



W.P.Nos.18230 & 18232 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.18230 & 18232 of 2022

and

W.M.P.Nos.17573 & 17574 of 2022

BMW India Private Limited,  
Represented by its Authorised Signatory,  
Mr.Chandrasekar Babu,  
No.36, 1<sup>st</sup> Cross Road,  
Mahindra World City, Natham Post,  
Chengalpet,  
PIN: 603 002.

... Petitioner in  
both W.Ps.

Vs

The Deputy Commissioner (ST)-IV,  
Large Taxpayers Unit,  
Integrated Buildings,  
Commercial Taxes and Registration Department,  
South Tower,  
4<sup>th</sup> Floor, Block No.19, Government Farm Village,  
Nandanam,  
Chennai – 600 035.

... Respondent in  
both W.Ps.



W.P.Nos.18230 & 18232 of 2022

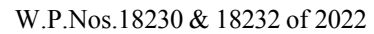
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Prayer in W.P.No.18230 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Impugned Order bearing No:CST/845546/2017-18 and dated 26.05.2022 passed by the Respondent and quash the same, and, to forbear the Respondent from treating internal stock transfer of cars in question from one branch of the Petitioner to another branch of the Petitioner as inter-state sales liable to a levy of Central Sales Tax under the Central Sales Tax Act, 1956.

Prayer in W.P.No.18232 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the consequential Demand Notice in Form-3 bearing No.CST/845546/2017-18 dated 26.05.2022 issued by the Respondent and quash the same.

For Petitioner : Mr.Karthik Sundaram  
(in both W.Ps)

For Respondent : Mr.V.Prashanth Kiran  
Government Adovcate  
(in both W.Ps)



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

2. The learned Government Advocate for the respondent would submit that the writ petition is not maintainable.

3. At the outset, the learned Government Advocate for the respondent would place reliance on the order passed by this Court on 30.11.2021 in W.P.Nos.24610 of 2021 in the case of Tvl.Carpenters Classics India Private Limited vs. The State Tax Officer. Wherein, this Court after following the decision of the Hon'ble Full Bench of this Court in **State of Tamil Nadu vs. Arulmurugan and Company**, 1982 (51) STC 381 FB, had dismissed the writ petition by stating the correctness of Form F cannot be determined under Article 226 of the Constitution of India as the scope for interference under Article 226 was limited with wider powers.



W.P.Nos.18230 & 18232 of 2022

WEB COPY

4. It is submitted that the petitioner may be asked to file a rectification application under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (herein after referred to as TN VAT Act) as made applicable to assessment under provisions of the Central Sales Tax Act, 1956, (hereinafter referred to as CST Act).

5. The learned Government Advocate for the respondent has placed reliance on the two other decisions of this Court dated 22.09.2022 in W.P.No.36116 of 2003 and another order dated 09.01.2023 in W.A.No.2659 of 2022, wherein, the Hon'ble Division Bench had also directed the Assessing Officer to decide the correctness of the claim of transfer under Section 6A of the CST Act.

6. The learned Government Advocate for the respondent submitted that at the time of the admission of this writ petition, the petitioner had merely stated that the minutes of the hearing that was transmitted to the petitioner after the order was passed did not reflect the submission of the petitioner and therefore, it is only under these circumstances, the present writ petition was admitted and now the learned counsel for the petitioner



W.P.Nos.18230 & 18232 of 2022

has argued the case on merits, as if, the impugned order was passed on different grounds. Hence, submits that these writ petitions are to be dismissed. It is submitted that at best liberty may be given to the petitioner to file appropriate application under Section 84 of the TN VAT Act, 2006 for rectification of the order.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

8. Section 3 of the Central Sales Tax Act provides that a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase (a) occasions the movement of goods from one State to another, or (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. The settled view of this Court is that if the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale then the sale is an inter-state sale.



W.P.Nos.18230 & 18232 of 2022

WEB COPY

9. The law relating to stock transfer and interstate sales was decisively concluded by the Hon'ble Supreme Court in the case of **Ashok Leyland Limited vs. Union of India and Others**, (1997) 9 SCC 10. The Hon'ble Supreme Court after examining the provisions of the Tamil Nadu General Sales Tax Act, 1959, (herein after referred to as TNGST Act), as made applicable to CST Act, during the period in dispute in the facts of the case in Paragraph No.12 has held as under:-

*“12. We find it difficult to agree with Shri Parasaran that Section 6-A creates a conclusive presumption. It is true that if the particulars stated in the declaration/Form ‘F’ are found to be true, the assessing authority shall pass an order, either at the time of making of the assessment or at any time before, that the contents of Form ‘F’ are accepted as true. On such order being made, it shall be deemed that the movement of goods to which the form relates has been occasioned otherwise than as a result of sale. But there are no words in Section 6-A which can be said to create a conclusive presumption or clothe the “deemed” fact with a conclusive character. All that it says is that if the particulars stated in Form ‘F’ are true, certain fact shall be presumed — or shall be or deemed to have taken place, as the case may be. It is not possible to agree that the word “deemed” in sub-section (2) of Section 6-A can be understood as creating a conclusive presumption nor is it possible to agree that the fact “deemed” is final and*



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W.P.Nos.18230 & 18232 of 2022

*conclusive. Section 6-A merely states a rule of evidence. It says that where a dealer claims that certain goods have been moved from one State to another and that such movement has occasioned otherwise than as a result of sale, the burden of proving the same lies upon him. Besides creating the said rule of evidence, the section also sets out how the said burden can be discharged. It can be discharged by producing Form 'F' and on the particulars stated in the said Form being found true on being enquired into by the assessing officer. From this it does not follow that once an order is made accepting Form 'F' as true, it is not subject to the power of reopening or revision contained in Sections 16 and 32 of the Tamil Nadu General Sales Tax Act read with Section 9(2) of the Central Sales Tax Act. After all, Section 6-A is also one of the provisions in this Act. There is no reason to elevate it to a higher status than the rest of the provisions. If it were the intention of Parliament to invest the "deemed" fact with the status of a conclusive presumption, Parliament would have said so. The Court cannot supply that requirement. Ordinarily speaking, an order accepting — or rejecting — Form 'F' as true will be passed only during the assessment proceedings. There may be cases where such an order is passed earlier to the making of the assessment. Even so, such an order is incidental to and integrally connected with the assessment of the dealer. The High Court has characterised the said provision as a step-in-aid of assessment. Be that as it may, if the very assessment is subject to the power of reopening or revision, it is un-understandable as to how an order under Section 6-A(2) is not similarly amenable. The power to reopen can be exercised under Section 16 of the Tamil Nadu General Sales Tax Act "where for any*



W.P.Nos.18230 & 18232 of 2022

*reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax". The power is very wide, though it may be that it should not be mechanically or lightly exercised."*

10. After the above judgment was passed by the Hon'ble Supreme Court, Section 6A of the CST Act was amended, whereby, the following sentences were added to Section 6A of the CST Act:-

*“, and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.”*

11. The Hon'ble Supreme Court had an occasion to consider the impact of the above amendment to Section 6A by Central Sales Tax (Amendment) Act 2001 with effect from 11.05.2002 in **Ashok Leyland Limited vs. State of Tamil Nadu and Another**, (2004) 3 SCC. The Hon'ble Supreme Court in **Ashok Leyland Limited vs. State of Tamil Nadu and Another**, (2004) 3 SCC summarized the position that existed prior to the amendment in 2002 in terms of the decision in **Ashok Leyland Limited vs. Union of India**, 2 (1997) 9 SCC 10 : (1997) 105 STC 152. Extract from Paragraph No.10 from **Ashok Leyland Limited vs. State of Tamil Nadu and Another**, (2004) 3 SCC reads as follows:-



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*“10. The matter came up for consideration before this Court in Ashok Leyland Limited vs. Union of India at the instance of the appellant herein; and upon referring to the decisions rendered in Balabhagas Hulaschand vs. State of Orissa, Izhar Ahmad Khan vs. Union of India, Sodhi Transport Company vs. State of U.P. and several others, this Court by a judgment dated 20.02.1997 held:*

- (a) Section 6-A does not create conclusive presumption as contended on behalf of the assessee.*
- (b) An order of the assessing authority accepting Form F, whether passed during the assessment or at any point earlier thereto, forms part and parcel of the order of assessment.*
- (c) Its amendability to the power of reopening and revision depends upon the provisions of the sales tax enactments concerned by virtue of the operation of Section 9(2) of the Central Act.*
- (d) It is not possible to accept that an order under Section 6-A(2) has an independent existence.*
- (e) An order refusing to accept Form F may or may not be appealable independently depending upon the provisions of the State Sales Tax enactments, but it is certainly capable of being questioned if an appeal is preferred against the order of assessment.*
- (f) If orders accepting Form F are sought to be reopened, it can be done as part of reopening of assessment or may be done independently, which would depend upon the language of the relevant provisions of the State Acts concerned.***
- (g) It is permissible to reopen an assessment accepting Form F as true, even though such a*



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W.P.Nos.18230 & 18232 of 2022

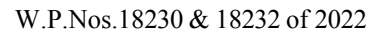
*reassessment necessarily leads to revision/modification of the assessment order.*

*(h) If the reopening is confined to the order accepting Form F as true, the enquiry shall be confined to the matters relevant thereto. In that case, it was noticed that the assessments were sought to be reopened only in respect of the turnover relating to sales of vehicles to State transport undertakings and not turnover relating to persons other than State transport undertakings.*

*(i) In the facts of the case, the question as to whether the power had been exercised validly or not did not call for consideration. If the assessing authority decided against the appellants, it would be open to the assessee to file appeal(s) directly before the Tribunal (in order to shorten the litigation and in the interest of justice). If and when the Tribunal decides against the appellants, it shall be open to the appellants to approach the Supreme Court.”*

12. After examining the amendment in 2002 with effect from 11.05.2002, the Hon'ble Supreme Court in **Ashok Leyland Limited vs. State of Tamil Nadu and Another**, (2004) 3 SCC has ultimately concluded as follows:

***“111. We, therefore, are of the opinion that the observations made by this Court in Ashok Leyland***



*112. However, we may hasten to add that the same would not mean that even wherein such an order has been obtained by commission of fraud, collusion, misrepresentation or suppression of material facts or giving or furnishing false particulars, the order being vitiated in law would not (sic) come within the purview of the aforementioned principle*

113. An order of assessment is albeit passed under the State Act. But once it is held that the concerned State Act as also the Central Act is not applicable, as a consequence whereof sales tax would be payable under another State Act, it is doubtful as to whether the power to reopen the proceedings under the State Act or the Central Act would be attracted. There does not exist any power in the statute to rectify a mistake. In that view of the matter, mere change in the opinion of the assessing authority or to have a relook at the matter would not confer any jurisdiction upon him to get the proceedings reopened. Discovery of a new material although may be a ground but that itself may not be a ground for reopening the proceedings unless and until it is found that by reason of such discovery, a jurisdictional error has been committed. In other words, when an order passed in terms of sub-section (2) of Section 6A is found to be illegal or void *ab initio* or otherwise voidable, the assessing authority derives jurisdiction to direct reopening of the proceedings and not otherwise”



W.P.Nos.18230 & 18232 of 2022

WEB COPY

13. After the above judgment of the Hon'ble Supreme Court, section 6A of the CST Act, was amended by Sub-Section(3) to Section 6A of the CST Act, was inserted vide Finance Act, 2014 of 2010. Sub-Section(3) to Section 6A of the CST Act reads as under:-

*“Nothing contained in sub-section (2) shall preclude reassessment by the assessing authority on the ground of discovery of new facts or revision by a higher authority on the ground that the findings of the assessing authority are contrary to law, and such reassessment or revision may be done in accordance with the provisions of general sales tax law of the State.”*

14. Thus, the Assessing Authority has wide powers to reopen the assessment under Section 27 in the circumstances specified in sub clause(3), on the ground of discovery of new facts or revision by a higher authority on the ground that the findings of the Assessing Authority are contrary to law. Such re-assessment or revision may be done in accordance with the provisions of the General Sales Tax law of the state.



W.P.Nos.18230 & 18232 of 2022

WEB COPY

15. As per decision of the Hon'ble Supreme Court in **Ashok Leyland Limited vs. State of Tamil Nadu and Another**, (2004) 3 SCC, an Assessing Officer can reopen the assessment if it is found that there was a jurisdictional error committed and the order passed under retain Sub-Section (2) of Section 6A was found to be illegal or void ab initio or otherwise voidable. As per the decision of the Hon'ble High Court in **Ashok Leyland Limited vs. State of Tamil Nadu and Another**, (2004) 3 SCC, the Assessing Authority would derive jurisdiction to reopen of the assessment only under those circumstances and not otherwise.

16. A reading of the notice issued to the petitioner on 30.12.2021, indicates that it proceeds on the assumption that generally cars with high value are transferred to sales Depots on stock transfer basis only after getting confirmed booking from the customers or making financial arrangement from financial companies. There is a fallacy in this approach. The view that since, the value of the cars manufactured by the petitioner was high and are sold only after getting financial arrangement and confirmed order from financial companies is also based on an



W.P.Nos.18230 & 18232 of 2022

assumption, presumption and conjectures. Thus, the conclusion that the cars were transferred to the petitioners's branches based on pre-confirmed order or prior order and therefore, the value of stock transfer was not eligible for exemption under Section 6A, and liable to tax did not give an authority to reopen the assessment.

17. The said notice which called upon the petitioner to furnish the purchase orders/stock transfer note received from other branches with documentary evidence for the value of stock transfer of Rs.5,77,95,797/-, failing which it was construed that the cars that were transferred against the confirmed order or prior order in the teeth of Form F cannot be countenanced.

18. Reading of the above impugned order makes it clear that the notice was passed on assumption, presumption and conjecture. There were no material that was available on the date when a revision notice dated 30.12.2021, based on which the assessment could be re-opened. In fact, the notice itself calls upon the petitioner to furnish the purchase orders/stock transfer note received from other branches with documentary



W.P.Nos.18230 & 18232 of 2022

evidence for the value of stock transfer for the aforesaid value. If there were no purchase orders, questioning of furnishing non existing purchase order also does not arise.

19. The petitioner has also replied to the same which was followed by a notice dated 30.12.2021 and another notice dated 20.04.2022.

20. In the reply to notice dated 20.04.2022, the petitioner has furnished all the details and has also admitted that one of the cars which was stock transferred was sold on 09.05.2017 and therefore, the petitioner has also paid Inter-State Sales of Rs.51.071.02. at 2% CST against Form-C.

21. In absence of jurisdictional facts available with the assessing authority or in absence of fraud in which case assessment is to be declared as *void ab initio*, question of invoking Section 27 of the CST Act to reopen an assessment that was completed earlier on 08.04.2019 for the Assessment Year 2017-2019 cannot be countenanced.



W.P.Nos.18230 & 18232 of 2022

WEB COPY

22. Merely because the petitioner has sold one of the car which was stock transferred, for which the petitioner produced Form F was later sold as an interstate sale and produced Form C and sold as an inter-state sale, *ipso facto* would not mean that all the eleven stock transferred cars were sold in the course of inter-state sale. To hold that there was an inter-state sale, the twin test as recognized by the Hon'ble Supreme Court in the **State of Tamil Nadu vs. The Cement Distributors Private Limited**, 1975 4 SCC Cases 30, has to be satisfied as detailed below:-

*“Sale or purchase*

*(a) occasions the movement of goods from one State to another, or*

*(b) is effected by a transfer or documents of title to the goods during their movement from one State to another.*

23. The settled view of this Court is that if the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale then the sale is an inter-state sale.”



W.P.Nos.18230 & 18232 of 2022

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24. There cannot be assessment by sampling. One sample cannot be the basis of assessment for rest of the stock transfer. In this connection, it will be useful to refer to the decision of the Hon'ble Supreme Court in **Tata Engineering and Locomotive Company Limited vs. The Assistant Commissioner of Commercial Taxes and another**, (1970) 1 SCC 622, wherein, it was argued all the transactions were of similar nature. The Court held as follows:-

“12. Another serious infirmity in the order of the Assistant Commissioner was (a matter which even the Advocate-General quite fairly had to concede) that instead of looking into each transaction in order to find out whether a completed contract of sale had taken place which could be brought to tax only if the movement of vehicles from Jamshedpur had been occasioned under a covenant or incident of that contract the Assistant Commissioner based his order on mere generalities. It has been suggested that all the transactions were of similar nature and the appellant's representative had himself submitted that a specimen transaction alone need be examined. In our judgment this was a wholly wrong procedure to follow and the Assistant Commissioner, on whom the duty law of assessing the tax in accordance with law, was bound to examine each individual transaction and then decide whether it constituted bound to examine each individual transaction and then decide whether it constituted an interstate sale exigible to tax under the provisions of the Act”



W.P.Nos.18230 & 18232 of 2022

WEB COPY

25. The petitioner has also showed that ten of these cars were given to its own employees and were later transferred to them on written down value after use. Thus, there is no scope for interfering inter-state sale. At best, there could be first sale in the State of Haryana where ten of the cars which were stock transferred were later sold to the petitioners' own employees after use.

26. Needless to state, before proceeding to reopen the assessment, it was incumbent on the part of the respondent to first call upon the petitioner to furnish the details and thereafter issue a notice and if the reply of the petitioner was found not satisfactory, the respondent should have issued a notice under Section 27 and thereafter proceeded to pass assessment order.

27. In the light of the above discussion, the Impugned Orders are unsustainable. Therefore, the Impugned Order is liable to be quashed.



W.P.Nos.18230 & 18232 of 2022

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28. The writ petitions stand allowed with the above observations and directions. No cost. Consequently, connected miscellaneous petitions are closed.

**12.07.2023**

Neutral Citation: Yes/No  
Index : Yes/No  
Speaking/Non-Speaking Order  
rgm

To

The Deputy Commissioner (ST)-IV,  
Large Taxpayers Unit,  
Integrated Buildings,  
Commercial Taxes and Registration Department,  
South Tower,  
4<sup>th</sup> Floor, Block No.19, Government Farm Village,  
Nandanam,  
Chennai – 600 035.



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W.P.Nos.18230 & 18232 of 2022

**C.SARAVANAN, J.**

rgm

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and  
W.M.P.Nos.17573 & 17574 of 2022

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