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MOHD. EKRAM KHAN AND SONS

v.

COMMISSIONER OF TRADE TAX, U.P., LUCKNOW

JULY 21, 2004

B

[S.N. VARIAVA AND ARIJIT PASAYAT, JJ.]

Uttar Pradesh Trade Tax Act, 1948 :

C *S.2(h)—Sale—Supply of motor parts to customers by agent under warranty agreement—Amount received by agent from manufacturer for such supply of parts—Assessed to tax—Held, assessee received payment of the price for the parts supplied to customers—Transactions were subject to levy of tax.*

D **A manufacturer of vehicles in Maharashtra had an agreement with its customers to replace defective parts during warranty period. The agent in the State of Uttar Pradesh supplied the parts to the customers under the warranty agreement and received the price thereof from the manufacturer. The assessing authority opined that the transaction amounted to sale and assessed the amount received by**
E **agent from the manufacturer as liable to tax under the U.P. Trade Tax Act, 1948. The Commissioner (Appeals) upheld the assessment. But the Trade Tax Tribunal held that there was no sale. However, the High Court set aside the order of the tribunal holding that the transactions constituted sale attracting levy of tax. Aggrieved the assessee-agent**
F **filed the present appeals.**

Dismissing the appeals, the Court

G **HELD : The High Court has rightly held that the transaction was subject to levy of tax. 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. In the event of manufacturer purchasing parts from open market for the purpose of replacement of defective parts, it would have paid tax for such transactions. The position is not different because the assessee had**
H **supplied the parts and had received the price. Assessing authorities had**

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categorically recorded a finding that the transaction is intra-State in nature. [120-A-D] A

Premier Automobiles Ltd. & Anr. Etc. v. Union of India, [1972] 2 SCR 526 and *Commissioner of Sales Tax, Delhi Administration, Vikas Bhawan, New Delhi v. Prem Nath Motors (P) Ltd.*, (1979) 43 STC 52, distinguished. B

Prem Motors v. Commissioner of Sales Tax, Madhya Pradesh, (1986) 61 SCT 244 and *Geo Motors v. State of Kerala*, (2001) 122 STC 285, overruled.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9618 of 2003. C

From the Judgment and Order dated 25.4.2003 of the Allahabad High Court in T.T.R. No. 332 of 2201.

WITH D

C.A. No. 9619 of 2003.

Dhruv Agarwal and Preveen Kumar for the Appellant.

Punit Dutt Tyagi for the Respondent. E

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : These two appeals relate to 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 F
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A 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:

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“(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-”

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

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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.

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In support of the appeals, learned counsel submitted that the position in law is no longer *res integra*. In *Premier Automobiles Ltd. & Anr. Etc. v. Union of India*, [1972] 2 SCR 536 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 v. Prem Nath Motors (P.) Ltd.*, [1979] 43 STC 52, *Prem Motors v. Commissioner of Sales Tax, Madhya Pradesh*, [1986] 61 STC 244 and *Geo Motors v. State of Kerala*, [2001] 122 STC 285. 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.

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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; that position may have been different. The manufacturer was obligated to make the replacement. If it did not possess the parts to meet the contractual obligation, 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.

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

A 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.

C 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.

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

R.P.

Appeals dismissed.