(1999) 09 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

Haryana Tourism Corporation Ltd. APPELLANT

Vs

HINDUSTAN GARAGE RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Citation : 2000 2 CPJ 110

Hon'ble Judges : J.B.Garg , P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision : Appeal dismissed

Judgement

1. HARYANA Tourism Corporation Ltd. is a State Government Undertaking and it purchased 2 ambassador motor cars (Diesel driven) from M/s. Hindustan Garage, respondent No. 1 manufactured by M/s. Hindustan Motor Ltd., Calcutta on 5.11.1993. It has been alleged that since the motor cars were to be utilised as taxis, he was entitled to refund of Rs. 8,000/- each in case of petrol driven car and Rs. 10,000/- each in the two diesel driven cars as refund of the excise duty. Since the respondents failed to make refund the complaint was instituted. The District Forum-II held that the motor cars were purchased for commercial use, by a Govt. undertaking, engaged in the business and dismissed the complaint on 24.5.1999 on this preliminary issue inasmuch as the complainant was not a consumer and the complaint was not maintainable in the Forum. Aggrieved against it, the present appeal has been attempted by the complainant.

2. THE explanation Section 2(1)(d) of the Consumer Protection Act, 1986 is as under : xxx xxx xxx xxx ""Commercial purpose'' does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;"

It is an admitted fact that motor cars were purchased and utilised as tourist taxis i.e. a commercial purpose. If a person purchases one motor car and utilised it as a taxi to earn his livelihood, he may be deemed to be a consumer but not if a Corporation purchases several motor cars and utilised them as taxis for commercial purpose. THE learned Counsel for the appellant has referred to M/s. Janta Auto Sales v. Madhavi Investment and Trading Pvt. Ltd., III (1998) CPJ

248=1999 (1) CON.LT 231, wherein it was observed that there is no ban anywhere in the Act which shows that if a person hires or avails the services for construction for commercial purpose, he would not be a consumer within the meaning of the Act. Here, in the case now in hand the facts and circumstances are altogether different in asmuch as it is not under consideration that the services of the motor cars purchased were found defective. Our attention has also been drawn to Mahant Ram & Anr. v. International Tractor and Firm Equipments Ltd., Jabalpur & Anr., 1999 (2) CON.LT 8, where in it was observed that the vehicle might have been purchased for commercial purpose, it is not barred to hold a person as Consumer in case there is violation of terms and conditions of warranty of service. In this case of Himachal Pradesh the purchase related to a ''Jonga'' and within a week of its purchase it was found that the vehicle had inherent manufacturing defects. In the case now in hand there is no plea of any defect in the motor cars whether petrol driven or diesel driven. In Satish Kumar v. M/s. Master Pipes Stores, Muktser, 1999 (1) CON.LT 579, referred to by the learned Counsel for the appellant wherein it was observed that commercial activities of the dealer were irrelevant. However, the aforesaid case related to purchase of stones for construction of floor mill and cracks appeared in the stones within a month of the purchase. Here also the facts and circumstances are distinguishable, in the case now in hand, purchase of several motor cars for user as taxis is restricting us to hold the complainant to be a consumer. On the contrary in Laxmi Engineering Works v. PSG Industrial Institute, II (1995) CPJ 1 (SC) decided on 4.4.1999 by the Supreme Court, it was observed that if the purchaser himself plies the motor car as a taxi he did not cease to be a consumer. Thus keeping in view the aforesaid decision, the finding of the District Forum that complainant was not a consumer does not call for interference. Before we conclude, here there is another aspect since on behalf of the respondents our attention has been drawn to notification/Section XVII. CH 87-Vehicles and Parts (Page 563) of the Central Excise Department and the relevant part thereof is reproduced as under : "63-CE, dated 28.2.1993, as amended by 11/94-CE. dated 1.3.1994; In exercise of the powers conferred by Sub-section (I) of Section 5A of the Central Excise and Salt Act (1 of 1944), the Central Government, being satisfied that it is necessary in the interest so to do, hereby exempts all goods falling under heading No. 87.03 of Schedule to the Central Excise Tariff Act, 1985 (5 to 1986), from so much of the of excise leviable thereof which is specified in the said Schedule as is in excess amount calculated at the rate of 40 per cent ad volerem : Provided that in a case where a saloon car after clearance has been registered for solely as a taxi, the manufacturer of the said saloon car shall be entitled to a further option of duty of 10 percentage points subject to the following conditions : (i) The manufacturer at the time of clearance of such saloon car has paid excise duty calculated at the rate of 40 per cent ad valorem; (ii) The manufacturer furnishes to the Assistant Collector of Central Excise a certificate from an officer authorised by the concerned State Transport Authority in this behalf to the effect that such saloon car has been registered for use solely as a taxi, within three months of the date of clearance of the said saloon car from the factory of manufacturer or such extended period as the said Assistant Collector may allow; (iii) The manufacturer had not collected from the person in whose name such saloon car has been registered as a taxi or in a case had collected and has refunded to such person the amount equivalent of such further exemption of duty; and (iv) The manufacturer files a claim for refund of duty in terms of Section 11-B of the Central Excise an Salt Act, 1944 (1 of 1944)."

A perusal there of shows that purchaser should start claiming the amount of refund quickly and he should not slumber for a long time. In this case, though the purchases were made on 5.11.1993 the vehicles were got registered on 9.11.1994 and the certificate for registration as taxis was obtained on 25.1.1994 though it was required that the vehicle should be registered as a taxi within 3 months of the date of clearance of the said saloon car from the factory of manufacturer or such extended period as the said Assistant Collector may allow. The delay in registration and claiming the refund rendered the complainant himself deficiency this case.

After having considered all these legal issues, the impugned order dismissing the complaint is affirmed and the appeal is dismissed.

3. SIMILARLY Appeal No. 106 of 1999 which relates to refund in case of two other ambassador motor cars (petrol driven) purchased from M/s. Hind Motors too were utilised as taxis by Haryana Tourism Corporation Ltd. fails and is dismissed. Appeal dismissed.

