IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 30th DAY OF APRIL 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.S.No.408 of 2015

M/s.Hyundai Motor India Limited,
rep. By its Authorized Signatory,
Mr.M.Sagadevan, Assistant General
Manager – Legal & Secretarial,
South Regional Office at Hyundai Motor Plaza,
NP 54, Developed Plot,
Thiru-Vi-Ka Industrial Estate,
Ekkaduthangal, Guindy, Chennai – 600 032. ...Plaintiff

Vs..

1.M/s.A-1 Auto Pvt Ltd.,
3,4,5 Town Centre, Andheri Kurla Road,
Sakinaka, Andheri East,
Mumbai – 600 059.

2.Mr.Manpreet Singh Amrik Singh Vijan,
Director M/s. A-1 Auto Pvt. Ltd.,
Flat No.51/52, 5th Floor,
New Samir Apartments Socy (Society),
50, Pali Hill Road, Bandra,
(West) Mumbai – 400 050.

3.Mr.Pradeep Lalichand Tilani
Director M/s. A-1 Auto Pvt. Ltd.,
8, Bamboo House, Saraswati Road,
Santacruz (w), Mumbai – 400 054.

4.Mr.Mehmood Khan,
Additional Director M/s.A-1 Auto Pvt. Ltd.,
RN 9, Papadwala Chawl 44,
Masan Road, Kasai Wada, Kurla,

Mumbai – 400 070.

5.Mr.Manmohan Durgadas Sharma,
Additional Director M/s. A-1 Auto Pvt Ltd.,
Flat No.E/522, Bhoomi Hills,
Thakur Village, Kandivali (East)
Mumbai – 400 101

6.The Deputy Commissioner,
(Commercial Taxes) – IV, Large Tax Payer Unit,
Durga tower, 5th Floor, Egmore, Chennai – 600008. ...Defendants

Civil Suit praying that this Hon'ble Court may be pleased to pass a judgement and decree against the defendants 1 to 5 directing the Defendants 1 to 5:-

a) To pay to the plaintiff the sum of Rs.5,43,04,069/- (Rupees five crores forty three lakhs four thousand and sixty nine only) together with interest @ 18% p.a on the said sum of Rs.5,43,04,069/- from this date till date of realisation.

b) To pay the plaintiff the costs of the suit.

This suit coming on this day before this Court for hearing in the presence of Mr.A.R.Karunakaran, Advocate for the plaintiff herein and the defendants herein, not appearing in person or by advocate and upon reading the plaint filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and this Court having observed that the 1st defendant is liable to compensate the plaintiff for the additional tax

paid by the plaintiff,

it is ordered and decreed as follows:-

That the defendants 1 to 5 herein, do pay to the plaintiff herein, a sum of Rs.11,38,74,145/- (Rupees Eleven Crores Thirty Eight Lakhs Seventy Four Thousand One Hundred and Forty Five only) with further interest at the rate of 18% per annum on the sum of Rs.5,43,04,069/- (Rupees Five Crores Forty Three Lakhs Four Thousand and Sixty Nine only) from this date till the date of realization.

2. That the defendants 1 to 5 herein, do pay to the plaintiff herein, the costs of this suit as and when taxed by the taxing officer of this court, and noted in the margin thereof.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 30th DAY OF APRIL 2021.

Sd./-
ASSISTANT REGISTRAR (O.S-I)

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

KY

01.06.2021

C.S.No.408 of 2015

DECREE:

DATED : 30.04.2021

THE HON'BLE MR. JUSTICE
R.SUBRAMANIAN

FOR APPROVAL: 9.7.2021

APPROVED ON: 14.7.2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.408 of 2015

M/s.Hyundai Motor India Limited,
rep. By its Authorized Signatory,
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Mumbai – 400 101

6.The Deputy Commissioner,
(Commercial Taxes) – IV, Large Tax Payer Unit,
Durga tower, 5th Floor, Egmore, Chennai – 600008. ...Defendants

Prayer: Plaint filed under Order IV Rule (1) of the Original Side rules r/w Order VII Rule 1 and 2 of C.P.C., praying to direct the defendants 1 to 5 to pay to the plaintiff the sum of Rs.5,43,04,069/- (Rupees five crores forty three lakhs four thousand and sixty nine only) together with interest @ 18% p.a on the said sum of Rs.5,43,04,069/- from this date till date of realisation and to pay the plaintiff the costs of the suit.

For Plaintiff : Mr.A.R.Karunakaran

For Defendants : No Appearance

JUDGMENT

This suit has been filed for recovery of a sum of Rs.5,43,04,069/- being the excess tax amount paid by the plaintiff due to the failure of the defendant in furnishing 'C' forms.

2.The plaintiff is a leading car manufacturer and the 1st defendant was appointed as a dealer of the plaintiff. The defendants 2 to 5 are the Directors of the 1st defendant Company. As per Section 8(1) of the Central Sales Act, the rate of sales tax / VAT for the Cars and their spare parts in the course of Inter-State Trade or Commerce in respect of sales made to registered dealers of other states is 2%. The said concessional rate of 2% is applicable to inter-state or commerce only if the selling dealer furnishes particulars of sale to the prescribed authority in a particular manner in a particular form, which is generally called as 'C' form within the prescribed time. If the 'C' forms are not furnished within the prescribed time, the sales made even to a registered dealer will also be deemed as a sale made to an unregistered dealer or a Local Sales and the highest rate of tax will be imposed according to the Local Sales Tax Act, wherein the tax of the sale of cars / spare parts is 12.50% as against 2% under CST Act.

3.As per the memorandum of understanding dated 18.07.1996 and 22.01.2008 between the plaintiff and the Government of Tamil Nadu, the plaintiff was given a concessional rate of tax at 1% instead of 2%. Pursuant to the memorandum of understanding, Government Orders have been issued in G.OMs.225 dated 29.09.1998 and G.O.Ms.No.101 dated 23.04.2008.

4.As per the Central Sales Tax Act and Rules, the purchasing dealer is obliged to obtain form 'C' from the local sales tax office and submit the same to the selling dealer to enable them to file the same to the local sales tax authorities within the stipulated time. The plaintiff would claim that the 1st defendant who was appointed as a dealer of the plaintiff under a dealership agreement dated 11.09.2008 failed to furnish 'C' forms as required under the Act and therefore, the plaintiff was compelled to pay the

suit claim as additional sales tax. The differential sales tax comes to

Rs.5,43,04,069/-.

5.According to the plaintiff, the liability for payment of excess sales tax arose due to the failure on the part of the 1st defendant to furnish 'C' forms with the stipulated time and therefore, the defendant is liable to pay dues. On the strength of the above pleadings, the plaintiff had sought for a decree for recovery of the said sum of Rs.5,43,04,069/- along with interest at 18% per annum on the said sum from the date of plaint till date of realization.

6.Despite service, the defendants have not chosen to enter appearance to defend the suit. The plaintiff has let in evidence and One Mr.Sahadevan, Deputy General Manager (Legal & Secretarial) has examined as P.W.1. He has filed his proof affidavit and has also produced Exs.P1 to P21. The evidence on record clearly demonstrates that the additional liability for a payment of sales tax arose solely on the ground of the failure of the 1st defendant to produce 'C' forms within the stipulated time. Therefore, the 1st defendant is liable to compensate the plaintiff for the additional tax paid by the plaintiff.

7.Hence, the suit is decreed as prayed for with costs.

Sd./- R.S.M.J
30.04.2021

List of witness marked on the side of the plaintiff :

P.W.1 – M.Sagadevan

List of documents marked on the side of the plaintiff:

S.No	*Exihibits. No*	*Documents marked*
1	Ex.P1	The Original Board Resolution authorizing Mr.M.Sagadevan dated 30.06.2014.
2	Ex.P2	The Original Dealership Agreement between plaintiff and the 1st defendant dated 11.09.2008.
3	Ex.P3	The Photo copy of the plaintiff letter to 1st defendant for non-submission of Form-C for the period October 2007 to November 2009 dated 18.12.2009.
4	Ex.P4	The photo copy of the 1st defendant letter to the plaintiff's Regional Manager, Mumbai Zonal Office with respect to payment of tax to sales tax department and obtaining Form-C from Sales Tax Office dated 18.05.2020.
5	Ex.P5	The photo copy of the Assistant Commissioner of Sales Tax(Investigation) 18, Mumbai letter to the plaintiff regarding non-payment of the tax by the 1st Defendant dated 14.12.2010.
6	Ex.P6	The photo copy of Assistant Commissioner of Sales Tax (Investigation) 18, Mumbai letter to the plaintiff regarding non-payment of tax by the 1st defendant.
7	Ex.P7	The original annual return in Form No.1 for the Financial Year 2009-10 of the plaintiff with respect to Inter-State sales.
8	Ex.P8	The photo copy of List of Invoice Numbers and value of sales made to the 1st defendant by the plaintiff.
9	Ex.P9	The original letter with referene no.723823/2009-10 sent by the Deputy Commissioner (CT), Enforcement (North) with respect to CST assessment for the financial year 2009-10 dated 06.02.2014.
10	Ex.P10	The original letter with reference no.723823/2010-11 sent by the Deputy Commissioner (CT), Enforcement (North) with respect to CST assessment for the financial year 2010-11 dated 06.02.2014.
11	Ex.P11	The original reply filed by the plaintiff for the letter with reference no.723823/2009-10 dated 24.02.2014.
12	Ex.P12	The original reply filed by the plaintiff for the letter with reference no.723823/2010-11 dated 24.02.2014.
13	Ex.P13	The original order passed by the Deputy Commissioner (CT), Enforcement (North) for the financial year 2009-2010 for a demand of Rs.5,25,23,516/- dated 15.03.2014.
14	Ex.P14	The original order passed by the Deputy Commissioner (CT), Enforcement (North) for the financial year 2010-11 for a demand of Rs.21,92,709/- dated 15.03.2014.
15	Ex.P15	The original plaintiff reply to Assessment Order dated 15.03.2014

S.No	Exihibits. No	Documents marked
		Assessment Year 2009-10 informing the payment plan under protest, dated 09.04.2014.
16	Ex.P16	The original plaintiff reply Assessment Order dated 15.03.2014 Assessment Year 2010-11 informing the payment plan under protest dated 09.04.2014.
17	Ex.P17	The original notice sent by the Deputy Commissioner (CT)-IV. Large Taxpayer Unit for demand Rs.22,95,11,731/- for the financial years 2006-07 to 2010-11 dated 16.04.2014.
18	Ex.P18	The original plaintiff letter to the Deputy Commissioner (CT)-IV large Taxpayer Unit for payment of the demand amount under protest dated 17.04.2014.
19	Ex.P19	The original plaintiff letter to the Deputy Commissioner (CT)-IV large Taxpayer Unit for payment of the demand amount for the financial year 2009-10 under protest dated 12.05.2014.
20	Ex.P20	The original plaintiff letter to the Deputy Commissioner (CT)-IV large Taxpayer Unit for payment of the demand amount for the financial year 2010-11 under protest dated 12.05.2014.
21	Ex.P21	The original Legal Notice issued to the defendants – returned unserved dated 12.07.2014.

List of witness and documents filed on the side of the defendants:

Nil

Sd./- R.S.M.J
30.04.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

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