

(2013) 04 KAR CK 0184

In the Karnataka High Court

Case No : Sales Tax Revision Petition No's. 130 of 2010, 4 and 5 of 2011 along with Sales Tax Appeal No. 30 of 2010

State of Karnataka

APPELLANT

Vs

Cauvery Motors (Private) Limited

RESPONDENT

Date of Decision : 24-04-2013

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12A, 2(1)(t), 21(2)

Citation : (2013) 77 KarLJ 1 : (2014) 68 VST 124

Hon'ble Judges : N. Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : S. Sujatha, Additional Government, Sri G. Rabhinathan and Sri M. Thirumalesh, for the Appellant;

Judgement

N. Kumar, J.—The State has preferred this revision petition against the order passed by the Tribunal, which has held that there was no sale involved within the definition in Section 2(1)(t) of the Karnataka Sales Tax Act, 1957 in the transactions of free supply of parts by the appellant to customers covered by warranty and in the credit notes issued by the manufacturer in favour of the assessee towards reimbursement of the cost of the parts so supplied to those persons. The assessee is an authorised dealer of M/s. Ford India Limited, who is the manufacturer of different models of Ford four wheeler motor vehicles, having its principal place of business and Registered Office in Chengalpet, Tamil Nadu. The said manufacturer sold Ford model four wheeler motor vehicles to the assessee in the course of inter-State trade or commerce against "C" Forms. The assessee is also a registered dealer under the provisions of the Karnataka Sales Tax Act, 1957. In turn, the assessee sold the cars so purchased from the manufacturers to local customers at sale price which includes cost of warranty. The warranty was meant to provide free replacement of parts to customers if found to involve manufacturing defect within the warranty coverage. The warranty coverage was for a period of 24 months or upto travel distance of 40,000 kms. from the date of sale to customers. The assessee supplied the

defective parts to the customers free of cost and after such replacement returned the defective part to the manufacturer. The assessee also raised debit notes on the manufacturer. On receipt of the debit notes, the manufacturer will carry out scrutiny and if found acceptable, it would issue credit notes to the assessee. The credit notes are issued reimbursing the assessee for the cost of the parts supplied to customers free of cost and the cost of labour. The assessee claimed deduction of the amounts for which credit notes were received from the manufacturer. The Assessing Authority passed assessment orders for three years i.e., 2001-02, 2002-03 and 2003-04 and allowed the deductions claimed by the assessee. Subsequent to the judgment of the Apex Court in the case of Mohd. Ekram Khan and Sons Vs. Commissioner of Trade Tax, U.P. Lucknow, , the Assessing Authority initiated reassessment proceedings by issue of a notice u/s 12A of the Act. The assessee filed objections to the proposed reassessment and produced the documentary evidence. Thereafter, a detailed order came to be passed confirming the assessment orders and the reassessment proceedings were dropped.

2. The Revisional Authority issued notices u/s 21(2) of the Karnataka Sales Tax Act asking the assessee to show cause why it should not be treated as a sale price and taxable turn over in respect of which, he had claimed deductions. After hearing the assessee, orders were passed allowing the revision petition and reviewing the sales tax for the spare parts supplied during the warranty period. Aggrieved by the said order, the assessee preferred an appeal to the Karnataka Appellate Tribunal. The Tribunal after considering the statutory provisions, judgment of the Apex Court and also the judgment of the Rajasthan High Court held that there was no "Sale" involved within the definition u/s 2(1)(t) of the KST Act in the transactions of free supply of parts by the assessee to customers covered by warranty and in the credit notes issued by the manufacturer to the appellant towards reimbursement of the cost of the parts so supplied to customers. Accordingly, appeals were allowed, revisional orders were set aside and the assessment order passed by the Assessing Authority was restored. Aggrieved by the said order, the Revenue is in revision.

3. We have heard the learned Counsel appearing for the parties.

4. The Apex Court in the case of Mohd. Ekram Khan and Sons, held as under:

The only question involved in these appeals is whether the amount received by the assessee for supply of parts to the customers as a part of the warranty agreement was liable to tax.

The above question was answered as under:

Though the decision in Geo Motors Pvt. Ltd. Vs. State of Kerala, and Prem Motors Vs. Commissioner of Sales Tax, , support the stand of the assessee, we find that basic issue as to the nature of the transaction between the assessee and the manufacturer was lost sight of. 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 and Prem Motor's case stand overruled.

5. Following the said judgment, a Division Bench of this Court in the case of Deputy Commissioner of Commercial Taxes (Special) v. M/s. Prerana Motors (Private) Limited, decided on 19th October, 2005 in STRP 69 of 2004 held that the supply of parts to the customers against the credit note of the manufacturer is liable to tax under the Act. However, the High Court of Rajasthan in the case of Commercial Tax Officer (AE), Jodhpur v. Marudhara Motors, Jodhpur 2009 (67) Kar. L.J. 416 (Raj.) (HC) has taken a contrary stand. The Apex Court in Mohd. Ekram Khan's case has held that the whole object behind the warranty is that the consumer, who has to make a heavy investment for the vehicle should be assured of a proper performance of the vehicle in a trouble free manner for reasonable length of time. Therefore, entire cost of warranty was to be borne by the manufacturer. The manufacturer may have purchased parts from the open market for the purpose of replacing the defective parts. For such transactions it would have paid tax. The position is not different because the assessee had supplied the parts and had received the prices. That being so, the transaction was subject to levy of tax.

6. In the instant case, customers have purchased the motor vehicles from the manufacturers through the assessee. The sale price includes the price of warranty. The assessee has supplied spare parts, replaced defective parts and returned the defective parts to the manufacturer. Along with the defective parts, the assessee has raised a debit note in the name of the manufacturer. Thereafter the manufacturer has raised a credit note. In other words, the manufacturer has paid the assessee the price of the spare parts, which were replaced. If the said spare parts had been purchased in the open market, both of them have to pay sales tax. Therefore, in view of the law laid down by the Apex Court in Mohd. Ekram Khan's case the consideration paid by the manufacturer to the assessee by way of a credit note represents the sale price of the spare parts which are replaced and is liable to tax. In that view of the matter, the impugned order passed by the Tribunal is liable to be set aside. Hence, we pass the following order:

(a) Revision is allowed.

(b) The impugned order passed by the Tribunal is hereby set aside.

(c) The order passed by the Revisional Authority is restored to file in its original.

7. In STA No. 30 of 2010, the assessee has challenged the order passed by the Additional Commissioner of Commercial Taxes u/s 22A(1) of the KST Act, 1957

levying sales tax on the spare parts, which are supplied to the customer for replacing if the defective parts during the warranty period. In view of what we have stated above, the said levy of tax is justified and therefore, no case for interference in the said order is made out. However, it was contended that the Additional Commissioner was not justified in imposing penalty. Here, we find some substance. Earlier, when the assessment orders were passed, the understanding of the Department was no sales tax was payable in respect of the spare parts supplied to the customers for replacing of the defective parts during the warranty period. It is only after the judgment of the Apex Court in Mohd. Ekram Khan's case, the tax was levied on such spare parts. Under those circumstances, we are of the view that the Additional Commissioner was not justified in imposing penalty for nonpayment of tax. In that view of the matter, that portion of the order imposing penalty is liable to be quashed. Hence, we pass the following order:

(a) Sales tax appeal is partly allowed.

(b) Levy of tax and interest is upheld.

(c) Levy of penalty is set aside.

Parties to bear their own cost.