IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

357 **ITR-602-1995 (O&M)**
Date of Decision : 24.07.2019

The Majestic Auto Ltd., Ludhiana

... Appellant

Versus

The Commissioner of Income Tax, Ludhiana.

...Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Alok Mittal, Advocate for the appellant.

Mr. Rajesh Katoch, Senior Standing counsel with
Ms. Pridhi Jaswinder Sandhu, Junior Standing Counsel
for the Income Tax Department.

AJAY TEWARI, J (ORAL)

1. This reference has been made to consider the following questions :-

> "1. Whether on the facts and in the circumstances of the case and interpretation of the agreement of the assessee-company Majestic Auto Limited with Steyr-Daimler-PUCHAG (PUCH), Austria and Convention for avoidance of double taxation between India and Austria, the Hon'ble Tribunal was right in holding that the sum of Rs.9,34,579/- paid to Puch was subjected to deduction of tax at source?
>
> 2. Whether on the facts and in the circumstances of the case and the material on record, the Appellate Tribunal was right in holding that the consideration pain to Puch for supply of designs, drawings and specifications was nothing but "royalty" and subjected to deduction of tax at source?
>
> 3. Whether on the facts and in the circumstances of the case and true interpretation of the documents, the Hon'ble Tribunal was right in holding that there was no distinction

between the expression "supply" and "use" for the supply of designs and drawings and thus the provisions of tax deduction at source were applicable to the above payment?"

2. The brief facts are that the assessee had entered into an agreement with Steyr-Daimler-Puch AG (Puch), (Materised Two Wheel Division), Austria, whereby the letter head granted to the assessee exclusive and individual right and licence to use manufacturing information supplied by PUCH to manufacture, assemble and sell in India vehicle Maxi Plus and Super Maxi. As per Clause No. 1.4 PUCH supplied drawings, designs, specifications, processes, schedule and all other relevant technical details and documents to the assessee for which the assessee paid an amount of 3 Million Austrian Schilling in three installments as detailed below:-

a) First 1/3rd after agreement is filed with Reserve Bank of India and the Capital Goods Clearance if any, is obtained, however, not later than 10 days from the date of approval of Reserve Bank of India.

b) Second 1/3rd on delivery of technical documentation (as defined in Annex. 2) however, not later than 30 days after receipt of PUCH's confirmation that the complete technical documentation has been delivered.

c) Third and final 1/3rd on the commencement of commercial production or four years after agreement is filed with RBI whichever is.

3. The agreement further had a separate Clause No. 2.1 for royalty as per which after the production started the assessee would pay 1% as royalty up to 50,000 vehicles, .75% royalty from 50,000 to 100,000 vehicles and .5% royalty above more than 100,000 vehicles produced. At this stage, it would be apposite to notice that there is no dispute that on the royalty paid under Clause 2.1, the assessee is liable to deduct tax at source.

4. The dispute in the present case is whether similarly for the payment of 3 million Austrian schilling also the assessee was liable to deduct tax at source?

5. The A.O. held that even for the payment of 3 million Austrian Schilling, the assessee was liable to deduct tax at source since it was in the nature of royalty payment. In an appeal filed by the assessee, the Commissioner held that this payment was not royalty payment and as per the convention signed between the Government of India and Austria for the avoidance of double taxation with respect to taxes on income, the amount of 3 million Austrian shillings would be taxable in the hands of PUCH in Austria and would not be exigible to tax in India since it was not payment made for royalty. The Revenue carried the matter to the Tribunal. It was the case of the assessee that the payment of 3 million Austrian Schilling was for the supply of material and their use would arise when the vehicles would be started to be produced and at that stage royalty would become payable. The main plank on which the Tribunal passed its decision was its interpretation of the word 'supply and it held that 'supply' includes 'use'.

6. At this stage, it would be important to understand the concept of 'royalty' . To our mind '*royalty is a payment to an owner for the ongoing use of its assets or property such as patents or natural resources for business purposes.'*

7. Word 'royalty' has been defined by the Supreme Court in the case titled as ***Entertainment Network (I) Ltd. v. Super Cassette Inds. Ltd.,, 2008(3) SCC 30*** as '*the remuneration paid to an author in respect of the exploitation of a work, usually referring to payment on a continuing basis (i.e. 10 percent of the sale price) rather than a payment consisting of a lump sum in consideration of acquisition of rights. May also be applied to* *payment to performers.'* and further in the case titled as ***State of H.P. v. Raja Mahendra Pal,*** 1999 (4) SCC 43 as *"a payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use made of the right by the grantee, which shall on payment of money, but may be a payment in kind being the part of the produce of the exercise of the right.'* (excerpts taken from the Supreme Court on Words, Phrases and Legal Expressions (Judicially defined) 1950-2015 Volume III.

8. Word 'Royalty' has been defined in Oxford Advanced Learner's Dictionary (New 9th Edition) as '*a sum of money that is paid by an oil or mining company to the owner of the land that they are working on'*

9. Thus understood, the assessee would have to pay a certain amount of money to PUCH for every vehicle which is sold using its designs.

10. In our considered opinion, the Tribunal has given an unnatural and strained meaning to the expression 'supply'. Yes, by entering into the agreement and by supplying the material PUCH authorized its use but its actual use would start only when production and sale commenced and that would be the stage at which royalty would be payable.

11. No other argument has been raised before us.

12. Though the reference is answered in favour of the assessee and against the revenue.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

24.07.2019
pooja saini

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*