IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.24914 of 2019
&
W.M.P.No.24511 of 2019

I Horse Technologies Private Limited
Represented by its Director Mr.S.Kaundeya
Old No.374, New No.388
Vazhudhavur Road
Shanmugapuram
Puducherry

... Petitioner

vs.

1. The Principal Chief Commissioner
Goods and Services Tax & Central Excise
26/1, Uthamar Gandhi Road
Thousand Lights West
Nungambakkam
Chennai - 600 034

2. ALD Automotive Private Limited
Represented by its Managing Director
No.10, First Floor, 11 Feet Road
Opposite: Toyota Show Room
Puducherry - 605 013

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the 1st respondent to consider the petitioner's representation dated 05.08.2019 pertaining to the vehicle (PY-05B-6699 and PY-05B-1308) and dispose it in accordance with law.

For Petitioner : Mr.Mohammed Mudassir Ali
for Mr.B.Gurumurthy

For Respondent -1 : Mr.R.Hemalatha
Standing Counsel

O R D E R

Mr.Mohammed Mudassir Ali, learned counsel representing the counsel on record for writ petitioner is before this Court. Ms.R.Hemalatha, learned Standing Counsel accepts notice on behalf of first respondent.

2. This writ petition has been filed with a prayer to mandamus the first respondent to dispose of a 'representation dated 05.08.2019' ('said representation' for brevity) sent by the writ petitioner to the first respondent. In the typed-set of papers, only a photocopy of postal receipt pertaining to despatch of said representation has been enclosed and the same shows that there is a despatch on 06.08.2019, but no postal acknowledgment card or no tracking report has been placed before this Court to demonstrate that the representation has been served on the noticee/addressee i.e., first respondent.

3. Considering the nature of the matter, this Court is of the considered view that it may not be necessary to go into this aspect of the matter. The reason is, a perusal of said representation

reveals that it is a contractual dispute between the writ petitioner and the second respondent, both being private entities. To be noted, both writ petitioner and second respondent are private limited companies and they are therefore, juristic persons. Further, a perusal of said representation reveals that the issue arises out of an agreement between the writ petitioner and the second respondent and the agreement which goes by the caption 'Master Lease Agreement' (hereinafter 'said Lease Agreement' for brevity) . Said Lease Agreement is dated 04.08.2016. Under said Lease Agreement, there was a lease/finance agreement pertaining to Toyota Innova Crysta cars, which have been registered with Registration Nos.PY 05 B 1308 and PY 05 B 6699 (hereinafter 'said Cars' for brevity, clarity and convenience).

4. From the submissions made by learned counsel for writ petitioner, it comes to light that the issue pertains to who should pay the Goods and Services Tax besides certain other disputes.

5. Be that as it may, it is not in dispute that the second respondent has sent a notice dated 30.06.2019 which is a termination notice and this Court is also informed by the learned counsel for writ petitioner that the said cars have been

repossessed by the second respondent. It is submitted by learned counsel for writ petitioner that said cards i.e., both cars have been repossessed by the second respondent and they are now with the second respondent.

6. Learned Revenue Counsel, who has accepted notice on behalf of first respondent, points out that said Lease Agreement between the writ petitioner and the second respondent contains an arbitration clause and the arbitration clause is Clause 14, which reads as follows:

'14. Arbitration

14.1. In the event of any dispute or difference arising between the Parties during the subsistence of this MLA, VLC or thereafter in connection with the validity interpretation, implementation or alleged breach of any provision of this MLA or VLC or regarding any question, including the question as to whether the termination of his MLA or VLC by one party hereto has been legitimate, the Parties hereto shall endeavour to settle such dispute amicably. The attempt to bring about an amicable settlement is considered to have failed as soon as one of the Parties hereto, after reasonable attempts which attempt shall continue for not less than 30 (thirty) days, gives 30 (thirty) days'notice thereon to the other Party in writing.

14.2. In case of such failure the dispute shall be referred to sole arbitrator appointed by the mutual consent of the Parties in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory modification or reenactment thereof for the time being in force.

14.3. The arbitration shall be held at Mumbai and the proceedings shall be in the English language.

14.4. The arbitrator's award shall be substantiated in writing.

14.5. The provisions of this Clause shall survive the termination of this MLA or VLC for any reason whatsoever.'

7. A perusal of the arbitration clause reveals that it is a comprehensive clause, which provides for resolution of all disputes between the parties to said Lease Agreement, namely the writ petitioner and the second respondent. It is nobody's case that the disputes that have now arisen between the writ petitioner and the second respondent are not arbitrable disputes. To be noted, Hon'ble Supreme Court in a line of authorities / case laws starting from Booz Allen and Hamilton Inc. Vs. SBI Home Finance Limited and others reported in (2011) 5 SCC 532 enlisted disputes which are not arbitrable. It is not the case of the writ petitioner that the dispute that has arisen

in the instant writ petition qualify as any of the disputes which are not arbitrable.

8. Under such circumstances, this Court is of the considered view that it would be appropriate to leave it open to the writ petitioner to invoke arbitration clause and seek redressal against the second respondent. While so, if certain issues which have been raised in this writ petition arise, it is made clear that those issues are left open for arbitration and this Court does not express any opinion or view on the same.

9. As already alluded to supra, with regard to fiscal law, there is disputation before this Court by the learned counsel for writ petitioner that the dispute centers not around payment of tax or the quantum of tax, but the dispute is, who is to pay the tax under said lease agreement. This obviously is an issue which has to be resolved between the writ petitioner and the second respondent, which are governed by an arbitration clause. A perusal of said lease agreement leaves this Court with the considered opinion that Clause 14 in the said Lease Agreement, which is an arbitration clause prima facie qualifies as an arbitration agreement within the meaning of Section 7 of the Arbitration and Conciliation Act, 1996. Therefore, this Court dismisses this writ petition, albeit preserving the rights of the writ petitioner to invoke the arbitration clause in said Lease Agreement and seek redressal.

This writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

gpa
To
1. The Principal Chief Commissioner
Goods and Services Tax & Central Excise
26/1, Uthamar Gandhi Road
Thousand Lights West
Nungambakkam
Chennai - 600 034
+1 CC to M/s.R. Hemalatha, Advocate sr 76382.

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SV(CO)
SP(27/09/2019)