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T.C.No.41 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN**

Tax Case No.41 of 2021

The State of Tamil Nadu
Rep.by the Deputy Commissioner (CT)
Chennai (Central) Division, Chennai-6. Appellant

Vs.

Tvl.Modi Olivetti Ltd
No.1, Krishnamma Road
Chennai 600 034. Respondent

Tax Case filed under Section 38 of the TNGST Act, 1959 against the order of the Sales Tax Appellate Tribunal (Additional Bench) Chennai in T.A.No.58 of 2021 dated 10.10.2002.

For Appellant : Mr.V.Prasanth Kiran
Government Advocate

ORDER

(Order of the Court was made by **C.SARAVANAN, J.**)

This Tax Case is directed against the order dated 10.10.2002 passed by the Sales Tax Appellate Tribunal (Additional Bench), Chennai in T.A.No.58 of 2002.



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2. The said appeal was filed by the respondent herein, wherein part of the appeal filed by the respondent was allowed and part of the appeal was dismissed. To the extent the appeal of the respondent was allowed, the Revenue viz., the Commercial Taxes Department is in appeal before this Court.

3. The short point that arises for consideration in this Tax Case is whether the respondent can be subjected to purchase tax under Section 7-A of the Tamil Nadu General Sales Tax Act, 1959 during the Assessment Year 1994-1995 on the defective parts that were collected from the customers by providing maintenance services to the customers / clients on behalf of the head office.

4. The business model was the re- placement of defective parts with new parts supplied by the head office of the respondent and charges the customers / clients the net price of the spare parts less residual value of defective parts.

5. The original authority, while passing the Assessment Order dated 28.6.1996 concluded that the respondent had not included the value of defective parts retrieved from the customers / clients after replacing them with new spare parts.

6. In the assessment order, the assessing officer has observed that the discarded / defective materials received from the customers for valuable



consideration, original sale of which were effected by their head office in New Delhi directly and that the respondent did not offer tax on the discarded / defective parts.

7. In the impugned order, the Tribunal has concluded that the defective spare parts are not purchased by the respondent and therefore it cannot be construed that the respondent satisfied the situation in clause (c) of Section 7-A of the Act. There is also a categorical finding given by the tribunal that the retrieval of the defective parts was part of the annual maintenance charges incurred by the respondent at its branch.

8. In fact, recently, the Hon'ble Supreme Court in **Tata Motors Ltd v. The Deputy Commissioner of Commercial Taxes** 2023 SCC Online SC 638 had an occasion to deal with replacements under annual maintenance contract / warranties. In para 56, the Hon'ble Supreme Court observed as under:-

56. But there can also be a situation when the dealer would replace the defective part in the automobile pursuant to a warranty from his own stock of spare parts which he would have purchased either from the manufacturer or from the open market or the manufacturer of the spare part. In the aforesaid three situations, the dealer would have paid sales tax while purchasing the said stock. When the defective part is replaced by the dealer from a spare part from his stock, the dealer is no doubt acting pursuant to the warranty on behalf of the manufacturer but is sourcing the spare part from his own stock. Simply put, the dealer is not "selling" the spare part to a customer while acting on behalf of



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the manufacturer but replacing the defective part free of cost by acting under the warranty. But what is to be borne in mind is that the replacement of the spare part is from the stock of the dealer who would have earlier bought the same by paying the requisite tax on the same. If the said part, instead of being replaced pursuant to the warranty free of cost had been sold, the dealer would have earned a return on his investment and possibly with a reasonable profit also and would have also collected the sales tax. But when the dealer replaces a defective part with a spare part from his stock pursuant to a warranty, he does not receive anything in return from the customer for the spare part used from his own stock. It is in such a situation that the manufacturer issues a credit note to recompense the dealer for his investment on the spare part in his stock which was used to replace a defective part pursuant to a warranty in the sale of automobile as nothing would have been received in return from the customer. This is because if the spare part from the stock of the dealer had been sold to any other customer, across the counter and not pursuant to any warranty, he would have received a return on his investment. But such a return is not received by the dealer from the customer when he replaces a defective part pursuant to a warranty. In such a situation, on return of the defective part to the manufacturer by the dealer, he is issued a credit note by the manufacturer which is to make good the stock of the dealer.

9. Considering the issue further, in para 58, the Hon'ble Supreme Court further observed that if the dealer had sold the spare part which he used to replace a defective part pursuant to a warranty clause, he would have received a return for his investment plus a profit. But, while acting under the warranty on behalf of the manufacturer, the dealer does not receive any price from the



customer. Hence, he is recompensated by the manufacturer in the form of a credit note.

10. The Hon'ble Supreme Court, in para 60 observed as under:-

***60.** Therefore, the entire controversy must be viewed in the perspective of a composite transaction and not in isolation as the dealer (assessee) would be acting under a warranty with there being a manufacturer on one end and the purchaser or customer of an automobile at the other end and the dealer acting on behalf of the manufacturer or an intermediary between the said customer and manufacturer. The said transaction cannot be viewed in a myopic sense by truncating or excluding the role or action of a dealer under the warranty and viewing it only from the perspective of a transaction simpliciter between manufacturer and a dealer. Such an approach is not only skewed from a commercial perspective but also jurisprudentially or in the legal sense. There need not be a reiteration of the significance of a warranty in a transaction of a sale of goods already discussed above.*

11. Ultimately, the Hon'ble Supreme Court, in para No.102 has concluded as follows:-

102. In the circumstances, the reference is answered in the following terms:

- i) The judgment of this Court in Mohd. Ekram Khan is applicable to a situation where a manufacturer issues a credit note to a dealer acting under a warranty given by the manufacturer pursuant to a sale of an automobile in the following situations. The dealer replaces a defective part of the automobile by a spare part maintained in the stock of the dealer or when the same is purchased by the dealer from the open market. In such situations, the credit note issued in the name of the dealer is a valuable consideration for a transfer of property in the spare part made by the*



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dealer to the customer and hence a sale within the meaning of the sales tax legislations of the respective States under consideration. The value in the credit note is thus exigible to sales tax under the respective sales tax enactments under consideration.

- ii) The judgment in Mohd. Ekram Khan does not apply to a case where the dealer has simply received a spare part from the manufacturer of the automobile so as to replace a defective part therein under a warranty collateral to the sale of the automobile. In such a situation also, the dealer may receive a consideration for the purpose of the service rendered by him as a dealer under a dealership agreement or any other agreement akin to an agent of the manufacturer which is not a sale transaction.***

On the above understanding of the judgment of this Court in Mohd. Ekram Khan, we are of the view that the same does not call for any interference.

In light of the above, in our view, overruling of the judgments in the case of Prem Motors and Geo Motors in Mohd. Ekram Khan, is just and proper.

- (iii) It is reiterated that a credit note issued by a manufacturer to the dealer, in the situations explained above, is a valuable consideration within the meaning of the definition of sale and hence, exigible to sales tax under the respective State enactments of the States under consideration. In the result, appellants-dealer/assessee are liable to pay sales tax under the respective State enactments under consideration.***
- (iv) In view of the above, the appeals filed by the dealers are dismissed. The appeals filed by the revenue are allowed.***

12. It is the contention of the Commercial Taxes Department that the respondent / assessee was liable to pay purchase tax under Section 7-A of the Act. During the period in dispute, Section 7-A(1) of the Act reads as under:-



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"Section 7-A. Levy of purchase Tax. – (1) 1 *[Subject to the provisions of subsection (1) of section 3, every dealer] who in the course of his business purchases from a registered dealer or from any other person, any goods, (the sale or purchase of which is liable to tax under this Act) in circumstances in which [no tax is payable under (sections 3 or 4,) as the case may be, *[not being a circumstance in which goods liable to tax under **[sub-section (2), (2-A) or (2-C) of section 3 or section 4, were purchased at a point other than the taxable point specified in the First, the Fifth, the Eleventh or the Second Schedule], respectively, and either, –*

*(a) *[consumes or uses such goods in or for the manufacture of other goods for sale or otherwise; or]*

*(b) disposes of such goods in any manner other than by way of sale in the State, [....]**

*(c) 3 [despatches or carries them] to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, [or]***

(e) installs and uses such goods in the factory for the manufacture of any goods. shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in 2 [sections 3 or 4], as the may be."

13. A reading of sub-section (1) to Section 7-A of the Act as extracted above makes it clear that the question of subjecting the respondent to purchase tax would arise only if there was a purchase of defective spare parts by the respondent from the customers / clients, question of involving Section 7-A of the TNGST Act, 1959 will apply.

14. Section 7-A of TNGST Act, 1959 will apply to every dealer who in the course of his business purchases good liable to tax either from a "registered dealer" or from "any other person" in the circumstances in which no tax payable



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was paid under Section 3 or Section 4 of TNGST Act, 1959 where such goods purchased are;

- a. consumed or used such goods in or for the manufacture of other goods for sale or otherwise, or*
- b. disposed in any manner other than by way of sale in the State, or*
- c. dispatched or carried them to a place outside the State except as a direct sale or purchase in the course of inter-State trade or commerce,*

15. In the present case, it cannot be said that the respondent was purchasing the defective spare parts from the customers / clients. All that, the respondent did was to replace the old defective parts with the new parts and gave a discounts on the replaced new parts to the customers.

16. Since there was no purchase of defective parts, question of levying purchase tax at the rate mentioned in Section 3 or Section 4 of TNGST Act, 1959 under Section 7-A of TNGST Act, 1959 does not arise.

17. As such, we find no merit in the challenge to the impugned order of the Tribunal. Therefore, the Tax Case is dismissed. No costs.

(R.S.K.,J.) (C.S.N.,J.)
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Index : Yes/No
Internet : Yes/No

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The Sales Tax Appellate Tribunal
Additional Bench, Chennai.



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