IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4483 OF 2022

1. Vidarbha Automobile Dealers Association, a society registered under the Society Registration Act, having its office at : c/o Provincial Automobile Company Private Limited, Kingsway, opposite State Bank of India, Nagpur - 440 001, through its Vice President Mr.Achal A.Gandhi.

2. M/s.Aditya Auto Agencies, having its office at 40,41, Yeshwant Stadium, Dhantoli, Nagpur, through Shri Prakash Jain.

3. M/s.Barbate Automotive (India) Pvt.Ltd. having office at Arya Cars, K.H.No.63/66, Mauza Kapsi, Bhandara Road, Nagpur, through its director Shri Vishal Barbate.

4. M/s.Nangia Automotive Pvt. Ltd, having office at Shop No.45, Yeshwant Stadium, Dhantoli, Nagpur – 12, through its Director Shri Mahesh Nangia.

5. M/s.AKG Cars Pvt.Ltd, having office at 8,9, Ganesh height, Khamla, Nagpur, through its Director Shri Ashok Kumar Gandhi.

6. M/s.Central Avenue Trading Co. Private Limited, having office at 31/41, W.No.65, Haudary Tire Works, Mohan Nagar, Kamptee Road, Nagpur - 01, through its Director Shri Kartik Kale.

7. M/s.Rishikesh Motors Pvt.Ltd. having office at Kanoria Bhavan, Civil Lines, Nagpur-01, through its Director Shri Brahma Kanoria.

8. M/s.Sudarshan Motors, having office at Kanoria Bhavan, Civil Lines, Nagpur – 01, through its director Shri Dev Kanoria.

9. M/s.Unnati Vehicles Private Limited, having its office at House No.2126, Near MIDC T Point, Amravati Road, Wadi, Nagpur – 440 023 through its Director Mr.Hemag Parikh.

10. M/s.Eros Motors Pvt.Limited, having office at Gayatri Sada, Ghat Road, Nagpur – 18, through its director Shri Anuj Pande.

11. M/s.Ketan Motors Pvt.Ltd., having office at Khasara No.35, Kachimet, Amravati Road, Nagpur – 23, through its director Shri Gautam Kale.

12. M/s.A.K.Gandhi, having office at Yeshwant Stadium, Dhantoli, Nagpur – 12, through its director Shri Ashok Kumar

Gandhi.

13. M/s.A.K.Gandhi Marketing Pvt.Limited, having office at 33, Yeshwant Stadium, Dhantoli, Nagpur – 12, through its director Shri Ashok Kumar Gandhi.

14. M/s.Girnar Autoventures Pvt. Ltd, having office at 271/A, Congress Nagar, opposite Shivaji Science College, Congress Nagar, Nagpur – 12, through its director Shri Pravin Chandak.

15. M/s.Patni Automobiles, having its office at Sadar Kamptee Road, Nagpur, through its Director Shri Umesh Patni.

16. M/s.Sequel Motors Pvt.Ltd, having office at Vali Tower, Indora Square, Nagpur – 26, through its director Shri Shabbir Vali.

17. M/s.Jaika Motors Pvt.Ltd. having office at Jaika Building No.1, Civil Lines, Nagpur – 01, through its Director Shri Kartik Kale.

18. M/s.Tajshree Autowheel Pvt. Ltd, having office at plot No.9, Nargundkar Layout, Khamla Road, Nagpur – 15, through its Director Shri Nitin Bhute.

19. M/s.N.K.Kusumgar & Company, having office at 33,

Dahipura, Unthkhana, Nagpur, through its director Shri Nikhil Kusumgar.

20. M/s.Nangia Motors, having office at plot No.C-7, MIDC, Hingna, Wadi, Nagpur through its Director Shri Mahesh Nangia.

21. M/s.Tajshree Motors, having office at plot No.17, Nandanvan Main Road, Tajshree Estate, Nagpur – 09, through its Director Smt.Shobha Mahakalkar.

22. M/s.Provincial Automobile Company Pvt.Ltd., having office at Post Box No.7, Kingsway, Nagpur – 01, through its Director Signatory Shri Ashish Harshraj Kale. ….. **Petitioners.**

:: **V E R S U S** ::

1. State of Maharashtra, through the Secretary, Department of Revenue and Finance, Mantralaya, Mumbai.

2. The Commissioner of State Tax, 8th Floor, Vikrikar Bhavan, Mazgaon, Mumbai – 400 010.

3. The Deputy Commissioner of State Tax (NAG-VAT-E), First Floor, New Building, GST Bhavan, Civil Lines, Nagpur-440 001. ….. **Respondents**.

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Shri S.N.Bhattad, Counsel for Petitioners.
Mrs.K.R.Deshpande, Assistant Government Pleader for Respondents.
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CORAM : PRITHVIRAJ K.CHAVAN & URMILA JOSHI-PHALKE, JJ.
CLOSED ON : 19/10/2023
PRONOUNCED ON : 30/10/2023

JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard learned counsel Shri S.N.Bhattad for petitioners and learned Assistant Government Pleader Mrs.K.R.Deshpande for respondents.

2. **Rule**. Rule made returnable forthwith. Heard finally by consent of learned counsel for parties.

3. The petitioners are motor vehicles' dealers and engaged in business of selling motor vehicles. Petitioner No.1 - Vidarbha Automobile Dealers Association, is a society registered under the Societies Registration Act, 1961 which represents the automobile dealers in Nagpur. The petitioners have challenged assessment as well as show cause notices issued to them on respective dates i.e. 15.11.2021; 1.4.2017, and 30.6.2017 by which the Sale Tax (VAT) was sought to be

levied on R.T.O. Tax, Registration Charges, and Insurance Premium Charges received from customers and paid on their behalf to concerned authorities. These charges were treated as sales' prices of vehicles. The said show cause notices were issued by referring the judgment of the Honourable Apex Court in the case of **Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala vs. KTC Automobile, reported in (2016)4 SCC 82** in support of the show cause notices. The said show cause notices further referred to order dated 20.6.2018 passed by the Advanced Ruling Authority of the Sales Tax Department under Section 55 of the MVACT Act in the case of M/s.B.U.Bhandari Auto Private Limited vs. The State of Maharashtra. The Advanced Ruling Authority of the Sales Tax Department opined that RTO Tax, Registration Charges, and Insurance Premium Charges formed part of sale price of vehicles and hence assessable to the Sales Tax (VAT). The Authority on an erroneous consideration has held that RTO Tax, Registration Charges, and Insurance Premium Charges formed part and parcel of total sale consideration. As such, MVAT is payable on the charges so collected by petitioners and paid to respective department and, therefore, liable for payment of MVAT on such amount.

4. As per contentions of petitioners, demand raised by the show cause notices is not at all maintainable in law and the RTO Tax, Registration Charges and Insurance Premium Charges cannot be included in the sales price of vehicles for the purpose of attracting sales tax.

5. It is submitted by learned counsel for petitioners that the assessment orders have been passed against petitioners holding that the tax is leviable under the MVAT Act of 2002 which is challenged by petitioners by this petition. Learned counsel further submitted that the similar type of challenge was raised in Writ Petition No.2512 of 2021 and other connected matters. All those petitions were transferred to the Principal Bench at Mumbai. The Division Bench at the Principal Seat dealt with this issue and observed as follows:

> 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 ?
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> 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?
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> (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?
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> (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.
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> (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.

6. Learned counsel for petitioners submitted that the order passed in the case of M/s.B.U.Bhandari Auto Private Limited vs. The State of Maharashtra answers the issue raised by petitioners in their favour and prays for quashing and setting aside of the Tax Demand. In view of the order passed by the Division Bench at Principal Seat at Mumbai, Section 55 of the MVAT Act provides for an advanced ruling, which allows applicant to apply to the Commissioner for advanced ruling on the specified question. The application must be made in the prescribed form and manner stating the question on which the advanced ruling is sought as prescribed under sub section (1). The Commissioner will then constitute the Advanced Ruling Authority comprising three officials not below the rank of the Joint Commissioner by Notification in the official gazette for giving advanced rulings. This procedure is provided in Section 55(3) to Section 55(7). According to Section 55(8)(a), the advanced ruling is binding on all the officers including the

appellate authority and the advanced ruling authority regarding similarly situated person. Section 55(10) provides that the appeal against the advanced ruling order shall lie to the Tribunal and the order passed in such an appeal would be binding on the similarly situated cases.

7. The Division Bench further observed that the decision of the Tribunal in the case of M/s.B.U.Bhandari Auto Private Limited vs. The State of Maharashtra, though it provides relevant legal guidance for petitioners under consideration, this decision cannot be applied directly to each petitioners to quash the assessment orders. It is necessary to conduct an enquiry to determine whether petitioners can be considered similarly situated persons. The assessing officers based their decision on the law the Advanced Ruling Authority laid down in the case of M/s.B.U.Bhandari Auto Private Limited vs. The State of Maharashtra. If this order is reversed, the implication of the order passed by the Tribunal will have to be considered in each case of the petition and, therefore, an enquiry must be conducted to determine whether the facts of each petitioner's case warrant similar treatment.

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8. With the above observations, the Division Bench directed the Commissioner to examine the facts of each case and pass the order as per law. It is further directed that the contentions of petitioners and the department are expressly kept open.

9. The similar challenge is raised by petitioners in the present petition and, therefore, similar directions will meet the ends of justice.

10. In the light of the observations above, we dispose of the writ petition by quashing and setting aside the impugned assessment order in the case of each petitioner. The assessment proceedings are restored to file before the concerned Commissioner of Sales Tax. The Commissioner would examine the issue pending before it in the light of the decision rendered by the Tribunal in the case of M/s.B.U.Bhandari Auto Private Limited vs. The State of Maharashtra and in the context of the provisions of Section 55 of the Act. The Commissioner would examine the facts of each case and pass the order as per law.

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11. Needless to say that the contentions of petitioners and the department are expressly kept open. The impugned assessment is quashed set aside. The consequential effects of setting aside of the impugned order would follow and be given effect to by the concerned.

Rule is made absolute in the aforesaid terms. No order as to costs.

(URMILA JOSHI-PHALKE, J.) (PRITHVIRAJ K.CHAVAN, J.)

!! BrWankhede !!