THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITIONS No. 1803, 4377, 4550, 4651, 4731, 4758, 4763, 4837, 4873, 5330, 5341, 5348 of 2019, 35625, 20487, 36699, 39712 and 43099 OF 2018

COMMON ORDER:

All these Writ Petitions raise a common question of law and fact. Hence, they are being disposed of through this order.

Essentially, the petitioners in all these cases are the purchasers of motor vehicles (high-end and expensive cars), like BMW, Bentley, Maruti Ertiga, etc. While the petitioners submit that they had purchased them at ex-show room price which is reflected in the invoices, the respondent authorities assert that in terms of the list price of the dealer, life tax is to be paid under the provisions of the Telangana Motor Vehicles Taxation Act, 1963.

At the outset, it may be noted that the issue raised in these Writ Petitions is no more *res integra* and is settled by the judgment of the learned Single Judge in Writ Petition No. 5286 of 2018, dated 02.05.2018, as confirmed by the Division Bench in its judgment, dated 29.01.2019 in Writ Appeal No. 805 of 2018 and batch. Notwithstanding the said two judgments, learned Government Pleader for Transport, in his anxiety to protect the State exchequer and to add revenue to the coffers, would venture to submit that the matter requires rehearing. Considering the genuine efforts being made by the learned Government Pleader, this Court, once again, has heard the matter.

The contention of the learned Government Pleader, in brief, is that the individual dealers, with respect to the same product, have been giving different invoices with varied price and peculiarly, the dealers are not showing the list price and the discount, if any that is being offered. In the absence of the same, the list price, which is being projected, is the price required to be taken for the purpose of taxation, as, the tax is payable under Section 3 of the 1963 Act, as amended by Act 11 of 2010, contends the learned Government Pleader. It is his further contention that in terms of Schedule VI (as amended by Act 11 of 2010), tax is to be paid as a percentage of the 'cost of the vehicle'. The dealers by artificially showing lesser price than the list price are enabling evasion or avoiding the tax which is justly due to the State. It is his assertion that for the same product, i.e. motor vehicle, on account of varying invoice price charged by the dealer, tax is being paid by the individuals differently which results in invidious discrimination against the citizens by the dealers. The learned Government Pleader places reliance on the judgments of the Supreme Court in ***Commissioner of Income Tax v. P.J. Chemicals Limited***[1]***, Collector of Central Excise v. Dai Ichi Karkaria Limited***[2] and the Cost Accounting Standards issued by ICAI (earlier ICWAI).

On the other hand, learned counsel for the petitioners, in unison, opposed the arguments of the learned Government Pleader and assert that since the matter is covered by the judgment of the Division Bench, if at all the respondents are aggrieved thereby, they either need to carry the matter in Appeal or, for any valid reasons, if it requires review, they can, at best, file a Review Petition before the Division Bench, hence, submits, the arguments of the learned Government Pleader ought to be rejected *in limine.*

As stated supra, since the learned Government Pleader is making sincere efforts to project an argument, patient audience is

---

[1] 1994 Supp 3 SC 535
[2] (1997) 7 SCC 448

given to the same. Thereafter, having given anxious thought to the said submissions, this Court does not find any reason to come to a different conclusion than the one reached by the learned Single Judge as well as the Division Bench. The learned Single Judge had elaborately dealt with respect to the interpretation that is required to be given to the words 'cost of vehicle' as mentioned in the Schedule with reference to certain settled principles. While selling of the vehicle by the dealer and purchase of the vehicle by the individual like the petitioners is by way of a contract which is governed by the law relating to sale of goods, under the Sale of Goods Act, there are specific rights enuring to the benefit of both the seller and buyer. There is no dispute that under the earlier State Sales Tax laws and now present integrated Goods and Service Tax Act, in terms of Section 31 of GST Act, a tax invoice is required to be issued by the dealer. Under the scheme of GST Act, there is Central GST and also State GST apart from other levies, if any by way of the special cess / surcharges. With respect to the GST, it is calculated on the sale price reflected in the invoice. It is not the case of the learned Government Pleader that the sale and purchase of motor vehicles is governed by any other law and there is no controlled price notified by the government. In other words, so far as the cost of vehicle is concerned, it is not regulated, in any manner, leaving it to the free choice of the buyer and seller. It may also be noted that unlike under the erstwhile repealed Central Excise Act, where there is a presumptive price, there is no presumptive price so far as the sale and purchase of the motor vehicles under the Taxation Act. It is also conceded by the learned Government Pleader that neither there is mechanism nor power vests with the authority under the Motor Vehicles Act / Motor Vehicles Taxation Act to determine the cost of the vehicle which would enable them to arrive at the cost of the vehicle, for the purpose of Taxation Act. In those circumstances, the tax invoice that was issued under the GST Act is the only available indicator for the purpose of Motor Vehicles Taxation Act and the same is being followed in all the States in all respects. The judgments of the Supreme Court relied on by the learned Government Pleader in ***P.J. Chemical's case*** and ***Dai Ichi Karkaria Limited's case*** are not applicable as they do not relate to the issue of the nature which is arising in the present Writ Petitions.

The standards of Cost Accounting also have no relevance in the present case as the said standards are relevant at the stage of manufacturing, with respect to the manufacturer but not at the stage of commodity being sold by the dealer and they operate entirely a different field altogether.

In those circumstances, reliance that is being placed on the said regulations in the anxiety of the learned Government Pleader is also misconceived and does not stand to scrutiny and it does not require much further examination in the matter.

In those circumstances, as the issue involved is squarely covered by the judgment of the Division Bench and there being no reason for this Court to come to a different conclusion altogether, the Writ Petitions are allowed following the judgment of the Division Bench with a further direction to the respondent authorities to refund the excess tax amount wherever has been paid in the absence of interim orders of this Court at the stage of admission, within four weeks from the date of receipt of a copy of this order. No costs.

The miscellaneous Applications, if any pending shall stand closed.

CHALLA KODANDA RAM, J

14th March 2019

ksld