

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

Thursday, the 17th day of January 2019/27th Pousha, 1940

WP(C) No.680/2019

PETITIONER

PSN AUTOMOBILES PRIVATE LIMITED,
34/652 C, CIVIL LINE ROAD, PADIVATTOM, EDAPPALLY P.O., COCHIN-682 024
REPRESENTED BY ITS CHIEF FINANCIAL OFFICER, MR.MATHEW GEORGE.

RESPONDENTS

1. THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF REVENUE,
NORTH BLOCK, NEW DELHI-110 001.
2. THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA,
NORTH BLOCK, NEW DELHI 110 001.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the respondents or any officer or official under their jurisdiction from acting upon the Clarification at Sl.No.5 of Exhibit P1, pending disposal of this Writ Petition (Civil).

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S. M.GOPIKRISHNAN NAMBIAR, K.JOHN MATHAI, JOSON MANAVALAN, KURRYAN THOMAS & PAULOSE C. ABRAHAM, Advocates for the petitioner the court passed the following:

Smj

PTO

DAMA SESHADRI NAIDU, J.

W.P.(C) No.680 of 2019

Dated this the 17th day of January, 2019

ORDER

Section 15 of the Goods and Services Tax Act speaks of the value of goods and services, besides defining how the value of supply shall be reckoned. It says that the value of supply of goods, services, or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply.

2. Section 15(2) mandates that the value of supply shall include any taxes, duties, cesses, fees and charges levied under any other law in force.

3. As has been rightly contended by the learned Senior Standing Counsel for the Customs Department, Section 15(2)(a) is expansive. Yet Sri Gopinathan, the learned Senior Counsel for the petitioner, has submitted

that the amount of 1% the dealer collects from the purchaser of a car worth more than ten lakhs, under Section 206C(1F) of the Income Tax Act, cannot be treated as an integral part of the value of the goods and services supplied by the petitioner. According to him, the petitioner, as the dealer of the motor vehicle, acts only as an agent for the State to collect the income tax under Section 206C(1F). And that amount will eventually goes to the vehicle purchaser's credit.

4. In this context, the learned Senior Counsel has drawn my attention to the last portion of Section 15(2)(a), which emphasises "charging of tax, duties, cess or fee by the supplier".

5. Indeed, recently a constitution Bench of the Hon'ble Supreme Court in *Commissioner of Customs (Import), Mumbai v. M/s. Dilip Kumar & Co.*¹ has held that any ambiguity in taxing provision should be resolved in the State's fare. Yet, in this context, to conclude either way it needs further and deeper

¹ Judgment dated 30.07.2018 in Civil Appeal No.3327/2007

adjudication. Thus, the petitioner has raised a *prima facie* issue, which needs Court's attention.

6. I, therefore, hold that the authority will not act on the clarification at Sl.No.5 of Ext.P1 pending the disposal of the writ petition. I, however, clarify that this arrangement shall be subject to the outcome of the writ petition and without prejudice to the rights of the Department in collecting the taxes in future if the writ outcome is adverse to the petitioner.

SD/-DAMA SESHADRI NAIDU, JUDGE

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ASSISTANT REGISTRAR

(pro)