SUPREME COURT OF INDIA

Mohd. Ekram Khan and Sons

Vs.

Commissioner of Trade Tax, U.P. Lucknow

C.A.No.9618 of 2003

(S. N. Variava and Arijit Pasayat JJ.)

21.07.2004

JUDGMENT

Arijit Pasayat, J.

1**.** These two appeals related to a common judgment rendered by a learned Single Judge of the Allahabad High Court. The appellant (hereinafter referred to as the 'assessee') was a dealer registered under the *Uttar Pradesh Trade Tax Act, 1948* (hereinafter referred to as the 'Act'), for the relevant assessment years i.e. 1990-91 and 1996-97. 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 assessee was an agent of M/s. Mahindra and Mahindra (hereinafter referred to as the 'manufacturer'). The manufacturer had warranty agreement with the purchasers of vehicles (hereinafter referred to as the 'customers') to replace defective parts during the warranty period. As found by the taxing authorities and the High Court, the manufacturer made payment for certain price as the parts were supplied by the assessee to the customers. Credit notes were issued by the manufacturer to the assessee in respect of the price of the parts supplied to the customers. The assessing officer was of the view that the payments received through credit notes amounted to a sale in terms of Section 2(h) of the Act. Said Provision, so far as relevant reads as follows:

> "(h) 'Sale' with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) for cash or deferred payment or other valuable consideration and includes -"

2. Accordingly tax was levied for the two assessment years in question.

3. The orders of assessment were questioned before the Commissioner (Appeal), Varanasi who upheld the assessments by common order dated 20.6.2001. The matter was carried in appeal before the Trade Tax Tribunal, Varanasi (in short 'Tribunal') by the assessee which placed reliance on certain decisions of different High Courts and came to hold that there was

no sale. The matter was carried in revision by Revenue before the Allahabad High Court. The High Court set aside the order of the Tribunal and held that the transactions constituted sale attracting levy of tax.

4. In support of the appeals, learned counsel submitted that the position in law is no longer res integra. In *Premier Automobiles Ltd. & Anr. etc. vs. Union of India*[1] it was clearly held that the replacement of defective parts during the warranty period would not involve any sale. Reliance was also placed on decisions of the Delhi, Madhya Pradesh and Kerala High Courts reported in *Commissioner of Sales Tax, Delhi Administration, Vikas Bhawan, New Delhi vs. Prem Nath Motors (P) Ltd.*[2], *Prem Motors vs. Commissioner of Sales Tax, Madhya Pradesh*[3] *and Geo Motors vs. State of Kerala*[4]. It was submitted that the assessee, as part of the warranty agreement, replaced the defective parts. There was a contractual obligation for the same and, therefore, there was no sale involved.

5. In response, learned counsel for the revenue submitted that the transaction between the assessee and the manufacturer was a separate transaction. It is not the case of the assessee that the manufacturer had supplied the goods to the customers. If it had supplied parts to the customers. Through assessee; the position may have been different. The manufacturer was obligated to make the replacement. If it did not possess the parts to meet the contractual obligations, it would have purchased the parts from any seller of the parts and would have paid the sales tax. In the instant, case, the assessee had supplied the goods for which it received the consideration by way of credit notes and/ or other mode of payment. That being the position, the High Court was justified in its view about the taxability of the transactions.

6. The decision in Premier Automobiles case (supra) is really of no assistance to the assessee. The fact situation there was different. The issues in the said case were different. One of the issues was whether the expenses on account of warranty and statutory bonus were to be excludable while working out the ex-work cost. It was held by this Court that manufacturers furnish warranty covering the cars sold. Under the warranty all defects on account of faulty manufacture have to be set right and the defective parts have to be replaced free of costs by the manufacturer or his dealer within the specified period or given distance travelled by the car. The car manufacturers enter into an agreement with the manufacturers of components providing for a warranty so far as the components supplied are concerned. 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 issue was entirely different from the one at hand and the ratio in the said case provides no answer to the present dispute. Prem Nath's case (supra), as the factual position goes to show, dealt with transfer of property in the part or parts replaced in pursuance of the stipulation of warranty as part of the original sale of car for the fixed price paid by the buyer/ consumer. The price so fixed and received was a consolidated price for the car and the parts that may have to be supplied by way of replacement in pursuance of the warranty. That decision also throws no light on the present controversy. Though the decision in Geo Motor's case (supra) and Prem Motor's case (supra) 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 (supra) and Prem Motor's case (supra) stand overruled.

7. However, learned counsel for the assessee submitted that even if it is conceded for the sake of arguments that the transactions attracted levy of sales tax, no categorical finding has been recorded about the nature of the sale i.e. whether it is intra-State or inter-State in character. It was submitted that the manufacturer was located in the State of Maharashtra and, therefore, the transaction would be inter-State in nature. We find no such plea advanced by the assessee before the forums below. On the contrary assessing authorities had categorically recorded a finding that the transaction is intra-State in nature. In view of the factual finding we do not find any substance in the plea taken by the assessee. It was further submitted that on facts the position would be different for other assessment years. We do not think it necessary to express any opinion in this regard. It is for the assessee to place materials in support of its stand, if any, which, it goes without saying, would be examined by the authorities in accordance with law.

8. The appeals are sans merit and deserve dismissal, which we direct. Costs made easy.

[1]*1972 (2) SCR 526*
[2]*1978 Indlaw DEL 3*
[3]*1984 Indlaw MP 29*
[4]*2001 Indlaw KER 105*