 327]).

The power to frame rules under the Act has to be construed along with the other provisions of the Act, keeping in mind the object sought to be achieved by the Act. The legislative intent, derived from the objects of the Act, should be achieved. The interpretation, furthering the object and purposes of the Act, has to be preferred in comparison to an interpretation which would frustrate the same. (**Pratap Chandra Mehta** [{2011} 9 SCC 573]). The regulatory provisions are to be read and applied keeping in view the nature and textual context of the enactment as that is the source of power. (**Indraprastha Gas Ltd** [{2015} 9 SCC 209). The Telangana VAT rules must, therefore, be harmoniously construed with the provisions of the Telangana VAT Act and the objects for which the Act was made. A statutory rule cannot be so construed as to extend its scope even beyond the provisions of the Act. The court has to examine the nature, object and the scheme of the legislation as a whole and, in that context, should consider what is the area over which powers are given by the Section under which the rule making authority is to act. As the Court starts with the presumption that the impugned Rule is intra vires, the Rule has to be read down to save it from being declared ultra vires if the Court finds, in a given case, that the above presumption stands rebutted. (**J.K. Industries Ltd** [{2007} 13 SCC 673]).

If the words "*already registered in the State under the Motor Vehicles Act, 1988*" in Rule 20(3)(a) is construed to include vehicles initially registered in another State and thereafter, on its being brought within the State of Telangana, were again registered within the State, then that would render Rule 20(3)(a) ultravires the provisions of the Act, and a dealer being extended the benefit of input tax credit on vehicles which have not even suffered tax under the VAT Act, as VAT is imposed only on the sale of new vehicles by registered dealers within the State. Rule 20(3)(a) of the Rules must be construed harmoniously with the provision of the VAT Act and the object for which the Act was made, and the words "*already registered in the State under the Motor Vehicles Act, 1988*" must be read down to mean only new vehicles registered within the State, and to exclude vehicles which were earlier registered as a motor vehicle in some other State and subsequently registered again, under the provisions of the Motor Vehicles Act, 1988, within the State of Telangana."

The learned Senior Counsel submitted that as the tax periods are from April, 2011, to March, 2012, and April, 2012, to March, 2013, the purchase of the motor vehicles might have taken place in any part of the undivided State of Andhra Pradesh and that therefore, the appellant would be entitled to claim input tax credit in either of the two States.

Mr.M.Govind Reddy, learned Special Standing Counsel for Taxes (TS), has fairly conceded that in the light of the Common Order of this Court in W.P.No.20186 of 2016 and batch, the appellant is entitled to an opportunity of being heard by the assessing authority.

In the light of the above submissions, the orders under Appeals are set aside only to the limited extent of disallowing the input tax credit on the sale of the second hand motor vehicles. Both the Appeals are remanded to the assessing authority concerned for taking a decision *de novo* on the liability of the appellant to pay VAT for the periods from April, 2011, to March, 2012, and April, 2012, to March, 2013, after giving it an opportunity of being heard and to produce the documentary evidence to show- (i) the price actually paid by it on the purchase of used/second hand vehicles and (ii) the vehicles purchased by it had suffered VAT at the time of their initial registration in terms of the Act within the State of Andhra Pradesh and Telangana State (undivided State of Andhra Pradesh). The assessing authority shall, thereafter, pass appropriate orders afresh at the earliest, in any event, not later than four months from the date of receipt of a copy of this order. It is further made clear that the assessment orders shall remain valid on all other aspects.

The Special Appeals are, accordingly, allowed to the extent indicated above.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

**(C.V.Nagarjuna Reddy, J)**

**(D.V.S.S.Somayajulu, J)**

**Date: 01-05-2018**
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