THE HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT APPEAL No.805 of 2018
AND
WRIT PETITION Nos.28612 and 45131 OF 2018

COMMON JUDGMENT :: *(per the Hon'ble Sri Justice A. Rajasheker Reddy)*

The writ appeal under Clause 15 of Letters Patent is directed against the order dated 02-05-2018 passed in WP No.5286 of 2018 whereby and whereunder the learned single Judged allowed the writ petition filed by the respondent herein. The other two writ petitions are connected with the subject matter of the writ appeal and the order in the writ appeal will abide those petitions.

02. Facts giving rise to the present writ appeal are as follows:-

03. The writ petitioner purchased a car Volvo XC 60 D5 Inscription model for an invoice price of Rs.52,90,000/- and he had paid an amount of Rs.7,40,600/- towards tax apart from other amounts totalling to Rs.7,43,735/-. It is stated that he had to pay Rs.51,000/- in excess towards life tax for registration of his vehicle, which he stated to have paid under protest, lest the reserved car number would be cancelled under Rule 81 (6) of the AP Motor Vehicle Rules, 1989 (for short, 'the Rules'), if the vehicle is not registered within 15

days. Before the learned single Judge, the learned counsel for the writ petitioner contended that a Circular Memo No.13/4515/R1/2008, dated 30-08-2008, was issued by the Road Transport Authority (RTA), which insisted the life tax to be collected from a vehicle owner produced for registration upon the sale based on the net invoice price of the vehicle and not upon the ex-showroom price of the vehicle.

04. The Secretary, RTA, Hyderabad Central Zone, the 3rd appellant herein filed a counter affidavit in the writ petition contending that the writ petitioner paid lesser amount of tax on the discounted invoice price and he ought to have paid life tax on the ex-showroom price; that since there is a difference between the price mentioned in the invoice and the price mentioned in the price list of the said vehicle, it was determined that there was under-pricing of the sale of the vehicle; and that a memo dated 02-09-2003 was issued by appellant No.2 instructing the registering authorities to check that there will be no loss of revenue for registering the vehicles.

05. The learned single Judge, after hearing both sides and considering the material on record, by the impugned order, while upholding the plea of the writ petitioner that he is only liable to pay life tax on the discounted invoice price and not on the ex-showroom cost of the vehicle, directed the

authorities to refund the life tax amount collected in excess of the life tax payable by the writ petitioner. Aggrieved by the same, the Transport Authorities filed this writ appeal.

06. Learned Special Government Pleader for the appellant-authorities canvassed an argument that the discount offered by the dealer to the writ petitioner was not mentioned in the net invoice and that the writ petitioner paid lesser amount of tax on the discounted invoice price and therefore collection of life tax on the ex-showroom price is justified. It is also his contention that the very sale by giving fabulous discounts by the car dealer is unethical 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 car dealer had sold the vehicle in question to a party at a discounted price than the price shown in the ex-showroom price list.

07. The learned counsel for the respondent-writ petitioner argued that the Regional Transport Authority (RTA) had illegally levied life tax on the ex-showroom price and that the demand of excess amount of Rs.51,000/- paid by the writ petitioner was under coercion/economic duress since the petitioner had to get the vehicle registered within 15 days of reserving the number or otherwise the reserved number would be cancelled. He further contended that the action of the authorities in insisting the writ petitioner to pay life tax

on ex-showroom price and not on the net invoice price of the vehicle is illegal and arbitrary and violates Articles 14 and 300-A of the Constitution of India, and that the writ petitioner is entitled to seek refund of the amount.

08. The ex-showroom price of the vehicle purchased by the writ petitioner is Rs.55,90,000. The sale invoice was issued to him by the dealer for Rs.52,90,000/-, after giving a discount of Rs.3,00,000/-. It is stated that the authorities have collected excess amount of Rs.51,000/- from the writ petitioner towards life tax. As per the circular memo dated 30-08-2008, life tax is to be collected upon the sale based on the net invoice price and not on the ex-showroom price. As rightly observed by the learned single Judge, life tax can be levied only on the 'cost of the vehicle' under Sixth Schedule to the A.P. Motor Vehicles Taxation Act, 1963, unless the contrary is carved out by way of notification in that behalf. In the absence of any notification in that behalf, life tax can be levied only on the 'cost of the vehicle'. In the general parlance, the 'cost of the vehicle' is the amount actually paid by the purchaser to the dealer, and it is the 'consideration' for transfer of vehicle from the dealer to the purchaser. The learned single Judge relied on the judgments of the Hon'ble Supreme Court in ***Ku.Sonia Bhatia vs. State of U.P and***

***others*[1]** *and* ***Regional Provident Fund Commissioner vs. Shiv Kumar Joshi*[2],** which describes the term 'consideration' as 'a reasonable equivalent or valuable other benefit passed by the promisor to the promisee or transferor to the transferee'. The learned Single Judge also relied on the judgment of the Hon'ble Supreme Court in ***Southern Motors v. State of Karnataka*[3]** and held that 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 Tamilnadu State Legislature has defined "cost of the vehicle" in Explanation under Schedule (iii) of Tamil Nadu Motor Vehicles Taxation Act, as cost paid by the purchaser at the time of purchase of the vehicle and by placing reliance on the same, the Madras High Court passed order in WP No.8985 of 2018 accordingly.

09. The discretion exercised by the learned single Judge in exercise of jurisdiction under Article 226 of the Constitution, cannot be interfered with except in compelling circumstances and there is no reason to take a view than the view taken by the learned single Judge in the facts and circumstances of the case, and therefore, the discretion exercised cannot be unfolded in intra-Court appeal filed under Clause 15 of the Letters Patent Act.

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[1] AIR 1981 SC 1274
[2] (2000) 1 SCC 98
[3] (2017) 3 SCC 467

10. In the result, the writ appeal is devoid of merits and it is accordingly dismissed and consequently, the writ petitions are allowed. As a sequel to the disposal of these petitions, miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Dated: 29-01-2019
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