(2011) 11 BOM CK 0005

In the Bombay High Court

Case No : Sales Tax Application No. 15 of 2011 In Reference Application No. 6 of 2011

Navnit Motors Pvt. Ltd. APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Citation : (2012) 47 VST 511

Hon'ble Judges : D. Y. Chandrachud, J;A. A. Sayed, J

Bench : Division Bench

Advocate : P. C. Joshi with Piyush Shah, for the Appellant; S. K. Nair, A Panel counsel, for the Respondent

Final Decision : Dismissed

Judgement

Dr. D. Y. Chandrachud, J.—The Sales Tax Tribunal by its impugned order dated April 18, 2011, has declined to make a reference to this court u/s 61 of the Bombay Sales Tax Act, 1959. The Tribunal has held that its judgment in the present case delivered on November 19, 2010, follows the law laid down by the Supreme Court in Mohd. Ekram Khan & Sons v. Commissioner of Trade Tax [2004] 136 STC 515 (SC). Hence, according to the Tribunal no case was made out for making a reference. The applicant is an authorized dealer of Maruti Udyog Limited and Eicher Motors Limited and engages in the business of selling vehicles and spare parts purchased from both the manufacturers. Under the dealership agreement the applicant replaces defective parts which cannot be instantly repaired with new ones from the ready stock without any cost consideration or charge to the customer. This obligation is assumed by the applicant in respect of vehicles which are under warranty. After the defective parts are replaced with parts from the ready stock of the applicant, the applicant receives a credit note from the manufacturer for the cost of the spare parts purchased by the applicant earlier and replaced under the warranty. The Tribunal in its judgment dated November 19, 2010 adverted to the clauses of the dealership agreement. Upon considering the terms of the agreement, the Tribunal recorded the salient features of the agreement as follows :

(i) The appellant is not an agent or representative of M/s. MUL. The relationship of agency is specifically excluded.

(ii) The title and the risk in the goods purchased by the appellant from M/s. MUL passes to him at the factory gate.

(iii) The warranty that the new vehicle serviced and delivered by the authorized dealer to be free from defects in material and workmanship, is given by the MUL to the customer.

(iv) By virtue of dealership agreement the appellant is liable to settle the warranty claims made by the customers.

(v) Replacement for defective part covered by warranty is done by the appellant out of his stock of purchased goods.

(vi) Cost of parts incurred by the appellant in carrying out repair, or replacement of defective part is reimbursed by M/s. MUL.

2. The Tribunal held that the present case is directly governed by the decision of the Supreme Court in Mohd. Ekram Khan & Sons v. Commissioner of Trade Tax [2004] 136 STC 515 (SC).

3. In Mohd. Ekram Khan & Sons v. Commissioner of Trade Tax [2004] 136 STC 515 (SC), the appellant was a registered dealer under the U.P. Trade Tax Act, 1948. The question involved in the appeal before the Supreme Court was whether the amounts received by the assessee for supply of parts to customers as a part of the warranty agreement were liable to tax. The assessee was an agent of an automotive manufacturer. The manufacturer had a warranty agreement with the purchasers of the vehicles to replace defective parts during the warranty period. The manufacturer issued credit notes to the assessee in respect of the price of the parts supplied by the assessee to customers. The Supreme Court held as follows (page 518 in 136 STC) :

... As noted above, in a case manufacturer may have purchased from the open market parts for the purpose of replacement of the defective parts. For such transactions, it would have paid taxes. The position is not different because the assessee had supplied the parts and had received the price. The categorical factual finding recorded by the taxing authorities and the High Court is that the assessee had received the payment of the price for the parts supplied to customers. That being so, the transaction was subject to levy of tax as has been rightly held by the High Court. The decisions in Geo Motor''s case [2001] 122 STC 285 (Ker) and Prem Motor''s case [1986] 61 STC 244 (MP), stand overruled."

4. Counsel appearing on behalf of the applicant sought to make a distinction by urging that in Mohd. Ekram Khan''s case [2004] 136 STC 515 (SC), the relationship between the parties involved an agency whereas in the present case

the transaction was on a principal to principal basis. This was based on a sentence in the judgment of the Supreme Court while recording the facts that the assessee was an agent of the automotive manufacturer. The Tribunal has considered this aspect in a significant amount of detail and has noted the submission of the Revenue that this expression was used in the judgment of the Supreme Court in its commercial sense. That apart, the Revenue produced a copy of the dealership agreement between the automotive manufacturer, Mahindra and Mahindra Ltd., and the assessee in Mohd. Ekram Khan''s case [2004] 136 STC 515 (SC), which clearly showed that the relationship was not of an agency, but on a principal to principal basis. In our view, the attempt on the part of the applicant to distinguish the decision in Mohd. Ekram Khan''s case [2004] 136 STC 515 (SC) was correctly rejected by the Tribunal. In the present case, clause 49 of the agreement of dealership which deals with warranty requires the dealer to promptly and effectively deal with any claim made by the customer of any vehicle under the provisions of the warranty currently in force. In terms of the warranty, the cost of parts incurred by the dealer in carrying out repairs or replacement of defective parts is in accordance with the procedure established by the manufacturer reimbursed by the manufacturer to the assessee. The terms of the agreement as noted in the judgment of the Supreme Court in Mohd. Ekram Khan''s case [2004] 136 STC 515 (SC) were similar. The expression "sale" in the Bombay Sales Tax Act, 1959 is defined in section 2(28) to mean a sale of goods made within the State for cash or deferred payment or other valuable consideration. The definition of the expression "sale" in section 2(h) of the U.P. Trade Tax Act, 1948 was, insofar as is material, similar. The judgment of the Supreme Court was therefore binding on the Tribunal. Counsel appearing on behalf of the applicant submitted that the Supreme Court in that decision did not consider the service aspects involved in the dealership agreement. That cannot be a ground either for the Tribunal or this Court not to follow the binding principles contained in the judgment of the Supreme Court. In declining to make a reference the Tribunal has followed a binding precedent of the Supreme Court. Consequently there is no merit in the application. The application shall accordingly stand dismissed.

