IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.37063 to 37068 of 2015
and M.P.No.1 of 2015

Tvl.Sri Amman Cars India Private Ltd.,
Represented by its Managing Director,
K.Senthilkumar,
No.2-A/2/42, Dheevattipatti,
Omalur Taluk,
Salem-636 304. ... Petitioner in all Writ Petitions

vs.

The Assistant Commissioner (CT),
Omalur Assessment Circle,
Omalur. ... Respondent in all Writ Petitions

Common Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent herein in his TIN:33083245522/2009-10 and TIN:33083245522/2010-11 dated 14.10.2015, TIN : 33083245522/2011-12, TIN:33083245522/2012-13, TIN:33083245522/2013-14 and TIN:33083245522/2014-15 dated 27.10.2015, quashing the same while directing the respondent herein to levy tax at the reduced rate on value addition in respect of the sales of used cars by the petitioner as provided in Notification G.O.,Ms.No.78, CT & R (B-2, dated 11.07.2011 - No.II(1)/CT & R/12(R-20)/2011.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.M.Mohammed Shaffiq
Spl.Govt.Pleader (T)

COMMON ORDER

The Petitioner has filed this writ petition, seeking for issuance of a a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent herein in his TIN:33083245522/2009-10 and TIN:33083245522/2010-11 dated 14.10.2015, TIN:33083245522/2011-12, TIN:33083245522/2012-13, TIN:33083245522/2013-14 and TIN:33083245522/2014-15 dated 27.10.2015, quash the same and direct the respondent herein to levy tax at the reduced rate on value addition in respect of the sales of used cars by the petitioner as provided in Notification G.O.,Ms.No.78, CT & R (B-2, dated 11.07.2011 - No.II(1)/CT & R/12(R-20)/2011.

2. In all these writ petitions, the petitioner has challenged the impugned orders passed by the respondent for the assessment years 2009-10 to 2014-15, denying the benefit of Notification Number in G.O.M.S.No.79/CT & R/B2 at Serial No.1, dated 23.03.2007, as per the said notification at Serial No.23, a dealer engaged in sale of Used cars/Motor vehicle on value addition without input tax credit was liable to pay tax at the rate of 4% which was subsequently increased to 5% vide Notification Number in G.O.Ms.No.78, CT & R (B2) dated 11.07.2011-No.II(1) CT R/12(R-20)/2011. In the impugned order, it has been observed as follows:

> "As per the first notification the dealers have not proved with documentary evidences that the used cars sold by them had already suffered VAT with connected purchase bills as the notification forbids the selling dealer in availing the VAT already paid as ITC. The dealers should have proved that the used cars were already subjected to VAT as new cars. Since the sellers are required to forego the VAT paid. In the circumstances, the dealers are not eligible to pay the reduced rate of tax on value addition as per the notification. This notification enables the dealers to enjoy the benefit of reduced rate with a condition that they should not claim and avail the ITC on their purchases. Therefore the dealers are not eligible to pay tax on their sales of used cars at the reduced rate instead have to pay at the original rate. In the objection they have stated that they are prepared to pay on the value addition on the used cars at the reduced rate. A sales turnover means the entire cost of purchase including freight charges and the profit margin and liable to tax. But it does not mean that any portion of the sales turnover i.e., value addition is liable to tax. Therefore the objections filed in the matter are not acceptable and are rejected. At the time of personal hearing they have stated that they have not received any consideration for the transfer of used cars between the individual persons these transactions are not a sale by them as defined under Sec.2(33) of the TNVAT ACT 2006. If taken for granted, that the sales of used cars were not made by the dealers where the question is of declaring the concerned sales turnover of used cars in their trading profit

and loss account under other income evidently the dealers had themselves sold the cars and value is reflected in the Trading profit & loss account. Therefore the contentions of the dealers are false and untrue and therefore rejected.

In respect of mismatch between the purchases reported by the dealers in Annexure-I and the sales reported by the sellers in Annexure-II, the dealers have maintained the difference related to the purchases of auto spares meant for free replacement to their customers during the warranty period and the said purchases were duly accounted for in their accounts. Since they did not claim ITC on these purchases they did not report in Annexure-I to the monthly returns.

After the introduction of the TNVAT Act 2006, the monthly return is the primary and most important document for the purpose of making self-assessment. In Annexure-I and I-A all the local purchases and interstate purchases need to be reported. Merely because no ITC claimed the dealers cannot suppress a part of the purchases turnover in the returns.

The dealers have contended that the purchases were meant for free supply to their customers during the warranty period. But they failed to prove beyond doubt with records that the these spares were used for replacement only and not sold for a price. Thus the objection also fails and it is rejected.

In respect of warranty supply they have contended that they did not claim ITC on the purchase meant for replacement free of cost, and they had accounted for all these purchase, and reported the connected sales and paid tax due. But they have not furnished the break up sales for cars sales and spares separately. Therefore their contentions are not valid and rejected.

In fine the objections are not acceptable and they are rejected. The proposals for revision of assessment under Section 27(1)(a) are confirmed and orders are passed as under:-”

3. By the impugned orders, the benefit of Notification Number in G.O.M.S.No.79/CT & R/B2 at Serial No.1, dated 23.03.2007, has been denied in the light of Notification Number II in G.O.M.S.No.78/CT & R/B2 at Serial No.2, dated 11.07.2011. It is the contention that the dealers should have the benefit by virtue of the Notification in G.O.M.S.No.79/CT & R/B2 at Serial No.1, dated 23.03.2007.

4. I have considered the arguments of the learned counsel for the petitioner and the learned counsel for the respondent.

5. Already by an order, dated 20.01.2020 in W.P.Nos.37776 of 2015 & 3777 of 2015 I have already held that the benefit of Notification Number in G.O.M.S.No.79/CT & R/B2 at Serial No.1, dated 23.03.2007 and Notification Number in G.O.M.S.No.78/CT & R/B2 at Serial No.2, dated 11.07.2011, operate and apply to different kinds of dealers and therefore they are not to be taxed.

6. In the light of the clarification dated 25.10.2016 of the Authority for Clarification and Advance Ruling issued under Section 48 A of the Tamil Nadu VAT Act, 2006, the issue relating to availability of benefit of G.O.Ms.No.79 CT & R (B2) Dept. dated 23.3.2007 as amended by the of G.O.Ms.No.78 CT & R (B2) Dept. dated 11.7.2011 would require reconsideration by the respondent.

7. In the light of the above discussion, the following orders are passed:

i) the issue relating valuation is answered in favour of the Petitioner. Thus, the demand of tax on Trade Discount in the impugned orders are quashed to that extent.

ii) As far as the issue relating to rate of tax is concerned, the same is remitted back to the respondent to pass fresh order in the light of the clarification issued by the Authority for Clarification and Advance Ruling vide its order dated 25.10.2016.

iii). The operative portion of the impugned order on the issue relating rate of Tax may be treated as a show cause notice and if necessary, the respondent may issue appropriate corrigendum to the petitioner within a period of one month from date of receipt of copy of this order.

iv) The petitioner shall thereafter file a reply/representation before the respondent within a period of 30 days from the date of receipt of copy of this order irrespective of the fact whether corrigendum is issued or not.

8. These writ petitions stand disposed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gbi

To

The Assistant Commissioner (CT),
Omalur Assessment Circle,
Omalur.

+1 cc to Spl Government Pleader(Taxes) Sr.No. 4283
+1cc to Mr.R.Senniappan , Advocate SR.No. 4200

W.P.Nos.37063 to 37068 of 2015
and
M.P.No.1 of 2015

A.SK(04/03/2020)