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

WRIT PETITION 658 OF 2023

M/s. Tristar Cars Pvt. Ltd.,
A company incorporated under the
provisions of Companies Act, 1956,
having its Registered Office at Near
Hotel Kundan Plaza, Nagpur Road,
Chandrapur 442 401,
through its Authorized Signatory
Mr. Dattatray s/o. Shamrao Dandekar,
Age 53 yrs, C/o. M/S. Tristar Pvt. Ltd.,
Nagpur Road, Chandrapur 442 401. .....**PETITIONER**

...V E R S U S...

1. State of Maharashtra
Through Department of State Tax,
Through its Secretary, having office
at 5thFloor, Secretaries Cabin,
Main Building Mantralaya,
Madam Kama Road,
Hutatma Rajguru Chouk,
Mumbai 400 032

2. The Commissioner of State Tax,
Having office at 8th Floor, GST Bhavan,
Mazgaon, Mumbai 400 010

3. Deputy Commissioner of Sales Tax,
Having office at 2nd Floor,
Administrative Building,
Opp. Bus Stand,
Chandrapur 442 401. ..**RESPONDENTS**

Mr. R.L. Khapre, senior counsel a/b Mr. K.R. Jain,
for petitioner.
Ms. K.S. Joshi, Addl.GP for respondents 1 to 3/State.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 13.04.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Additional affidavit filed by learned Addl.GP Mrs. K.S. Joshi is taken on record.

2. Heard.

3. Rule. Rule made returnable forthwith. With consent, heard finally.

4. Petitioner – assessee is a company incorporated under the Companies Act, 1956 and is engaged in automobile business.

5. The challenge in the petition is to the notice of demand dated 22.2.2022, issued by the Deputy Commissioner of Sales Tax, in purported exercise of power under Section 32A of the Maharashtra Value Added Tax Act, 2002 ("VAT Act"), whereby the petitioner is directed to pay amount of Rs. 79,29,548/- (Rupees Seventy Nine Lakh Twenty Nine Thousand Five Hundred Forty Eight) into the

government treasury at Chandrapur.

6. Inasmuch as, the notice of demand invokes the provisions of Section 32A of the VAT Act, it would be apposite to extract the said provision, which reads thus:

> ***32A. Payment of tax or interest in certain cases***
>
> (1) After submission of the report of the audit as required under section 61, if it is noticed by the Commissioner that the Accountant has made a recommendation in respect of a sum payable or, as the case may be, the interest payable, if any, and the dealer has accepted the recommendations so made, either fully or partly, then the said dealer shall pay the same within thirty days from the date of service of the notice issued by the Commissioner in respect thereof.
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> (2) The provisions with regard to the payment of interest as provided under sub-section (2) of section 30 shall, in the circumstances provided under this section, apply mutatis mutandis as they apply to the tax that has remained unpaid before the last date prescribed for payment of the said tax as disclosed in the return or, as the case may be, the revised return.
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> *Explanation – In Section 32A of the Value Added Tax Act, in sub-section (2), in the Explanation, for the words "dues which are rupees one hundred or less" the words "tax, which is rupees five hundred or less, per order or, as the case may be, per period and the interest payable thereon, shall be substituted.*

7. The logic and rationale underlying the statutory provision does not present any conundrum. The provision is premised on the principle of non-traverse or admission. The legislative intention is, that if the assessee does not disagree with the recommendation of the Accountant which the assessee has engaged, the obvious inference is that the assessee does not dispute the liability which arises from the recommendation of the Accountant.

8. We have briefly delved into the statutory provision in view of the preliminary objection raised by the department that there is a statutory remedy, and in writ jurisdiction, we must be slow to interfere. The learned senior counsel Mr. R.L. Khapre would submit, that there is no statutory appeal against an order rendered in exercise of power under Section 32A of the VAT Act. Even *de hors* the said aspect, if the notice of demand is found jurisdictionally vulnerable, we are not expected to relegate the assessee to the statutory remedy, assuming arguendo that there is a statutory remedy,

as an empty or ritualistic formality.

9. In the factual matrix, we are more than satisfied that the notice of demand impugned is without jurisdiction and we may briefly articulate the reasons which have weighed with us.

10. The sine qua non for invoking the jurisdiction under Section 32A of the VAT Act is that the assessee shall have agreed with, and accepted, the recommendations made by his Accountant. It is the acceptance by the assessee, which in a sense is an admission of the liability, that clothes the authority with the jurisdiction to proceed under Section 32A of the VAT Act and obviates the need to take recourse to the adjudicatory and adversarial regime statutorily provided.

11. The learned senior counsel Mr. R.L. Khapre has invited our attention to the audit report in form 704. The recommendation of the Accountant on which the notice impugned is predicated reads thus:

*"(f) TAX AS PER DEALERS SOFTWARE IS CALCULATED AS FOLLOWS EX-NET=100+DISCOUNT 20=120 TAX IS CALCULATED AS 120/112 5*12 5=13 33, HOWEVER ACCORDING TO DEALER ACTUAL TAX IS TO BE CALCULATED AS 100-20=80*12 5%=10 HENCE THERE IS DIFFERENCE IN CALCULATION AS PER AUDIT AND AS PER DEALER".*

The assessee unequivocally recorded disagreement with the recommendation of the Accountant in the following terms:

"(g) RECOMMENDATION OF AUDITOR IS NOT ACCEPTABLE TO DEALER.

(h) THERE IS SALE OF FURNITURE AS PER BALANCE SHEET OF RS 2 CRORES. THE SAME HAS BEEN TAXED ON REVERSAL VALUE AS PER BALANCE SHEET THE SAME IS NOT ACCEPTABLE TO DEALER AS THE CONSIDERATION RECEIVED AS PER DEALER IS LESS THAN 2 CRORES. HOWEVER THE DEALER WAS UNABLE TO PRODUCE INVOICE FOR THE SAME IF THE INVOICE IS PRODUCED THAN THE VALUE LIABLE FOR TAX WILL BE REDUCED".

12. The finding recorded in the order impugned that the assessee has accepted the liability clearly militates against plain and unambiguous disagreement recorded in the audit report. We have not come across any other material

warranting any other view.

13. While the learned Addl. GP Mrs. K.S. Joshi would invite our attention to sub-section(2) of Section 32A of the VAT Act, we find that the said provision only provides that as regards the liability which is deemed to have been admitted in view of the provisions of sub-section (1) of Section 32A, the interest regime of Section 30 shall come into play mutatis mutandis. We do not see other or further significance of sub-section (2).

14. We are of the considered view, that the demand impugned is without jurisdiction.

15. We may hasten to observe, that we have not considered the narrative and counter-narrative on merit. The department is free to take recourse to the adjudicatory and adversarial regime, if such course is otherwise permissible in law and no observation penned by us in the instant order shall have any significance much less influence in any such

adjudication. All that we have considered is whether the liability could have been fastened in purported exercise of power under Section 32A of the VAT Act, and we have held in favour of the assessee on the said aspect.

16. In view of the discussion supra, we quash and set aside the demand impugned.

17. Petition is allowed in the aforestated terms.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

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