(2015) 03 GUJ CK 0094

In the Gujarat High Court

Case No : Tax Appeal Nos. 41 to 43 of 2015

Kataria Automobiles (P.) Ltd. APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Citation : (2015) 51 GST 403

Hon'ble Judges : M.R. Shah, J;S.H. Vora, J

Bench : Division Bench

Advocate : Gargi Vyas, Ld. Advocate, for the Appellant

Judgement

M.R. Shah, J—As common question of law and facts arise in this group of appeals and as such they arise out of the impugned judgment and order passed by the Gujarat Value Added Tax Tribunal, Ahmedabad (hereinafter referred to as the "Tribunal") and even the dispute is between the same parties but with respect to different Assessment Years, all these appeals are decided and disposed of by this common judgment and order. Feeling and aggrieved and dissatisfied with the impugned common judgment and order passed by the learned Tribunal dated 03.07.2014 passed in Second Appeal Nos. 411 of 2014 to 413 of 2014, by which, the learned Tribunal has partly allowed the said appeals, however confirmed the imposition of tax and interest but removing the penalty imposed only, common appellant/dealer/assessee has preferred present Tax Appeals.

1.1 That Separate provisional assessment orders dated 16.04.2014 came to be passed by the Assessing Authority - Assistant Commissioner of Commercial Tax (3) (Enforcement) Division-2 Ahmedabad. The Assessing Authority stated in its order that the business place of the appellant was visited on 17.2.2014. That the appellant was a Maruti Cars dealer. It was found by the Assessing Authority that the appellant had not paid tax on sales of parts during the warranty period of the motor cars; that on asking the appellant to pay up the tax and the penalty, the appellant had given the cheques of tax and the interest but he did not agree to pay penalty. The Assessing Authority also stated that earlier also when the place of appellant was visited, he was given a clear understanding that on such count he was liable to pay tax. That the Assessing Authority determined the following issue against the appellant.

"Whether in the facts and circumstances of the case, the Appellate Tribunal erred in holding that the transaction of exchange of goods by the Appellate to the consumers during the Warranty Period amounts to sale and consequent levy of VAT under the provisions of the Gujarat Value Added Tax Act, 2003?"

1.2 That feeling aggrieved and dissatisfied with the aforesaid separate Provisional Assessment Order dated 16.4.2014, the dealer/assessee preferred three separate appeals before the First Appellate Authority - Deputy Commissioner of Commercial Tax II, Ahmedabad. The First Appellate Authority directed the appellant to make the payment of pre-deposit. However, the appellant did not make the payment of pre-deposit as directed and instead contended that the during the warranty period he has replaced parts which did not include sale price of the motor cars, hence no tax is leviable. It appears that the submissions were also made on merits before the First Appellate Authority. Therefore, while touching the merits of the matter, the First Appellate Authority dismissed the three appeals.

1.3 Feeling aggrieved and dissatisfied with the three separate orders dated 21.5.2014 passed by the learned First Appellate Authority, the assessee/dealer preferred Second Appeal Nos. 411 of 2014 to 413 of 2014 and by impugned common judgment and order, the learned Tribunal Tribunal has partly allowed the said appeals removing penalty imposed, however confirmed the imposition of tax and interest. It appears that thereafter the assessee/dealer preferred three rectification application Nos. 20 of 2014 to 22 of 2014 to rectify, clarify and/or modify the earlier common order that the tax element is to be deducted from the credit notes received for the spare parts and not as per the amount mentioned in the provincial order. That by common order dated 18.09.2014, the learned Tribunal has disposed of all the aforesaid rectification applications by clarifying that tax element is to be deducted from the credit notes received for the spare parts.

1.4 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the learned Tribunal dated 3.7.2014 passed in Second Appeal Nos. 411 of 2014 to 413 of 2014 insofar as confirming the imposition of tax and interest on sales of spare parts during the warranty period of the motor cars, for which, manufacturer used to give credit notes, the common appellant has preferred present Tax Appeals.

2. Ms. Gargi Vyas, learned advocate for the appellant has vehemently submitted that learned Tribunal has materially erred in confirming the imposition of tax by the Assessing Authority on sales of parts during the warranty period of the motor cars. It is vehemently submitted by Ms. Gargi Vyas, learned advocate for the appellant-assessee/dealer that as such while replacing the defective parts during

the warranty period of the motor cars, there is no element of sale at all and the assessee/dealer as such did not charge anything from the owner of the cars. It is further submitted that as such whatever the parts are replaced by the dealer/ assessee during the warranty period of motor cars, assessee/dealer used to send the particulars of the same to the manufacturer and the manufacturer instead of replacing the defective parts is giving the credit notes. It is submitted that therefore, when there is no element of sale there shall not be any liability of any tax on the amount mentioned in the credit notes.

2.1 Ms. Gargi Vyas, learned advocate for the appellant has heavily relied upon the recent decision of the Rajasthan High Court in the case of C.T.O. (AE) Vs. Marudhara Motors, (2009) 2 RLW 1430 : (2009) 12 Vat Reporter 17 ; in support of her above submissions. It is submitted that in the aforesaid decision Rajasthan High Court has distinguished the decision of the Hon''ble Supreme Court in the case of Mohd. Ekram Khan and Sons Vs. Commissioner of Trade Tax, U.P. Lucknow, AIR 2004 SC 3965 : (2004) 6 JT 1 : (2004) 6 SCALE 242 : (2004) 6 SCC 183 : (2004) 3 SCR 116 Supp : (2004) 136 STC 515 : (2004) AIRSCW 4361 : (2004) 5 Supreme 530 and has held that the credit notes received from the manufacturer of assessee - dealer could not be taxed as sale value of spare parts replaced for defective parts under warranty by manufacturer to customer.

2.2 Ms. Gargi Vyas, learned advocate for the appellant-assessee/dealer has submitted that as such the decision of the Division Bench of this Court in the case of Ruby Laboratories Vs. Commissioner of Sales Tax, (1971) 27 STC 326 shall not be applicable to the facts of the case on hand. It is submitted that in the case before the Division Bench, it was found that the cost which manufacturer incurred in manufacturing samples were taken in to account at the time of fixing price of rest of the articles. It is submitted that on finding above, the Division Bench has held that assessee is liable to pay sales tax on the distribution of free samples.

2.3 Relying upon the aforesaid decision of the Rajasthan High Court in the case of Marudkara Motors (supra) and making above submissions, it is requested to admit/allow present appeals.

3. Present appeals are opposed by Ms. Vacha Desai, learned AGP appearing on behalf of respondent State - Revenue. It is submitted that as such the assessee/ dealer made the payment of tax and interest and the only question submitted before the learned Tribunal was with respect to the penalty. It is submitted that in fact the purshis was also submitted before the learned Tribunal submitting that as the assessee/dealer had already made payment of tax and interest, the penalty be removed. It is submitted that considering the purshis submitted by the assessee/dealer before the learned Tribunal, the Tribunal had by common judgment and order removing the order of penalty by observing that the assessee/dealer had already paid the amount of tax and interest. It is submitted that therefore, as such now it is not open for the appellant/assessee/dealer to contend that they are not liable to pay tax on the credit notes.

3.1 It is further submitted that even otherwise on merits also the issue involved in the present Tax Appeal is squarely covered by the decision of the Hon''ble Supreme Court in the case of Mohd. Ekram Khan & Sons (supra). It is submitted that the learned Tribunal has rightly relied upon the decision of the Hon''ble Supreme Court in the case of Mohd. Ekram Khan & Sons (supra) as well as decision of the Division Bench of this Court in the case of Ruby Laboratories (supra) and has rightly held that assessee/dealer is liable to pay tax on the credit notes. It is submitted that in the present case the assessee/dealer has specifically admitted that it used to purchase the parts from the market and on purchase of said parts they were replaced in place of defective parts.

3.2 It is further submitted that even subsequently the appellant/assessee submitted rectification applications to clarify that tax liability would be on amount as per the credit notes and not as per the amount mentioned in the provisional assessment order and the learned Tribunal as such did clarify the aforesaid position accepting the submissions on behalf of appellant-dealer. It is submitted that therefore, also now it is not open for the appellant-assessee-dealer to dispute their liability to pay tax on the credit notes issued by the manufacturer with respect to sale of parts during the warranty period of motor cars. Making above submissions and relying upon above decisions, it is requested to dismiss the present Tax Appeals.

4. Heard the learned advocates for the respective parties at length. That by the impugned common judgment and order, the learned Tribunal has confirmed the imposition of tax and interest on sales of parts during the warranty period of motor cars and tax element is to be deducted from the credit notes received for the spare parts. It is the case on behalf of appellant that during the case of transaction/transactions the assessee who is motor car dealer only replaced the defective parts during the warranty period of motor cars and manufacturer used to issue credit notes for the same and therefore, the appellant-assessee-dealer is not liable to pay tax on the sales of parts during the warranty period of the motor cars. However, it is required to be noted and it is not in dispute that as such the appellant-assessee-dealer is purchasing the parts from the open market and is replacing the same in place of defective parts during the warranty period of motor cars and for which manufacturer is issuing credit notes. The aforesaid issue/issues involved in the present appeal is as such squarely covered by the decision of the Hon''ble Supreme Court in the case of Mohd. Ekram Khan & Sons (supra). While considering the provision of Uttar Pradesh Trade Tax Act, 1948, the Hon''ble Supreme Court has confirmed the levy of tax on replacement of defective parts of vehicle during the warranty period dismissing the appeal against the order passed by the High Court holding that such transactions constitute sale attracting levy of tax and the Hon''ble Supreme Court has held since assessee had received the payment of parts supplied to customers, transactions were subject to levy of tax. It is further observed and held that as manufacturer would have paid taxes if he brought defective parts from market, the position would not be different in case of assessee who supplied parts and

received price for it. In the case before the Hon''ble Supreme Court also assessee had supplied the goods for which he had received the consideration by way of credit notes and/or other mode of payment. Under the circumstances, as such issued involved in the present appeal is squarely covered by the decision of the Hon''ble Supreme Court in the case of Mohd. Ekram Khan & Sons (supra).

5. Now, so far as the decision of the Rajasthan High Court in the case of Marudhara Motors (supra) relied upon by the learned advocate for the assessee - dealer distinguishing the decision of the Hon''ble Supreme Court in the case Mohd. Ekram Khan & Sons (supra) is concerned, as such with respect we are not in agreement with the view taken by the Rajasthan High Court distinguishing the decision of the Hon''ble Supreme Court in the case of Mohd. Ekram Khan & Sons (supra). The issue involved is squarely covered against the assessee in view of the decision of the Hon''ble Supreme Court in the case of Mohd. Ekram Khan & Sons (supra). In view of the above and without entering into the other question whether in view of the purshis submitted on behalf of the assessee/dealer to consider the question of penalty only by submitting that they have already paid the amount of tax and interest and therefore, whether it was open for them to now contend that they are not liable to pay tax and interest, on merits we dismiss the appeals in view of the decision of the Hon''ble Supreme Court in the case of Mohd. Ekram Khan & Sons (supra). The learned Tribunal has not committed any error in dismissing the appeals and confirming the imposition of tax and interest on sale of parts during the warranty period of motor cars. No substantial question of law arise as sought to be suggested. Hence, all the appeals deserves to be dismissed and are accordingly dismissed.

