

HONOURABLE SMT. JUSTICE V.SUJATHA

WRIT PETITION Nos.12089 of 2019 and 3049 of 2021

COMMON ORDER

These Writ Petitions are filed under Article 226 of the Constitution of India for the following relief:

W.P.No. 12089 of 2019:-

“...to issue Writ order or direction more particularly in the nature of Mandamus declaring the action of the Respondents in demanding Tax 14 percent on the net invoice price of INR 11,10,500/- Invoice No. V19VSI263 dated 12/06/2019 for the Petitioners Hyundai Venue 1 0 Turbo GDI DCT SX Motor Vehicle bearing No AP 39 BK 9573 with Chassis No. MALFC81 AVKMO 18346 Engine No G3LCKM804163 instead of on the cost of the motor vehicle of INR 8,60,853/- 12 contrary to Section 3 Proviso Four of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 R/w Schedule Six and Andhra Pradesh Motor Vehicles Taxation Rules 1963 as illegal, arbitrary, without jurisdiction and violative of Articles 14, 19, 265 and 300-A of the Constitution of India and consequently to direct the Respondents to forthwith refund the excess Tax of INR 52,168/- (Rupees fifty two thousand one hundred and sixty eight only) collected from the Petitioner illegally...”

W.P.No. 3049 of 2021:-

“...to issue Writ order or direction more particularly in the nature of Mandamus declaring the action of the Respondents in collecting life tax 14 percent coming to INR 4,41,000/- (Rupees four lakh forty one thousand only) on the IG T of INR 5,95,946/- Rupees five lakhs ninety five thousand nine

hundred and forty six only and Compensation Cess of INR 4,25,676/- (Rupees four lakhs twenty five thousand six hundred and seventy six only) along with the cost of the BMW X1 LCI Model Motor Vehicle bearing Registration No. AP39 GQ 5679 with Chassis No. WBA77ADO7LEP 29420 Engine No. 0126Y256 instead of the cost of the motor vehicle of INR 21,28,379/- alone contrary to Section 32 Fourth Provisio of the Andhra Pradesh Motor Vehicles Taxation Act 1963 R/w Sixth Schedule hereinafter called the Act and the Andhra Pradesh Motor Vehicles Taxation Rules, 1963 hereinafter called the Rules as illegal, arbitrary, without jurisdiction and violative of Articles 14, 19, 265 and 300-A of the Constitution of India and consequently to direct the Respondents to refund INR 1,16,000/- (Rupees one lakh sixteen thousand only) being the excess tax paid by the Petitioner..”

2. As the issue involved in both these writ petitions is one and the same, these writ petitions are dealt with by a common order.

3. Brief facts of the W.P.No. 12089 of 2019 are that the petitioner has purchased the Hyundai Venue 1.0 Turbo GDI DCT SX+ Motor Vehicle bearing No. A.P 39 BI 9573 with chassis No. MALFC81A VKM 018346, Engine No. G3LCKM804163 for a price of INR 8,60,853/- from the dealer, Kusalava Motors Pvt., Ltd., Vijayawada. At the time of purchase, the petitioner on demand paid INR 1,20,519 /- towards 14% CGST and INR 1,20,519.38/- towards 14% SGST. The petitioner paid INR 8,608/- towards Compensation

Cess under the provisions of the Goods and Service Tax Act, 2017. The petitioner thus paid total INR 11,10,500/- vide invoice No. V19VSI-263 dated 12.06.2019. The petitioner was forced to pay INR 1,55,470/- @ 14% towards Tax allegedly levied under Section 3 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 R/w Schedule -VI and Andhra Pradesh Motor Vehicles Taxation Rules, 1963 on the price shown in the invoice dated 12.06.2019, which is inclusive of Central GST, State GST & Cess for the reasons best known to the respondents without there being any power much less authority is collecting tax on the basis of "net invoice price" which is inclusive of CGST, SGST & Compensation Cess as well.

4. The motor vehicle purchased by the petitioner falls under fourth proviso to Section 3(2) of the Act and the Tax leviable under Schedule VI of the Act is 12% on the cost of the Motor Vehicle which is INR 8,60,853/- as the Unladen weight is 1168 kgs.

5. Article 265 & 300-A of the Constitution of India provides that no tax shall be levied or collected except by the authority of law and further the petitioner cannot be deprived of any property save by authority of law. Therefore, no tax can be

levied or collected/ demanded by the respondent Registering Authorities, unless they are explicitly and clearly authorised under the Act.

6. The composite High Court in WA.No. 805 of 2018 by an order dated 29.01.2019 has confirmed the common order dated 02.05.2018 in W.P. Nos. 28612 of 2018 and 45131 of 2018 granted by the erstwhile composite High Court for the States of Andhra Pradesh and Telangana as follows:

*“The ex-showroom price of the vehicle purchased by the writ petitioner is Rs.55,99,000. The sale invoice was issued to him by the dealer for Rs.52,90,000/-, after giving a discount of Rs.3,00,000/- It is stated that the authorities have collected excess amount of Rs.51,000/- from the writ petitioner towards life tax. As per the circular memo dated 30-08-2008, life tax is to be collected upon the sale based on the net invoice price and not on the ex-showroom price. As rightly observed by the learned single Judge, life tax can be levied only on the 'cost of the vehicle' under Sixth Schedule to the A.P. Motor Vehicles Taxation Act, 1963, unless the contrary is carved out by way of notification in that behalf. In the absence of any notification in that behalf, life tax can be levied only on the 'cost of the vehicle. In the general parlance, the 'cost of the vehicle' is the amount actually paid by the purchaser to the dealer, and it is the 'consideration' for transfer of vehicle from the dealer to the purchaser. The learned single Judge relied on the judgments of the Hon'ble Supreme Court in *Ku Sonia Bhatia vs. State of U.P and others* and *Regional Provident Fund Commissioner vs. Shiv Kumar Joshi*², which describes the term 'consideration' as 'a reasonable equivalent or valuable other benefit passed by the promisor to the promisee or transferor to the transferee'. The learned Single Judge also relied on the judgment of the Hon'ble Supreme Court in *Southern Motors v. State of Karnataka*³ and held that there is no law prohibiting the Dealers from giving discounts and practice of Dealers in giving discounts cannot be said to be unethical or immoral or a fraud on the State. The Tamilnadu State Legislature has defined "cost of vehicle" in Explanation under Schedule (iii) of Tamil Nadu Motor Vehicles Taxation Act, as cost paid by the purchaser at the time of purchase of the vehicle and by placing reliance on the same, the Madras High Court passed order in W.P.No.8985 of 2018 accordingly.”*

7. It is further case of the petitioner that the composite state of AP issued G.O.Ms.No. 240 Home (Tr-II) dated 28.12.1963 authorising the respondent State Transport Authority to sanction refund of Tax paid in excess, or by

mistake, provided the claim is made within a period of limitation of three years. The action of the respondents in not refunding the excess tax of INR 52,168/- collected from the petitioner is illegal and arbitrary. Hence, the present writ petition.

8. A counter affidavit has been filed by the respondents stating that the life tax on motor cars is levied on the cost of the vehicle as per Sixth Schedule to the Fourth proviso to sub-section (2) of the Andhra Pradesh Motor Vehicle Taxation Act, 1963, which reads as follows:-

3. Levy of tax on Motor Vehicles. –

(1)

(2) The notification issued under sub-section (1) shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied :

Provided that the rates of tax shall not exceed the maximum specified in Column (2) of the First Schedule in respect of the classes of motor vehicles fitted with pneumatic tyres specified in the corresponding entry in Column (1) thereof; and one and a half times the said maximum in respect of such classes of motor vehicles as are fitted with non-pneumatic tyres.

9. The cost of the vehicle is the actual consideration paid by the petitioner on purchase of the motor vehicle from the dealer. This consideration includes Central GST, State and cess also which comprises the total amount paid by the

purchaser. As such, the cost of the vehicle cannot be seen as excluding some part of the amount (consideration) paid by the purchaser. Hence, life tax is to be collected on the total invoice cost of the vehicle. In this case, the total invoice price is Rs. 31,50,000/- which is the consideration paid by the petitioner as admitted by him.

10. The petitioner has filed reply affidavit to the counter stating that the cost of the new vehicle means that how much amount to be paid to the dealer by the purchaser including CGST &SGST but not price of the vehicle mentioned in the invoice and that in the Memo. No. 49840/D2/93 dated 07.01.1994 issued by the second respondent. The cost of the new vehicle means total cost of the vehicle inclusive of taxes and not price of the vehicle noted therein are all false and hence denied. This High Court in W.P. NO. 5286 of 2018 has held that the words “cost of the vehicle” means the amount actually paid by the petitioner to the dealer. It is the consideration for transfer of vehicle from the dealer. **The term ‘cost of the vehicle’ is not ex-showroom price which is admittedly inclusive of taxes payable to the Government.**

11. Brief facts of Writ Petition No. 3049 of 2021 are that the petitioner has purchased the BMW X1 – LCI Model Motor

Vehicle (Storm Bay Metallic) bearing Registration No. A.P-39 GQ 5679 with chassis No. WBA77AD07LEP29420, Engine No. 0126Y256. At the time of purchase, the petitioner on demand paid INR 21,28,379/- from the dealer M/s Navnit Motors Private Limited, Bengaluru, Karnataka State. The petitioner has paid IGST of INR 5,95,946/- under provisions of the Act, 2017. The petitioner has paid INR 31,50,000/- vide invoice No.VSL-BM-BG2000115 dated 20.10.2020. At the time of registration, the petitioner was forced to pay the life tax @ 14% coming to INR 4,41,000/- on the IGST and INR 5,95,946/- and compensation cess of INR Rs.4,25,676/- along with the cost of the BMW X1-LCI Model Motor Vehicle of INR 21,28,379/-, which is highly illegal and arbitrary.

12. The respondents in the above mentioned writ petition have filed a counter stating that if any new vehicle cost exceeds Rs. 10.00 lakhs, the purchaser is liable to pay the tax @ 14% as per VI schedule of the Andhra Pradesh Motor Vehicle Taxation Act, 1963. Whereas if the cost of the vehicle is below Rs. 10.00 lakhs, the purchaser is liable to pay the tax 12% as per the VI schedule of the Andhra Pradesh Motor Vehicle Taxation Act, 1963. In the instant case, according to the invoice issued by the dealer of the car, the petitioner has paid

an amount of Rs. 11,10,500/- including charges under CGST and SGST. As the tax was levied @ 14% on the cost of the vehicle. Therefore, there is no illegality in collecting the tax as alleged by the writ petitioner.

13. In support of his contention, learned counsel for the petitioner has relied upon the judgment in the case of Fathima Shirin Vs. Joint Regional Transport Officer¹ and the relevant portion of the order is extracted below:-

6. Section 3(1) of the M.V.T Act provides for levy of tax on every motor vehicle falling within that provision, at the rates specified for such vehicle in the schedule. No. A Annexure-1 of that Schedule provides for, among other things, payment of one time tax for new motor vehicles. The rate of one time tax is fixed at a percentage of the purchase value of the vehicle. S. 2(e) of the M.T.V Act provides that “purchase value” means the value of the vehicle as shown in the original purchase invoice. When the legislature uses the tool, “means”, it means what is said and nothing beyond. When a statute says that a word or phrase shall ‘mean’ certain things or acts, the definition is a hard-and-fast one, and no other meaning can be assigned to the term so defined. A definition is an explicit statement of the full connotation of a term. Where an interpretation clause defines a word to mean a particular thing, that definition is explanatory and prima facie restrictive- see Punjab Land Deyl and Reclamation

¹(2013) 3 KLT 945

Corpn. Ltd. V. Presiding Officer, Labour Court (1990) 3 SCC 682), Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly (1986) 3 SCC 156: AIR 1986 SC 1671), Gough v. Gough (1891) 2 QB 6650 P. Kasilingam v. P.S.G.College of Technology (1995 Supp (2) SCC 348: AIR 1995 SC 1395). Applying this well settled principle of law, the definition “purchase value” in S. 2(e) of the M.V.T Act cannot be anything beyond the value of the vehicle is shown in the original purchase invoice.

7. If the purchase value of any vehicle is not ascertainable on account of non-availability of the invoice, the purchase value shall be the value of price at which the vehicle of like kind or same specifications is already registered or available with the manufacturer, or as fixed by the Customs and Central Excise Department for the purpose of levying customs duty, as the case may be. This provision, incorporated as a proviso to S.2 (e) provides abundant intrinsic statutory material to understand the term “purchase value “ as defined in S. 2(e), beyond any shadow of doubt. The purchase value can never be determined by adding on the VAT component or any customs duty or other charges, over and above the value or price of the vehicle. This is how the “purchase value” has to be determined for the purpose of levy of tax under the proviso to S.3(1) of the MVT Act, to the extent such levy is dependent on the Schedule to that Act, prescribing the rate of one time tax, on the basis of the purchase value of the vehicle.

8. For the aforesaid reasons, tax that could be levied under the M.V.T Act for the vehicle covered by the invoice which is Ext P-2 in the Writ Petition from which this

appeal arises shall be determined applying the rate applicable in terms of that Act, on Rs. 8,81,004.41 which is the purchase value of that vehicle. It is so declared. The competent authority among the respondents shall accept the appellant's application for registration of the vehicle in terms of this declaration and grant registration, if the application is otherwise in order. Any demand contrary to this declaration shall stand quashed hereby. Writ Appeal is ordered accordingly, vacating the impugned judgement."

14. The case of Fathima Shirin Vs. Joint Regional Transport Officer has been reaffirmed in **Nagendra Mani. N. Vs. State of Kerala** reported in **2015 SCC OnLine Ker 2117:(2015) 3 KLT (SN 160) 126**. Also, in **R.N. Hemendranath Reddy Vs. State of Telangana**, the Court observed that life tax to be collected from a vehicle owner produced for registration upon the sale based on the net invoice price of the vehicle and not upon the ex-showroom price of the vehicle. Thereby, the Court upheld that life tax can be levied only on the "cost of the vehicle" under Sixth Schedule to the A.P. Motor Vehicles Taxation Act, 1963, unless the contrary is carved out by way of notification in that behalf. In the absence of any notification in that behalf, life tax can be levied only on the 'cost of the vehicle'.

15. The learned counsel for the petitioners has relied upon a judgment reported in the High Court of Telangana between

Kishore Rai Sohni Vs. The State of Telangana, wherein, under similar circumstances, the Court has held as follows:

“Accordingly, the Writ Petition is allowed and respondents are directed to refund a sum of Rs.51,000/- collected from the petitioner towards life tax in excess of the life tax payable by the petitioner under the Sixth Schedule to the Act on the invoice sale price, to the petitioner within four (04) weeks from today. No costs.”

16. The respondents have filed a counter stating that the life tax on Motor cars is levied on the cost of the vehicle as per Sixth Schedule to the Fourth proviso to sub section (2) of Section 3 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963. The cost of the vehicle is the actual consideration paid by the purchaser on purchase of the motor vehicle from the dealer. This consideration includes IGST, Compensation cess under GST also, which comprises the total amount paid by the purchaser. As such, the cost of the vehicle cannot be seen as excluding some part of the amount (consideration) paid by the purchaser. Hence, life tax is to be made on the total invoice cost of the vehicle. In the present case, the total invoice price is Rs.31,50,000/- (Thirty one lakhs fifty thousand rupees only) which is the consideration paid by the petitioner as admitted by him.

17. It is further submitted that the manufacturer of a vehicle, transports the vehicle to retail Motor dealer, thereafter the motor vehicles dealer sells the vehicle. By the time vehicle reaches to retail Motor vehicle dealer, it accrued and covers charges of manufacturing, transport, dealer's margin, pre-delivery inspection (PDI) costs and the IGST & Compensation Cess {Compensation cess, as the name suggests, is designed to compensate producer (manufacturing) states for possible revenue losses under the GST regime} levied on the said vehicle which was paid by the manufacturer. In the present case, the motor vehicle dealer has indicated sale invoice price as INR 31,50,000/- including IGST and Compensation cess is paid by the petitioner to the Motor Vehicle dealer as a sale consideration. As per the Circular Memo No.49840/02/1994, dated 07.01.1994 as "The cost of a new vehicle means the total cost of the vehicle inclusive of all taxes as per the invoice and not price of the vehicle noted therein". So, it reveals that the cost of the vehicle is INR 31,50,000/-.

18. The combined State of Andhra Pradesh issued G.O.Ms.no.240, Home (Tr-II), dated 28.12.1963 as amended by Government, Home (Tr.II) Department Memo No.382/66-3, dated 25.03.1966, reads as follows:

“The Government after careful consideration agree to the above proposal of the Secretary State Transport Authority and accordingly, authorise the (Licensing Officers including the Addl. Regional Transport Officers) to sanction refund of Motor Vehicles tax paid in excess or by mistake provided the claim is made within the period of limitation prescribed in the Limitation Act, 1963, viz., three years in cases where payment is made under protest (Article 113 of Schedule to the Limitation Act, 1963) and three years where payment is made by mistake”

19. On a perusal of the judgment relied upon by the counsel for the petitioner, it is clear that the life tax is to be collected from the vehicle owner upon the sale based on the net invoice price of the vehicle and not upon the ex-showroom price of the vehicle. The life tax can be levied only on the cost of the vehicle under the 6th schedule of the A.P. Motor Vehicles Taxation Act, 1963. It is also clear that the petitioner has purchased the vehicle in the year 2019 and had filed the present writ petition in the same year, which is admittedly within the period of limitation prescribed in the Limitation Act, 1963, viz., three years.

20. In view of the above observations, this Court feels it appropriate to allow these writ petitions and the respondents are directed to refund a sum of Rs.52,168/- to the petitioner in W.P.No.12089 of 2019 and a sum of Rs.1,16,000/- to the petitioner in W.P.No.3049 of 2021, which were collected in excess of the life tax payable by both the petitioners under the

Sixth Schedule to the Act on the invoice sale price, within a period of four (4) weeks from the date of receipt of a copy of this order.

21. Accordingly, writ petitions are allowed. There shall be no order as to costs.

Consequently, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE V.SUJATHA

Date:

PSR/GSS

HONOURABLE SMT. JUSTICE V.SUJATHA

WRIT PETITION 12089 of 2019 and 3049 of 2021

Date:

PSR/GSS