

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2512 OF 2021

Modi Car Agencies Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Ors.)...Respondents

**WITH
WRIT PETITION NO.166 OF 2023**

Cornerstone Automobiles)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION NO.167 OF 2023**

Cherry Corporation)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION NO.173 OF 2023**

Newaskar Automobiles)...Petitioner
vs.
The State of Maharashtra and Ors.)...Respondents

**WITH
WRIT PETITION NO.168 OF 2023**

Sablok Cars)...Petitioner
vs.
The State of Maharashtra)...Respondents

**WITH
WRIT PETITION NO.169 OF 2023**

Satish Motors (Akola) Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION NO.174 OF 2023**

Bhuvan Wheels Private Limited)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION NO.170 OF 2023**

Dhoot Motors Private Ltd.)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION NO.171 OF 2023**

Ratnaprabha Motors)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION NO.172 OF 2023**

Sarra Motors Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION NO.175 OF 2023**

Dhanlaxmi Automobiles	)...Petitioner
vs.	
The State of Maharashtra	)...Respondent

**WITH
WRIT PETITION NO.176 OF 2023**

Sablok Cars	)...Petitioner
vs.	
The State of Maharashtra	)...Respondent

**WITH
WRIT PETITION NO.177 OF 2023**

Shri Ram Bikes Scooters	)...Petitioner
vs.	
The State of Maharashtra	)...Respondent

**WITH
WRIT PETITION NO.178 OF 2023**

Fine Autolines	)...Petitioner
vs.	
The State of Maharashtra	)...Respondent

**WITH
WRIT PETITION NO.179 OF 2023**

Salasar Wheels Private Limited	)...Petitioner
vs.	
The State of Maharashtra	)...Respondent

**WITH
WRIT PETITION NO.180 OF 2023**

Satish Motors Pvt. Ltd.	)...Petitioner
vs.	
The State of Maharashtra	)...Respondent

**WITH
WRIT PETITION NO.181 OF 2023**

Raj Auto	)...Petitioner
vs.	
The State of Maharashtra	)...Respondent

**WITH
WRIT PETITION NO. 406 OF 2023**

Raghuvir Motor Agencies Pvt Ltd.	)...Petitioner
vs.	
The State of Maharashtra	)...Respondent

**WITH
WRIT PETITION NO. 410 OF 2023**

Cherry Corporation	)...Petitioner
vs.	
The State of Maharashtra	)...Respondent

**WITH
WRIT PETITION NO. 407 OF 2023**

Sanya Motors Private Limited	)...Petitioner
vs.	
The State of Maharashtra	)...Respondent

**WITH
WRIT PETITION NO. 409 OF 2023**

Salasar Wheels Private Limited)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION NO. 408 OF 2023**

Shree Ram Bikes Scooters)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION NO.423 OF 2023**

Kankariya Automobiles Private Limited)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION (L) NO.3658 OF 2023**

Kifs Motors Private Limited)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION NO.478 OF 2023**

Dhanlaxmi Motors)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION NO. 479 OF 2023**

Rironsi Automotive)...Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION (L) NO.6743 OF 2022**

Ishna Motors)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
CHAMBER ORDER (L) NO.294 OF 2022
IN
WRIT PETITION (L) NO.6743 OF 2022**

Ishna Motors)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.4053 OF 2022**

Modi Car Agencies Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION (L) NO.7052 OF 2022**

Modi Car Agencies Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.1749 OF 2021**

Metro Motors Auto Hangar Division)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO. 2904 OF 2021**

Fortpoint Automotive Mumbai Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.2840 OF 2021**

Fortpoint Automotive Mumbai Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO. 2888 OF 2021**

Fortpoint Automotive Mumbai Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.2877 OF 2021**

Fortpoint Automotive Mumbai Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.2834 OF 2021**

Fortpoint Automotive Mumbai Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.2858 OF 2021**

Fortpoint Automotive Mumbai Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.2161 OF 2021**

Sharayu Autolinks Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.4055 OF 2022**

Krishiv Motors Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.2387 OF 2021**

VCM Agencies Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.3792 OF 2021**

Ishna Motors)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.2194 OF 2021**

Modi Motors Agencies Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.3727 OF 2021**

Krishiv Motors Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.2561 OF 2021**

S C Auto Agencies Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION (L) NO.24664 OF 2022**

Spectra Motors Limited)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.56 OF 2023**

Infinity Autolinks Private Limited)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.439 OF 2022**

SAP Holdings and Leasing Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.446 OF 2022**

SAP Holdings and Leasing Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.322 OF 2022**

Fortpoint Automotive Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra and Anr)...Respondents

**WITH
WRIT PETITION NO.5231 OF 2022**

Vidarbha Automobile Dealers Association)...Petitioner
vs.
The State of Maharashtra)...Respondents

Mr.Ratan Samal with Mr.Manohar Samal, Advocates for the Petitioners in WPs No. 2161/2021, 446/2022 and 439/2022.

Mr.Bharat Raichandani with Ms.Prachi Dhanani and Ms.Juhi Bahirwani i/by M/s Veritas Legal, Advocates for the Petitioners in WP No.1749/2021.

Mr.Bharat Raichandani with Mr.Rishabh Jain i/b M/s UBR Legal, Advocates for the Petitioners in WP No.3792/2021 and WPL No.6743/2022, WPL No.7052/2022.

Ms.Nikita Badheka a/w. Mr.Parth Badheka and Ms.Lata Nagal, Advocates for the Petitioners in WPLs No.24664/2022 and 56/2023.

Mr.Arya Anil i/by Mr. Sriram Sridharan, Advocates for the Petitioners in WPs No.2194/2021, 2387/2021, 2512/2021, 4053/2022, 4055/2022, 2561/2021, 3727/2021, 7052/2022.

Mr.Sharad Bhattad with Mr.Shashikant Gaikwad i/by SSP Legal, Advocates for the Petitioners in WP (St.) 3658/2023.

Mr.Vaibhav Shukla a/w Ms.Ira Mishra i/by Mr.Prabhakar Jadhav, Advocates for the Petitioners in WPs No.2840/2021, 2877/2021, 2834/2021, 1749/2021, 322/2021, 2858/2021, 2904/2021, 2888/2021 and 2834/2021.

Mr.Shashikant Gaikwad i/by Mr.Sharad Bhattad, Advocates for the Petitioners in WPs No.5231/2022, 3686/2020, 3658/2020.

Mr.V.A.Sonpal, Special Counsel with Ms.Jyoti Chavan, AGP for the State in WPs No.2194/2021, 2387/2021, 4053/2022, 4055/2022.

Mr.V.A.Sonpal, Special Counsel with Ms.P.H.Kantharia, GP for the State in WP No.2512/2021.

Mr.V.A.Sonpal, Special Counsel with Mr.Hemant Haryan, AGP for the State in WP No.3792/2021,WPL No.6743/2022.

Mr.V.A.Sonpal, Special Counsel with Mr.Himanshu Takke, AGP for the State in WPs No.2561/2021, 3727/2021.

Ms.Jyoti Chavan, AGP for the State in WPs No.446/2022, 439/2022.

Mr.Himanshu Takke, AGP for the State in WPs(L) No.7052/2022, 24664/2022.

Ms.Swatantri Waghmare, Advocate for Respondent No.1 in WP No.2834/2021.

AND

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5600 OF 2021

Neelam Automobile Pvt. Ltd. & Anr.)...Petitioners

vs.

Deputy Commissioner of Sales Tax & Ors.)...Respondents

WITH

WRIT PETITION NO.5546 OF 2022

Chavan Automobiles / Chavan Motor)

Engineering)...Petitioner

vs.

The State of Maharashtra & Ors.)...Respondents

**WITH
WRIT PETITION NO.5547 OF 2022**

Chavan Auto Wheels Pvt. Ltd)...Petitioner
vs.
The State of Maharashtra & Ors.)...Respondents

**WITH
WRIT PETITION NO.5548 OF 2022**

Chavan Motors Division India Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra & Ors.)...Respondents

**WITH
WRIT PETITION NO.5549 OF 2022**

Chavan Auto Wheels Pvt. Ltd)...Petitioner
vs.
The State of Maharashtra & Ors.)...Respondents

**WITH
WRIT PETITION NO.5550 OF 2022**

Chavan Automobiles / Chavan Motor)
Engineering)...Petitioner
vs.
The State of Maharashtra & Ors.)...Respondents

**WITH
WRIT PETITION NO.1985 OF 2021**

Arpanna Motors Pvt. Ltd. & Anr.)...Petitioners
vs.
Deputy Commissioner of Sales Tax & Ors.)...Respondents

**WITH
WRIT PETITION NO.582 OF 2023**

Bafna Motors Mumbai Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra & Anr.)...Respondents

**WITH
WRIT PETITION NO.9326 OF 2021**

Chavan Automobiles / Chavan Motor)...Petitioner
vs.
The State of Maharashtra & Anr.)...Respondents

**WITH
WRIT PETITION NO.9340 OF 2021**

Chavan Motors Division India Pvt. Ltd.)...Petitioner
vs.
The State of Maharashtra & Anr.)...Respondents

**WITH
WRIT PETITION NO.9341 OF 2021**

Chavan Auto Wheels Pvt. Ltd)....Petitioner
vs.
The State of Maharashtra & Anr.)...Respondents

**WITH
WRIT PETITION NO.9339 OF 2021**

Chavan Auto Wheels Pvt. Ltd)....Petitioner
vs.
The State of Maharashtra & Anr.)...Respondents

**WITH
WRIT PETITION NO.4691 OF 2021**

M/s. Regent Honda Division of M/s.Tejpal)
Motors Pvt. Ltd.)....Petitioner
vs.
The State of Maharashtra & Ors.)...Respondents

**WITH
WRIT PETITION NO.3685 OF 2020**

Unnati Vehicles Pvt. Ltd.)....Petitioner
vs.
The State of Maharashtra)...Respondent

**WITH
WRIT PETITION NO.3686 OF 2020**

M/s. Aditya Auto Agencies)....Petitioner
vs.
The State of Maharashtra & Ors.)...Respondents

**WITH
WRIT PETITION NO. 261 OF 2022**

The Kothari Wheels)....Petitioner
vs.
The State of Maharashtra & Anr)...Respondents

**WITH
WRIT PETITION NO. 260 OF 2022**

Garve Motors Pvt. Ltd.)....Petitioner
vs.
The State of Maharashtra & Anr.)...Respondents

**WITH
WRIT PETITION NO.9428 OF 2021**

Arpanna Motors Pvt. Ltd.)....Petitioner

vs.

Deputy Commissioner of Sales Tax & Ors.)...Respondents

Mr.Ratan Samal with Mr.Manohar Samal, Advocates for the Petitioners in WPs No.5546/2022, 5547/2022, 5548/2022, 5549/2022, 5550/2022, 89326/2021, 9340/2021, 9341/2021 and 9339/2021.

Mr.Hemang Raythattha with Mr.Swapnil Shikhare i/by M/s.RMG Law Associates, Advocate for the Petitioners in WPs No.1985/2021 and 9428/2021.

Mr.Rahul Thakar i/by Mr.C.B.Thakar, Advocates for the Petitioner in WP No.4691/2021.

Mr.V.T.Dubey a/w. Mr.N.K.Dubey, Advocates for Petitioner in WP No.5600/2021.

Mr.Shashikant Gaikwad i/by Mr.Sharad Bhattad, Advocates for the Petitioners in WPs No.3685/2020 and 3686/2020.

Mrs.Shruti D. Vyas, “B” Panel Counsel for the Respondent-State.

Mr.Ishaan Patkar i/by M/s Alaksha Legal, Advocate for the Petitioners in WPs No.582/2023, 260/2022 and 261/2022.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.**

DATE : 12 APRIL 2023

ORAL JUDGMENT : (PER NITIN JAMDAR, J.)

Rule. Rule made returnable forthwith. Respondents were served. Taken for disposal.

2. The Petitioners in these Petitions are motor vehicle dealers, and they are engaged in the business of selling motor vehicles. The Petitioners charge road tax, insurance premium, octroi duty and other charges and duties from their customers. A question has arisen about the applicability of the Value Added Tax (VAT) under the Maharashtra Value Added Tax Act, 2002 (MVAT Act). The assessment orders have been passed against the Petitioners, holding that the tax is leviable under the MVAT Act of 2002. Challenging this order of assessment, the Petitioners are before us.

3. By Administrative order, the Writ Petitions were pending at Aurangabad and Nagpur Bench, have been transferred to the Principal Seat to be heard along with Writ Petition No.2512 of 2021 (Modi Car Agencies Pvt. Ltd. vs. The State of Maharashtra and Ors.).

4. The common thread in these Petitions is a question as to the applicability of VAT to the charges as specified above. In

some cases, the Assessing Officer has relied on the Advance Ruling Authority's decision under the MVAT Act of 2002 in the case of *M/s. B. U. Bhandari Auto* dated 20 June 2018, wherein the Advance Ruling Authority has held that VAT is applicable on these charges. In some of these orders, though there is no direct reference to this Advance Ruling, an identical position of law has been accepted and made the basis thereof.

5. While these challenges to Petitions are pending, subsequent developments have occurred. That is, order passed by the Advance Ruling Authority in the case of *M/s. B.U.Bhandari Auto Private Limited Vs. The State of Maharashtra* was challenged before the Maharashtra Sales Tax Tribunal at Pune in VAT Appeals No.2 of 2018. The Tribunal posed the following question for consideration :

“(1) Whether the registration Charges, Insurance Charges, handling charges received and paid on behalf of the customer of a motor vehicle, form part of the “sale price” of such motor vehicle, considering the provisions of Section 2(25) of the MVAT Act ?

(2) Whether Incentive and discount, received from the automotive manufacturers form part of the “sale price” or needs to be treated as a “sale price” of the motor vehicle sold to the customer or whether it results in reduction of set off ?

(3) *Whether the Applicant is entitled to claim set off, on purchased motor vehicle and used it as “Demo Vehicles”, irrespective of the fact that such vehicle continuing to be “stock-in-trade” or not being treated as “capital asset” in the books of accounts of the Applicants ?*

(4) *Whether the prayer of “prospective effect, considering the fact that the decision of the Hon. High Court of Judicature at Bombay in the case of Sehgal Autoriders Private Limited was rendered on 11th July, 2011 and whereas the decision of the Hon'ble Supreme Court of India in the case of K.T.C. Automobiles was rendered only on 29th January, 2016?”*

6. Tribunal has rendered its decision on 6 March 2023 and has concluded thus :

“(b) The impugned Advance Ruling Order in respect of the registration Charges, insurance Charges, handling charges received and paid on behalf of the customer of a motor vehicle, form part of the “sale price” of such motor vehicle, is modified. And, it is held that, these charges cannot fall within the extended meaning of the expression “sale price” considering the provisions of Section 2(25) of the MVAT Act.

(c) The impugned Advance Ruling Order in respect of the Incentive and discount, received from the automotive manufacturers form part of the “sale price” or needs to be treated as a “sale price” of the motor vehicle sold to the customer is modified. And, it is held that, the Incentive and discount, received from the automotive manufacturers does not form

part of the “sale price”. And, also it is held that, due to this Incentive, the input tax credit does not reduce to the extent of Incentive.”

Unless specifically referred, this decision of the tribunal is henceforth referred to as *M/s. B.U.Bhandari Auto*.

7. We note that there has been no challenge to the decision of the Tribunal in *M/s. B.U.Bhandari Auto* and we have not been informed of any such challenge. Therefore, we proceed based on the Tribunal's decision to consider its implications for the Petitioners. Furthermore, it has not been debated before us that the Tribunal's decision in the case of *M/s. B.U.Bhandari Auto* has not changed the nature of the litigation following the challenge to the assessment orders passed against each Petitioner, directly or indirectly.

8. The learned Counsel for the Petitioners place reliance on the order *M/s. B. U. Bhandari Auto* and contend that this order answers the issue raised by the Petitioners in their favour and the impugned orders of Assessment be quashed and set aside so also the tax demand. The learned Counsel for the Respondent-State contends that the decision of the Tribunal in the case of *M/s. B. U. Bhandari Auto* cannot be directly made applicable to the case of

the Petitioners as under Section 55 of the MVAT Act, the decision of the Advance Ruling Authority would apply to others only if they are considered as similarly situated, and therefore, without this enquiry, it cannot be held that Petitioners are not liable for levy of VAT.

9. Section 55 of the MVAT Act reads as follows:

“55. Advance Ruling

(1) The Applicant may make an application to the Commissioner for Advance Ruling on the question prescribed.

(2) The Applicant desirous of obtaining Advance Ruling under the Section may make an application to the Commissioner in precise form and manner, stating any question prescribed under sub-section(1) on which the Advance Ruling is sought.

(3) The Commissioner shall constitute Advance Ruling Authority, comprising three officials, not below the rank of Joint Commissioner by notification in the Official Gazette, for giving Advance Rulings. He may allot any of the questions or as the case may be, all the questions prescribed under sub-section (1) to such Advance Ruling Authority.

(4) The Commissioner may also allot any application or question in such application made under section 56 and pending on the date of effect of this amendment or, as the case may be, any class of applications, to such Advance Ruling Authority.

(5) The Commissioner or, as the case may be, the Advance Ruling Authority shall, subject to rules, make Advance Ruling, within ninety days from the date of acceptance of the application by the Commissioner or, as the case may be, the Advance Ruling Authority.

(6) The applicant may withdraw his application within thirty days from the date of submission of the application.

(7) (a) No application shall be accepted where the question raised in the application,-

(i) is already pending before the Tribunal, Bombay High Court or, as the case may be, the Supreme Court in respect of the applicant, or

(ii) relates to a transaction or issue which is designed apparently for the avoidance of tax.

(b) The Commissioner or, as the case may be, the Advance Ruling Authority, may call for a report from the concerned officer, in the prescribed manner.

(c) The communication regarding the acceptance of the application shall be made to the applicant within thirty days from the date of submission of the application.

(d) No application shall be rejected under this subsection unless an opportunity of being heard has been given to the applicant and where the application is rejected, reasons for such rejections shall be recorded in the order.

(8) (a) The Advance Ruling of the Commissioner shall be binding on all the officers, including the appellate authority or, as the case may be, on the Advance Ruling Authority in respect of the similarly situated persons.

(b) The Advance Ruling of the Advance Ruling Authority shall be binding on all the officers, including the appellate authority, other than the Commissioner, in respect of the similarly situated persons.

(9) The Commissioner or, as the case may be, the Advance Ruling Authority, may direct that the Advance Ruling shall not affect the liability of the applicant or, if the circumstances so warrant of any other person similarly situated, as respects any sale or purchase effected prior to the Advance Ruling.

(10) The Appeal against the Advance Ruling Order shall lie to the Tribunal and shall be subject to the conditions prescribed.

(11) Notwithstanding anything contained in this Act, no Appeal shall be entertained under any circumstances whatsoever, after the date of expiry of period of thirty days from the date of communication of the Advance Ruling Order to the Applicant.

(12) The Advance Ruling order passed by the Advance Ruling Authority shall be subject to any directions or, as the case may be, instructions, issued under sub- section (10) of section 10 by the Commissioner and any order passed by the Commissioner under section 56, as it existed.

(13) The Commissioner or, as the case may be, the Advance Ruling Authority may on his own motion, rectify any mistake apparent from the record and may rectify any order passed by it before the order so issued has been given effect to by the officer concerned. The applicant may also bring to the notice of the Commissioner or, as the case may be,

Advance Ruling Authority, any such mistake within thirty days from the date of receipt of the said order:

Provided that, no such rectification shall be done unless the applicant has been given a reasonable opportunity of being heard:

Provided further that, an order under this sub-section shall be passed within a period of sixty days from the date of receipt of the Advance Ruling by the applicant.

(14) (a) The Commissioner may, on his own motion call for the record of any Advance Ruling issued by the Advance Ruling Authority to examine as to whether the said ruling is erroneous in so far as it is prejudicial to the interests of revenue. The Commissioner may, by serving on the applicant a notice in the prescribed form pass such order as he thinks just and proper.

(b) The Commissioner may also, for reasons to be recorded in writing on his own motion, review the Advance Ruling passed by him under this section and pass such order as he thinks just and proper. However, before initiating any action under this clause, the Commissioner shall obtain prior permission of the State Government. Such permission shall also be obtained when the Advance Ruling order is proposed to be made contrary to the order passed by the Commissioner under Section 56.

(c) The Commissioner may direct that, the order of review shall not affect the liability of the person in whose case review is made in respect of any sale or purchase effected prior to the review and may likewise, if the circumstances so warrant direct

accordingly in respect of any other person similarly situated.

(d) No order shall be passed, -

(i) under clause (a), after the expiry of a period of six months from the end of the year containing the date of Advance Ruling;

(ii) under clause (b), after the expiry of a period of three months from the end of the month in which the State Government gives permission to initiate action under clause (b):

Provided that, no order under this sub-section shall be passed unless an opportunity of being heard is given to the applicant.

(15) The regulations regarding the procedure to be followed shall be formulated by the Commissioner.”

Thus, Section 55 of the MVAT Act provides for Advance Ruling, which allows an applicant to apply to the Commissioner for Advance Ruling on the specified question. The application must be made in the prescribed form and manner, stating the question on which the Advance Ruling is sought, as prescribed under sub-section (1). The Commissioner will then constitute the Advance Ruling Authority, comprising three officials not below the rank of Joint Commissioner, by notification in the Official Gazette, for giving Advance Rulings. This procedure is provided in Section 55(3) to Section 55(7). According to Section 55(8)(a), the Advance Ruling is binding on

all officers, including the appellate authority and the Advance Ruling Authority, regarding similarly situated persons. Section 55(10) provides that appeal against the Advance Ruling Order shall lie to a Tribunal, and the order passed in such an appeal would be binding on similarly situated cases.

10. After considering the arguments, we agree with the Respondents that the decision of the Tribunal in the case of *M/s. B.U.Bhandari Auto*, though it provides relevant legal guidance for the Petitions under consideration, this decision cannot be applied directly to each Petitioner to quash the assessment orders. It is necessary to conduct an enquiry to determine whether the Petitioners can be considered similarly situated persons. The Assessing Officers based their decision on the law the Advance Ruling Authority laid down in the case of *M/s. B.U.Bhandari Auto*. If this order is reversed, the implication of the order passed by the Tribunal will have to be considered in each case of the Petitioners. Therefore, an enquiry must be conducted to determine whether the facts of each Petitioner case warrant similar treatment.

11. In light of the above discussion, we dispose of the Writ Petitions by quashing and setting aside the impugned assessment orders in each of these Petitions. The assessment

proceedings are restored to file before the concerned Commissioner of Sales Tax. The Commissioner would examine the issue pending before the Commissioner in light of the decision rendered by the Tribunal in the case of *M/s. B.U.Bhandari Auto* and in the context of the provisions of Section 55 of the Act referred to above and take the decisions as per law.

12. We make it clear that we have not concluded on other aspects that may arise during the assessment proceedings other than the decision of the Tribunal in the case of *M/s. B.U.Bhandari Auto* and the Commissioner would examine the facts of each case and pass the order as per law. Needless to state, the contentions of the Petitioners and the department are expressly kept open.

13. In the light of setting aside the impugned assessment orders as above, the consequential effects of the setting aside of the impugned orders would follow and be given effect to by the concerned.

14. Rule made absolute in the writ petitions in the above terms. No costs.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

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