BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2021
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5633 of 2019
and
W.M.P.(MD)No.4457 of 2019

M/s.Iswarya Motors,
Rep. by its Partner,
Mr.K.Mukundan,
S/o.Krishna Rao,
No.252, Tenkasi Road,
Rajapalayam,
Virudhunagar District,
Residing at
No.62/1, P.S.K.Nagar,
Rajapalayam,
Virudhunagar District. ...Petitioner

-Vs-

The Regional Transport Officer,
Srivilliputhur,
Virudhunagar District. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents herein to accept the life time tax of the petitioner's Motor Car namely Mercedes Benz India Private Ltd., Light Motor Vehicle Passenger car bearing its temporary registration mark Number TN/38/TMP/2019/592, coloring polar white, Engine No.65192134654533, Chasiss No.WDD2050026L037817, on receiving the life time tax for the invoice price of the petitioner's purchase of the vehicle of Rs.31,75,000/-.

For Petitioner : Mr.A.Saravanan
For Respondent : Mrs.M.Rajeswari
Government Advocate

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

2.The petitioner purchased a motor car (Mercedes-Benz) from M/s.TV Sundaram Iyengar & Sons Private Limited. According to the petitioner, the dealer raised an invoice indicating the price of the vehicle at Rs.31,75,000/-. According to the petitioner, this invoice included the tax components namely CGST, SGST and Cess. According to the petitioner, life time tax at 15% should be levied by the respondent only on this invoice amount for effecting registration. Since the respondent had insisted that they would compute life time tax at 15% only on the manufacturer's price, the present writ petition came to be filed.

3.The respondent has filed a detailed counter affidavit and the learned Government Advocate took me through its contents. The learned Government Advocate would point out that the vehicle was temporarily registered by paying 2% of the life time tax on the manufacturer's price ie., Rs.44,47,125/-. The learned Government Advocate would point out that having accepted that life time tax is to be paid only on the manufacturer's price, it is not open to the petitioner to now contend that the life time tax should be computed on the dealer's invoice.

4.I carefully considered the rival contentions and went through the relevant statutory provisions.

5.The issue raised in this writ petition has to be decided with reference to the provisions of the Tamil Nadu Motor Vehicle Taxation Act, 1974 and the Rules framed thereunder:-

Section 2(3-A) of the Act is as follows:-

> "life time tax" means the tax leviable in one lump sum in advance for the life time of a motor vehicle.

Section 4(1-A) (a) reads as follows:-

> "in respect of the motor vehicles specified in item (A) in Part-1 of the second schedule and in Part-I of the Third Schedule, at the time of its registration, a life time tax shall be paid at the rates specified in item (A) in Part-I of the Second Schedule or in Part-I of the Third Schedule, as the case may be, on a licence to be taken out for the life time of such vehicles."

6.According to Rule 2(aa) of the Tamil Nadu Taxation Rules, 1974, "Cost of Vehicle" means the total price paid at the time of purchase as ascertained from the authorised dealer or manufacturer as the case may be. These provisions came up for consideration in ***M/s.Khivraj Pearl Vs. The Secretary (Home), Transport Department, Chennai and another (W.P.No.8985 of 2018)***, dated 20.04.2018. The Hon'ble Judge held in the said case that life time tax should be computed based on the total cost of the vehicles. It was also made clear that 'cost of the vehicle' means cost of the vehicle paid by the purchaser at the time of purchase of the vehicle which should be inclusive of CGST and GST. Now the only question that arises for my consideration is whether the life time tax should be computed based on the dealer's invoice or the manufacturer's price.

7.The learned Government Advocate would contend that when the petitioner had chosen to secure temporary registration by paying 2% of the tax on the manufacturer's price, it is not now open to him to contend that computation should be based on the dealer's invoice. This contention has to be stated only to be rejected.

8.Article 265 of the Constitution of India states that no tax shall be levied or collected except by the authority of law. Even if the party had made any payment under an erroneous impression, he is entitled to refund. Merely because, at the time of temporary registration, 2% was paid by computing it on the manufacturer's price, that does not mean that the petitioner is bound by the said computation. A mere reading of the aforesaid statutory provisions and the decision in ***M/s.Khivraj Pearl case*** would lead to the inference that the life time tax has to be levied only on the cost of the vehicle. The cost of the vehicle obviously means the price paid by the purchaser at the time of purchase. My attention is drawn to the order passed by the Competition Commission of India (Suo Moto Case No.01 of 2019), in which, it was held that it is always open to the dealer to grant discount. Therefore, I hold that the respondent ought to collect life time tax only based on the dealer's invoice. In an earlier case, it was argued by the consumer that life time tax should be based on the ex-showroom price which did not include CGST and IGST components. I had rejected the said contention. The invoice raised by the dealer must include GST component also. In the present case, the dealer's invoice includes tax component also.

9.I therefore direct the respondent to accept the life time tax for the petition mentioned vehicle by computing it on the basis of dealer's invoice value of Rs.31,75,000/-. The Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Regional Transport Officer,
Srivilliputhur,
Virudhunagar District.

W.P.(MD)No.5633 of 2019
and
W.M.P.(MD)No.4457 of 2019

(CO)
AS(12.05.2021) 4P 2C