

M/S. TATA MOTORS LTD.

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v.

THE DEPUTY COMMISSIONER OF  
COMMERCIAL TAXES (SPL) & ANR.

(Civil Appeal No. 1822 of 2007)

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FEBRUARY 05, 2019

**[L. NAGESWARA RAO AND SANJAY KISHAN KAUL, JJ.]**

*Sales Tax :-*

*Liability towards, in respect of the free replacement of defective parts in motor vehicles, during the period of warranty – Appellant, dealer of Tata Motors – Warranty is given to the purchaser for free replacement of defective parts, during the period of warranty – To facilitate this, the dealer is obliged to keep a stock of spare parts – Sales tax is paid on the stock of spare parts so purchased from Tata Motors – Defective parts are sent back by the dealer to Tata Motors and credit note may be given by Tata Motors for the said parts – Plea of Revenue that sales tax is liable to be paid even qua the return of the spare parts, as credit note is given to the dealer for the same – Assessment order and appeal went against the appellant – Tribunal held in favour of the appellant – High Court set aside the order and restored the order of the assessing authority – Held: Judgment in **Mohd. Ekram Khan & Sons** case refers to the credit notes received as consideration for the replacement; but the moot point is whether credit notes can be treated as a mode of payment or not – Issue raised, as to whether, in the case of warranty for the supply of free spare parts; once the replacement is made, and the defective part is returned to the manufacturer, sales tax would be payable on such a transaction, based on a credit note, which may be issued for the said purpose, required to be looked into by a larger Bench – Papers be placed before Hon'ble the Chief Justice for necessary action.*

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**Referring the matter to larger Bench, the Court**

**HELD : 1.1 The crucial point which would arise for consideration, and over which the matter needs to be debated, is as to whether, in the case of such a warranty for the supply of free**

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- A spare parts; once the replacement is made, and the defective part is returned to the manufacturer, sales tax would be payable on such a transaction relating to the spare part, based on a credit note, which may be issued for the said purpose. The issue raised is required to be looked into by a larger Bench. This is in the context of the observations regarding the price of the car being inclusive of the cost of the spare parts, the latter being supplied for free, upon replacement. Sales tax on the car is paid. Sales tax on the inventory purchased by the dealer is paid. Thus, if there is no consideration for these replaced parts, can sales tax be levied at all? The judgment in the *Mohd. Ekram Khan & Sons* case refers to the credit notes received as consideration for the replacement; but it is a moot point whether credit notes can be treated as a mode of payment or not. The judgment in *Premier Automobiles Ltd. & Anr. Etc.* case is stated to contain a different factual situation, as per the observations in the *Mohd. Ekram Khan & Sons* case. There are observations, again in the *Mohd. Ekram Khan & Sons* case, of the possibility of the manufacturer having purchased, from open markets, the parts for replacement, on which taxes would be paid. In that context, it was observed that “the position is not different because the assessee had supplied the parts and received the price.” The assessee actually had purchased the parts and paid sales tax on it, but on return of the defective part, was given a credit note. There are some reservations in respect of the observations and legal propositions laid down in the *Mohd. Ekram Khan & Sons* case and it is considered appropriate that the matter be considered by a larger Bench. The papers be placed before Hon’ble the Chief Justice for necessary orders. [Paras 20-22][843-E-H; 844-A-C]

*Mohd. Ekram Khan & Sons v. Commissioner of Trade Tax, U.P., Lucknow (2004) 6 SCC 183 : [2004] 3 Suppl. SCR 116 ; Premier Automobiles Ltd. & Anr. Etc. v. Union of India : [1972] 2 SCR 526 ; Commissioner of Sales Tax v. M/s. Prem Nath Motors (P) Ltd. : ILR (1978) II*

- G *Delhi 273 ; Prem Motors v. Commissioner of Sales Tax, Madhya Pradesh (1986) 61 STC 244 (MP Division Bench) : Geo Motors v. State of Kerala (2001) 122 STC 285 (Kerala Division Bench) : Commercial Tax Officer (Anti-Evasion), Jodhpur v. Marudhara Motors (2010)*

**29 VST 114 (Raj) : Navnit Motors Pvt. Ltd. v. State of Maharashtra (2012) 47 VST 511 (Bom) ; Kataria Automobiles (P.) Ltd. v. State of Gujarat (2015) 51 GST 403 (Gujarat) ; The Commissioner, Commercial Tax, Lko. v. S/S Maskat Motors Pvt. Ltd. (2017) 102 VST 220 (All) ; Bharat Heavy Electricals Ltd. v. Commissioner of Customs & Central Excise, Indore (2003) 9 SCC 185 – referred to.**

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<u>Case Law Reference</u>		
[2004] 3 Suppl. SCR 116	referred to	Para 4
[1972] 2 SCR 526	referred to	Para 7 C
ILR (1978) II Delhi 273	referred to	Para 8
(1986) 61 STC 244	referred to	Para 9
(2001) 122 STC 285	referred to	Para 10 D
(2010) 29 VST 114 (Raj)	referred to	Para 11
(2012) 47 VST 511 (Bom)	referred to	Para 17
(2015) 51 GST 403 (Gujarat)	referred to	Para 17
(2017) 102 VST 220 (All)	referred to	Para 17 E
(2003) 9 SCC 185	referred to	Para 19

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1822 of 2007.

From the Judgment and Order dated 19.10.2005 of the High Court of Karnataka at Bangalore in Sales Tax Revision Petition No. 69 of 2004. F

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Civil Appeal Nos. 3004-3006/2017, 1821/2007, 2756/2012, 3856/2013, 3824/2011, 3827/2011, 3820/2011, 3821/2011, 3825-3826/2011, 3823/2011, 3822/2011, 5815/2012, 8049/2009, 6167/2009, 6171/2009, 6166/2009, 6160/2009 6173/2009, 6161/2009, 6164/2009, 6163/2009, 6162/2009, 6165/2009, 5967/2011, 5969/2011, 6168/2009, 6172/2009, 4019/2011, 4021/2011, 4516/2018, 9979/2018, 10924/2018, 11724/2018, S.L.P.(Civil) Nos. 15642-15643/2011, 25905/2013, 12806-12808/2016, 12280/2014, 19758/2009, 19745/2009, 19754/2009, 19748/2009, 19750/2009, 19756/2009, H G

- A 19757/2009, 19746/2009, 19755/2009, 19752/2009, 19753/2009, 19751/2009, 14260/2007, 28859/2011, 31698-31702/2013, 5447/2014, 5449-5451/2014.

Dr. Manish Singhvi, AAG, P. Chidambaram, Kavin Gulati, S. K. Bararia, Basava Prabhu S. Patil, Sr. Advs., Amar Dave, Nikhil Rohatgi, Shashank Khurana, R. N. Karanjewala, Ms. Ruby Singh Ahuja, Vishal Gehrana, Utsav Trivedi, Nakul Gandhi, Anupam Prakash, Sahil Monga, Shravan Sahney, Mrs. Manik Karanjawala, K. K. Mani, Ms. T. Archana, K. Ajit Singh, D. K. Devesh, Satyendra Kumar, Irshad Ahmad, Rahul Kaushik, Ms. Ruchi Kohli, Milind Kumar, Satyendra Kumar, Ms. Pragati Neekhra, V. Lakshmi Kumaran, Ms. L. Charanya, Aaditya Bhattacharya, Manish Rastogi, Victor Das, Ms. Apeksha Mehta, Punit Dutt Tyagi, M/S. Karanjawala & Co., P. K. Manohar, Yashraj Singh Deora, Shyam Agarwal, Abhishek Anand, Vivek Sharma, Udit Jain, M. P. Devanath V. N. Raghupathy, Chinmay Deshpande, Ms. Rachitha Hiremath, Geet Ahuja, Parikshit P. Angadi, Kunal Cheema, C. K. Sasi, Ms. Nayantar Roy, Abdulla Naseeh, Naresh Kumar, Ms. Prerna Singh, Guntur Prabhakar, Prashant Mathur, G. N. Reddy, Kamlendra Mishra, Arurag Tandon, Savmay Kapoor, Sanjay Jain, Nishe Rajen Shonker, Ms. Swarupama Chaturvedi, B. N. Dubey, Mukesh Kumar, Ms. Indira Bhakar, Santanu Singh, Nishant Ramakantrao Katneshwarkar, Ms. Deepa Kulkarni, Anoop Kanduri, Advs. for the appearing Parties.

The Judgment of the Court was delivered by

**SANJAY KISHAN KAUL, J.**

1. The common question of law, which arises for consideration in F these appeals, is the liability towards sales tax, in respect of the free replacement of defective parts in motor vehicles, during the period of warranty.
2. Civil Appeal No.1821/2007, filed by one of the dealers [M/s. Prerana Motors (P) Ltd.], was taken up as the main appeal for addressing G the submissions and, thus, reference to some of the relevant facts is qua that appeal.
3. M/s. Prerana Motors (P) Ltd./appellant is a dealer of Tata Motors. Sales Tax is paid on the vehicles sold. There is a warranty given to the purchaser for free replacement of parts, during the period of H warranty. To facilitate this, the dealer is obliged to keep a stock of spare

parts. The purchaser has an option to go to any dealer, and not be confined to the dealer from whom the purchase was made. Sales tax is paid on the stock of spare parts purchased from Tata Motors. The defective parts are sent back to Tata Motors and credit note may be given by Tata Motors for the said parts. The customer does not pay for the replacement of the defective part, which is stated to be the crucial fact. The stand of the Revenue is that sales tax is liable to be paid even qua the return of the spare parts, as credit note is given for the same, to the dealer.

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4. In the facts of this case, the assessment order and the appeal went against the appellant/dealer, while the Tribunal held in favour of the appellant/dealer. However, the High Court, relying upon the judgment of this Court in *Mohd. Ekram Khan & Sons v. Commissioner of Trade Tax, U.P., Lucknow*<sup>1</sup> set aside the order passed by the Tribunal, restoring the order of the assessing authority.

5. Mr. P. Chidambaram, learned senior counsel appearing for the appellant, drew our attention to the Dealership Agreement and pointed out that it is a principal-to-principal agreement, but that would not really make a difference to the controversy in question. In terms of this Agreement, *inter alia* stock of spare parts has to be kept by the dealer.

6. Learned senior counsel fairly conceded that if the judgment in *Mohd. Ekram Khan & Sons*<sup>2</sup> case is applicable, then the appellant would really have no case, but that his endeavour would be to distinguish the said judgment and/or persuade this Court that some of the observations made therein were *per incuriam*, and that in any case the matter needs to be examined by a larger Bench. In this course of action, learned senior counsel referred to the following judgments:

7. *Premier Automobiles Ltd. & Anr. Etc. v. Union of India*:<sup>3</sup> Mr. Chidambaram, learned senior counsel submitted by reference to pages 537 & 538 that the principle of warranty covering cars sold has been well enunciated. Accordingly, all defects on account of faulty manufacture in workmanship have to be set right and the defective parts have to be replaced, free of cost, by the manufacturer or his dealer, within a specified period of time or a given distance travelled by the car. Free services have to be rendered. Car manufacturers enter into an agreement with the manufacturers of components, providing for a

<sup>1</sup> (2004) 6 SCC 183

<sup>2</sup> (supra)

<sup>3</sup> (1972) 2 SCR 526

- A warranty so far as the components are concerned. The whole object behind warranty is that a consumer who has made a heavy investment, while purchasing a car, is assured of proper performance of the vehicle "in a trouble-free manner for a reasonable length of time." It is, thus, his submission that this fundamental concept appears to have been lost in *Mohd. Ekram Khan & Sons.*<sup>4</sup>
- B 8. *Commissioner of Sales Tax v. M/s. Prem Nath Motors (P) Ltd.*<sup>5</sup> Learned senior counsel drew our attention to paras 17 & 18 of this judgment, where observations have been made to the effect that a dealer sells cars along with a warranty, under which it is agreed that it would replace the parts free of cost. When such a part is replaced, it becomes a part of the car and the property in it stands transferred to the buyer/consumer. There is no separate consideration paid for the part so transferred and, thus, the only reasonable inference is that the consideration for the part or parts that might be replaced, under the warranty, was not separately specified because it was included in the price fixed and paid for the car at the time of its sale. The price so fixed and received is, thus, a consolidated price for the car and the parts that may have to be supplied by way of replacement, in pursuance of the warranty.

9. *Prem Motors v. Commissioner of Sales Tax, Madhya Pradesh*<sup>6</sup>:

- E The Court rejected the contention of the Revenue that when spare parts are replaced by the assessee and given to the customer free of charge, that being the condition of the warranty, the assessee recovers the price from the manufacturer and, in substance, it is a sale of the spare parts to the manufacturer and therefore liable to be taxed. It was opined that when a dealer sells automobile vehicles, he sells it with all parts in a saleable condition. The warranty given is a warranty from the manufacturer and therefore, if during the warranty period, any part is found to be defective and is to be replaced, the responsibility of replacement is on the manufacturer. This is neither a sale of parts by the dealer to the customer nor to the manufacturer. What is effectively done is a passing on, of the parts, from the manufacturer to the customer, but in order to avoid delays and prevent any inconvenience to the customer, he replaces the part first and gets them from the manufacturer later. The cost for the same is reimbursed by the manufacturer.

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<sup>4</sup> (supra)

<sup>5</sup> ILR (1978) II Delhi 273

H <sup>6</sup> (1986) 61 STC 244 (MP Division Bench)

It may be noted that this judgment has specifically been overruled A  
in the ***Mohd. Ekram Khan & Sons***<sup>7</sup>case.

10. ***Geo Motors v. State of Kerala***<sup>8</sup>: The reasoning of the Delhi High Court in ***Commissioner of Sales Tax v. M/s. Prem Nath Motors (P) Ltd.***<sup>9</sup> was adopted to conclude that the transaction could not be categorised as a ‘sale’ even though the dealer had purchased spare parts by giving ‘C’ Forms. Such a transaction was purely for replacement B  
and not for sale.

This judgment again has been specifically overruled in ***Mohd. Ekram Khan & Sons***<sup>10</sup> case.

11. ***Commercial Tax Officer (Anti-Evasion), Jodhpur v. Marudhara Motors***<sup>11</sup>: This opinion is post the judgment in the ***Mohd. Ekram Khan & Sons***<sup>12</sup>case. The learned single Judge of the Rajasthan High Court distinguished the case of the assessee dealer from the facts obtaining in ***Mohd. Ekram Khan & Sons***<sup>13</sup> case. One such distinguishing factor was that in the ***Mohd. Ekram Khan & Sons***<sup>14</sup> case, there was a relationship of principal to agent and not of principal to principal. The most crucial aspect observed in this case, and which is also the plea of Mr. Chidambaram, learned senior counsel, is qua the observations in para 6 of the ***Mohd. Ekram Khan & Sons***<sup>15</sup> case. It was observed that “in a case the 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.” C  
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12. While giving relief to the assessee, the significance of lack of consideration passing, i.e., spare parts being provided free of cost was taken note of, and thus, the cost of spare parts was held to be part of the cost of the vehicle, while giving such warranty for a limited period of time to the customer. F

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<sup>7</sup>(supra)

<sup>8</sup>(2001) 122 STC 285 (Kerala Division Bench)

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<sup>9</sup>(supra)

<sup>10</sup>(supra)

<sup>11</sup>(2010) 29 VST 114 (Raj)

<sup>12</sup>(supra)

<sup>13</sup>(supra)

<sup>14</sup>(supra)

<sup>15</sup>(supra)

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A        13. Learned senior counsel, thus, contended that the aforesaid significant aspect clearly distinguishes his case from the case of *Mohd. Ekram Khan & Sons*<sup>16</sup>, i.e., the aspect of thereplacement being undisputedly free. In this behalf, he referred to Section 4(1) of The Sale of Goods Act, 1930, which reads as under:

B        “**4. Sale and agreement to sell.—**

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.”

C        The submission, thus, is that for the sale of the parts of the car, a price has to be paid, which is not so in the present case.

D        14. *SLP (C) Nos.12806-12808/2016*: Learned counsel *inter alia* drew our attention to “Treitel- The Law of Contract” by G.H. Treitel, (7<sup>th</sup>ed.), to contend that to be enforceable as a collateral contract, a promise must be supported by consideration. It was submitted that the contract to supply spare parts, during the warranty period was akin to a collateral contract.

E        15. Learned counsel appearing for the other assessees also supported the stand taken by Mr. Chidambaram.

F        16. On the other hand, Mr. Basava Prabhu S. Patil, learned senior counsel appearing for the respondents in the aforesaid civil appeal, sought to contend otherwise and submitted that the *Mohd. Ekram Khan & Sons*<sup>17</sup> case is the binding precedent, and in this light, the matter does not need to be examined any further.

G        17. Learned senior counsel drew our attention to the following judgments:

i. *Navnit Motors Pvt. Ltd. v. State of Maharashtra*<sup>18</sup>

ii. *Kataria Automobiles (P.) Ltd. v. State of Gujarat*<sup>19</sup>

G        iii. *The Commissioner, Commercial Tax, Lko. v. S/S Maskat Motors Pvt. Ltd.*<sup>20</sup>

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<sup>16</sup>(supra)

<sup>17</sup>(supra)

<sup>18</sup>(2012) 47 VST 511 (Bom)

<sup>19</sup>(2015) 51 GST 403 (Gujarat)

H        <sup>20</sup>(2017) 102 VST 220 (All)

18. These judgments emanate from the Bombay High Court, Gujarat High Court and the Allahabad High Court respectively, and the submission is that a consistent view, in favour of the Revenue, has been taken by these three High Courts. We may, however, notice that the view emanates only by reason of reliance upon the *Mohd. Ekram Khan & Sons*<sup>21</sup> case. A

19. Learned counsel also referred to the judgment in *Bharat Heavy Electricals Ltd. v. Commissioner of Customs & Central Excise, Indore*<sup>22</sup> to contend that while considering the issue of excise duty in respect of components towardsthe “complaint reserve”, it was held that the same would be excisable. It was observed that while the initial price charged for the machinery may include the element of the “complaint reserve”, at the time of purchase, it is not known whether there will be any requirement to replace any part and, in many cases, the parts are not required to be replaced. In suchan eventuality, the price equivalent of the “complaint reserve” is not returned to the customer. B

20. We are not delving into the controversy in any further detail as we are of the opinion that the issue raised is required to be looked into by a larger Bench. The crucial point which would arise for consideration, and over which the matter needs to be debated, is as to whether, in the case of such a warranty for the supply of free spare parts;once the replacement is made, and the defective part is returned to the manufacturer, sales tax would be payable on such a transaction relating to the spare part, based on a credit note, which may be issued for the said purpose. This is in the context of the observations discussed aforesaid regarding the price of the car being inclusive of the cost of the spare parts, the latter beingsupplied for free,upon replacement. Sales tax on the car is paid. Sales tax on the inventory purchased by the dealer is paid. Thus, if there is no consideration for these replaced parts, can sales tax be leviedat all? The judgment in the *Mohd. Ekram Khan & Sons*<sup>23</sup> case refers to the credit notes receivedas considerationfor the replacement; but it is a moot point whether credit notes can be treated as a mode of paymentor not. The judgment in *Premier Automobiles Ltd. & Anr. Etc.*<sup>24</sup>case is stated to contain a different factual situation, as per the observations in the*Mohd. Ekram Khan & Sons*<sup>25</sup> case. There D

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<sup>21</sup>(supra)

<sup>22</sup>(2003) 9 SCC 185

<sup>23</sup>(supra)

<sup>24</sup>(1972) 2 SCR 526

<sup>25</sup>(supra)

- A are observations referred to above, again in the *Mohd. Ekram Khan & Sons*<sup>26</sup>case, of the possibility of the manufacturer having purchased, from open markets, the parts for replacement, on which taxes would be paid. In that context, it was observed that “the position is not different because the assessee had supplied the parts and received the price.” The assessee actually had purchased the parts and paid sales tax on it, but on return of the defective part to the manufacture, was given a credit note.
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- C 21. We have some reservations in respect of the observations and legal propositions laid down in the *Mohd. Ekram Khan & Sons*<sup>27</sup> case and consider it appropriate that the matter be considered by a larger Bench.  
22. The papers be placed before Hon’ble the Chief Justice for necessary orders.

Divya Pandey

Matter referred to larger Bench.

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<sup>26</sup>(supra)

<sup>27</sup>(supra)