(2012) 03 KL CK 0297

In the High Court Of Kerala

Case No : S.T. Rev. No. 157 of 2009

Mgf Motors Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Citation : (2012) 55 VST 81

Hon'ble Judges : C.N. Ramachandran Nair, J;Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : E.K. Nandakumar, A.K. Jayasankar, K. John Mathai, P. Benny Thomas and Anil D. Nair, for the Appellant; Bobby John, Senior Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question raised in the revision filed by the assessee is whether the replacement of parts of automobile during warranty period without collecting any price for the same from the vehicle owner amounts to sale that attracts sales tax. We have heard learned counsel for the petitioner and also learned Senior Government Pleader for the respondent.

2. The issue stands covered against the petitioner by the decision of the Supreme Court in Mohd. Ekram Khan and Sons Vs. Commissioner of Trade Tax, U.P. Lucknow, . However, the learned counsel for the petitioner relied on the single Bench decision of the Rajasthan High Court in C.T.O. (AE) Vs. Marudhara Motors, , wherein the Rajasthan High Court after distinguishing the decision of the honourable Supreme Court held that free replacement of parts of vehicle sourced from the manufacturer of the vehicle does not involve any sale. Learned counsel brought to our notice the distinction in this case also by stating that in the case decided by the Supreme Court the automobile parts replaced were out sourced from other parties and not from the manufacturer of the vehicle; and in that context only the Supreme Court held the transaction as sale attracting tax. According to the learned counsel for the petitioner, manufacturers are bound to replace parts of vehicle free of cost during warranty period, and so much so, the

cost of the parts replaced during warranty period should be taken to have been covered by the original value of the vehicle on which tax is paid.

3. The learned Government Pleader resisted the claim of the petitioner by stating that on facts, the transaction is a pure sale because manufacturer is not sending parts free of cost for replacement. On the other hand, the system is for the petitioner to purchase spare parts in bulk from the manufacturers and others and stock the same. As a dealer, the petitioner replaces the automobile parts by utilising the stock held by them, either purchased from vehicle manufacturer or from other sources, and then forward the warranty claim to the manufacturer, who issues credit note for the sale price along with the tax, if claimed by the petitioner. So far as the petitioner is concerned, the position is that the transaction is purchase and resale, and even though the price of the replaced part is not collected from the vehicle owner, the petitioner gets reimbursement of the value from the manufacturer. So much so, in our view, it is the purchase and sale of spare parts by the petitioner as authorised dealer of the manufacturer and the replacement therefor is resale effected by the petitioner for which payment is received through credit note issued by the manufacturer. So much so, we feel the distinction brought by the petitioner does not justify deviation from the decision of the Supreme Court holding that free replacement of parts during warranty period amounts to sale of such parts. Consequently, we dismiss the Sales tax revision case.