

Read: 1) Application dt.16/11/2006 from M/s. ALD Automotive Pvt. Ltd., holder of VAT R.C. No. 27720287642V, under the Maharashtra Value Added Tax Act, 2002.  
Heard: Shri Jigar Shah, C.A.

## **PROCEEDINGS**

(u/s.56 (1)(e) of the Maharashtra Value Added Tax Act, 2002.)

NO.DDQ-11/2006/Adm-5/92/B- 3

Mumbai, dt.10.9.08

An application for determination of disputed question was preferred by M/s. ALD Automotive Pvt. Ltd., under the provisions of section 56 of the Maharashtra Value Added Tax Act, 2002 whereby the question is posed for determination is as under:-

"Whether on the facts and circumstances of the Applicant's case, Road Tax paid/reimbursed by lessee of motor vehicle forms part of "sale price" for the purpose of levy of Value Added Tax under Maharashtra Value Added Tax Act, 2002?".

### **02. FACTS OF THE CASE:**

The applicant is registered dealer holding MVAT Registration Certificate No.27720287642V dated 1 April 2006 under MVAT. The applicant is engaged in the business of providing vehicles on operating lease to corporate entities for which the applicant has attached the copy of standard Master Lease Agreement. The applicant purchases identified motor vehicles from the supplier of the motor vehicles and leases it to the lessee. The applicant states that, the lease is ordinarily, for a period of 3 to 5 years during which period lessee is in possession of the vehicle. The lessor also provides Fleet Management Services. Road Tax under Motor Vehicle Act, 1988 and Bombay Motor Vehicle Tax Act, 1958 is required to be paid by the person in possession of the motor vehicle. In case of leased motor vehicle, such tax is payable by the lessee.

### **03. HEARING:**

Shri Jigar Shah, CA attended for the hearing. He argued that the amount recovered by them from the lessee of the motor vehicle towards road tax paid, in the first instance, for convenience, does not form part of "sale price" for the purpose of computing VAT liability under Maharashtra VAT Act, 2002 (MVAT). According to him, the road tax is required to be paid by the person in possession of/who is plying the vehicle on the road and, as such, in case of leased vehicle is the obligation of the lessee of the motor vehicle. The applicant makes payment of the same only as part of its obligation to provide service to the lessee and only as a matter of convenience. The "sale price" under MVAT is defined to mean "the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged". The four explanations to the definition of "sale Price" refer to inclusion of excise duty, customs duty and the duty under Bombay Prohibition Act, 1949 and deposit received by the seller (Explanation 1 and 3). Explanation 2 refers to exclusion of VAT and Explanation 4 refers to the maximum retail price in respect of specified drugs. The valuable consideration payable by the lessee is the lease rental which is towards lease of the vehicle. It is submitted that road tax is only an reimbursement of the amount paid by the lessor and is not valuable consideration for the lease of the vehicle. In view of the above, the applicant formed an opinion that the road tax

reimbursement by the lessee is not required to be included in determining sale price towards the lease of the vehicle.

#### **04. OBSERVATIONS**

This transaction before me is a lease agreement between Mumbai International Airport Pvt. Ltd. and the applicant. The lease is entered on between the parties on July 25, 2006. The subject of the contract is the lease of motor vehicles by ALD Automotive to Mumbai International Airport Pvt. Ltd. in the form of a long term lease agreement without a purchase option. I have gone through the submission of the applicant. The question posed by the applicant is whether road tax paid by lessor of motor vehicle forms part of the sale price for the purpose of levy of VAT. It is seen from the facts of the case that the applicant is engaged in the business of providing vehicles on lease to corporate entities. The applicant purchases identified motor vehicles and leases it to companies i.e. the lessees, the lease is having a period of three to five years, during which period the lessee is in a possession of the vehicles. It is the contention of the applicant that the road tax is required to be paid by the lessee and therefore it does not form a part of the sale price. The applicant was through letter dt.28.7.2008 requested to submit the following documentary evidences.

- 1) Registration Certificate issued by the R.T.O.
- 2) Copy of the delivery note.

The applicant has produced the same and has also produced the following documents earlier.

- 1) Copy of lease agreement with Mumbai International Airport Pvt. Ltd.
- 2) Copy of a contract for a vehicle with the customer.
- 3) Copy of invoice raised on customer.
- 4) Copy of invoice for vehicle purchases and
- 5) Copy of debit note against registration and road tax paid.

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In order to examine the question a perusal of the Lease Contract between ALD Automotive and Mumbai International Airport Authority is necessary. I find that the following clauses are very important to understand the question and they are reproduced for the sake of clarity.

##### **1. Purpose of the Contract**

1. The purpose of this contract is to define the conditions under which ALD will supply the Lessee with one or more motor vehicles(s) in the form of a long term lease agreement without a purchase option.

The Lessee accepts the risks for the vehicle(s) during the lease period over which it has the custody thereof and is liable in accordance with the provisions under the Motor Vehicles Act, 1988 ("the Act").

##### **2. Formation of the Contract**

###### **Contractual Documents**

1. This MLA sets out the general lease conditions, associated services and obligations of both the Lessor and the Lessee. Each individual vehicle leased by the Lessee will

contain other specific terms and conditions as set out in a vehicle quotation ("vehicle lease contract") signed by the Lessor and the Lessee such as contracted kilometers, duration and specification of all services included within each vehicle lease contract and shall be read along with this MLA.

### 3. Ownership

**Save as otherwise provided in this MLA, no right, ownership, title or interest in the vehicle shall pass to the Lessee by virtue of 'these presents'.** The Lessee shall at no time contest or challenge the lessor's sole and exclusive ownership right, title and interest in the vehicle and the Lessee shall not assign, sublet, hypothecate or otherwise encumber the vehicle. The Lessor and the Lessee hereby confirm that their intent is that the vehicle shall at all times remain the property of the Lessor. For the purposes of the Act and the provisions thereof, the vehicle shall be registered in the name of the Lessee and the Lessor shall be registered therein as the financier under this MLA and the Lessee shall be fully liable and responsible for all the obligations, liabilities and duties as provided under the Motor Vehicles Act or under any other law or instrument pertaining to the use of the vehicle during the lease period until the vehicle is returned to ALD as per clause 7.0. The Lessee undertakes and hereby authorizes the Lessor to have the said registration transferred in the name of the Lessor or its nominee on the termination and/or expiry of the Lease and/or requiring possession thereof as required by the Lessor in accordance with this MLA. Conditional upon the Lessee's compliance with and fulfillment of the terms and conditions of this MLA and the vehicle lease contract, the Lessee shall have the right to have exclusive peaceful possession, operation and use of the vehicle for the full term of the Lease.

### 5. Fleet Management Services

1. During the lease period and only within the Contracted Area (the city limits within which fleet management services can be availed by the Lessee as detailed in the relevant vehicle lease contract), the Lessor agrees to provide the following Fleet Management Services where requested. Any proposed change in the area of usage must be notified immediately to ALD. Specific services applicable to each vehicle will be reflected in the relevant vehicle lease agreement.
2. The Lessor arranges for the acquisition of the vehicle from relevant dealer or manufacturer.
3. The Lessor shall arrange with the respective dealer to have the vehicle ready for delivery. The Lessee shall take delivery of the vehicle from the dealer's premises. Alternatively, at the Lessee's request, the vehicle may be delivered to the Lessee's address. Any damages to the vehicle in transit from the dealer's premises to the Lessee's address shall be treated as an accident case and the repair will be covered as per the insurance policy.

Upon delivery of the vehicle, the Lessor shall provide to the Lessee a "Vehicle Delivery Form" at the time of delivery and the Lessee shall acknowledge receipt of the same within 7 (seven) working days either by post, courier or e-mail. A failure on the part of the Lessee to send a copy and/or the original of the accepted delivery form will neither affect any of the rights available to the Lessor nor the obligations of the Lessee contemplated in this MLA. If the signed delivery form is not received within 7 working days from the date of the vehicle delivery form being provided by the Lessor to the Lessee then the date of the delivery of the

vehicle plus 2 (two) days will be deemed to be the contract commencement date for the purposes of raising billings.

4. **After taking delivery of the vehicle, the Lessee shall be responsible for having the vehicle registered with the Transport Authorities within the due time limits and pay the applicable road taxes on the vehicle or to ensure that the same is done as per the applicable Motor Vehicles Law.** Where the lessee requests the Lessor to arrange for the registration of the vehicle with the Transport Authorities on its behalf, the related road tax charges shall be reimbursed to the Lessor by the Lessee by inclusion within the monthly lease recoveries. It shall be the responsibility of the Lessee to provide necessary documentation including proof of address required for the vehicle registration process.
5. The Lessor shall arrange for appropriate comprehensive insurance cover of the vehicle. The insurance policy shall be in the name of the Lessee and the Lessor shall be endorsed as the financing institution and the loss payee therein. The premium for the insurance policy shall be paid each year by ALD in the first instance and the same shall either be reimbursed to ALD by the Lessee or will be included in the monthly lease rate as determined by the individual vehicle lease contracts. All insurance claims shall be made to ALD or to its agents as may be authorized from time to time.

The following documents have also been examined by me and I have observed as follows. (a) The vehicle is purchased from Lakozy Toyota. The tax invoice shows the Mumbai International Airport Pvt. Ltd. as lessee and ALD Automotive as lessor. (b) The car in question 'Camry ACV 40R', the price of which includes tax at 23, 69,150/-. Further a debit note has been raised by Toyota Lakozy wherein the amount debited towards the registration charges and road tax is Rs.3,47,979/-. (c) The Registration Certificate of the car copy of which is also perused. The Registered owner shown on the registration certificate is Mumbai International Airport Pvt. Ltd. The certificate also shows that the car is hypothecated with ALD Automotive. A copy of the delivery note shows that delivery was given to Mumbai International. These are the bare facts of the case.

The question before me is to decide whether ALD Automotive can claim deduction of the road tax paid by it from the lease rent recovered from Mumbai International Airport Authority. In order to decide the question, I will have to first examine as to whose liability is it to pay the road tax. This question can be answered by referring to the relevant provisions of the Mumbai Motor Vehicle Tax Act, 1958. Section 3 of sub section 2 of the Bombay Motor Vehicle Tax Act says the following.

Subject to the other provisions of this Act there shall be levied and collected of all motor vehicles used or kept for use in the State, a tax at the rate fixed by the State Government by notification in the official gazette. For the purposes of this Act, registered owner or any person having possession or control of a motor vehicle shall be deemed to use or keep such vehicle for use in the State.....

It is seen from the above provisions that the road tax is primarily levied for the use of the vehicle in the State and the sub section (2) by placing the liability of the tax places the burden of payment by a legal fiction on the registered owner of the car or in person having possession or control of the motor vehicle. A registered owner of the Car is defined under the Act as a 'person in whose name a motor vehicle is registered under the Motor

Vehicles Act, 1988'. It is seen from the certificate that the registration is under rule 41 of the Central Motor Vehicle Rules. As per the said section 41 of the Motor Vehicle Act, an owner of a motor vehicle has to get the vehicle registered by a registering authority and a owner is defined under the Motor Vehicle Act in the following way.

"Owner means a person in whose name the motor vehicle stands registered and way such person is a minor the guardian of such minor and is related to a motor vehicle which is a subject of higher purchases, agreement or agreement of lease or a agreement of hypothecation the person in possession of the vehicle under that agreement'.

From the above clause it is clear that the owner of the vehicle has to get himself registered under the Motor Vehicle Act". Conversely, the owner is the following person.-

- In whose name the motor vehicle is registered
- In the case of an agreement of lease or hire purchase or hypothecation a person in possession of the vehicle in that agreement.

As per the Bombay Motor Vehicles Tax Act the following people are responsible to pay the road tax.

- The registered owner.
- The person in possession of the motor vehicle.

From the facts of the case as also from the registration certificate the following facts have come to notice:

- Mumbai International Airport Authority is a registered owner of the vehicle.
- Mumbai International Airport Pvt. Ltd. is also the person in possession or control of the vehicle. It is Mumbai International Airport Pvt. Ltd. who shall be using the car. ALD Automotive never intends to use the car as the car is primarily brought for the use of Mumbai International Airport Pvt. Ltd.
- As per the definition of owner in Motor Vehicle Act in the case of agreement of lease/hypothecation/hire purchase the person in possession of the vehicle is the owner. Therefore, we again come to the same conclusion that this being an agreement of lease and Mumbai International Airport Authority being in possession of the vehicle is the deemed owner.

It is true that from the point of view of the Motor Vehicle Act that Mumbai International Airport Authority is the registered owner of the car as is evident from the registration certificate. As per the definition of 'owner' under the Motor Vehicle Act, Mumbai International Airport Authority is the deemed registered owner as it is in possession of the car and also because of the fact that the Motor Vehicle Act has a special provision for hypothecated motor vehicle and cars leased. In such cases, the Motor Vehicle Act holds the lessee as the owner of the car who has to pay liability of road tax. However, my concern is not with the provisions of the Motor Vehicle Tax Act. I have to examine the transaction from the point of view of the Maharashtra Value Added Tax Act. I do not disagree with the fact that for the purposes of the Motor Vehicle Act, there are two parties between whom the transaction has taken place - the lessor and the lessee i.e. ALD Automotive and Mumbai International Airport Authority. However, from the point of view of the MVAT Act there are not one but two transactions in this issue. The first transaction takes place between Lakozy Toyota and ALD Automotive. The second transaction takes place between ALD Automotive and Mumbai International Airport Authority. In the first transaction itself the sale is complete. The car is purchased by ALD

Automotive from Lakozy Toyota by paying the whole cost of the car as well as the registration charges and the road tax. Subsequently, ALD Automotive leased the car to Mumbai International Airport Authority. There is a sale first and the sale precedes the lease transaction. Therefore when ALD Automotive buys the car from Lakozy Toyota it has to pay the entire amount following which it leases the car to Mumbai International Airport Authority. In such a case, when the sale itself becomes complete when the car is bought by ALD Automotive and there is no question of ALD Automotive deducting the road tax paid by it from the lease rent recovered by it from Mumbai International Airport Authority. Such would have been the case if the first transaction was between ALD Automotive and Mumbai International Airport Authority. The ALD Automotive has paid the road tax when it buys the car. Whether it passes on the liability of the road tax or not is of no consequence here.

Let's see clause 3.1 of the contract. As per this provision, ALD Automotive is the rightful owner of the car. The clause itself says that no ownership shall pass to the lessee. It places the uncontroverted fact before us that ALD Automotive is the sole owner of the car. The ALD Automotive has become the sole owner unless the property was transferred to it in exchange of the payment of the price. It is also made very clear in the provisions of the clause that for the purpose of the Motor Vehicle Act the vehicle shall be registered in the name of the lessee and the lessee shall be responsible for the duties provided under the Motor Vehicle Act.

This makes it very clear that from the point of view of the Motor Vehicle Act the payment of the road tax and the burden of it are on Mumbai International Airport Authority. But from the point of view of Act before us, this is a second transaction in which deduction of road tax does not come in the picture at all. Also what is important is a consideration that flowed from Mumbai International Airport Authority to ALD Automotive. The lease rent is a composite whole. The consideration that has passed from the lessee to the lessor is a sale price in this case. Therefore the whole lease rent becomes amenable to tax without any deduction.

Tax is leviable under section 3 of the Act, inter alia, on the turnover of sales of a dealer. The expression "turnover of sales" has been defined in clause (33) of section 2 of the Act to mean-

"the aggregate of the amounts of sale price received and receivable by a dealer in respect of any sale of goods made during a given period after deducting the amount of sale price, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period."

"Sale price", as defined in clause (25) of section 2, means:

"the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the dealer in respect of goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged."

It is clear from the above definition that it is the amount payable to a dealer as consideration for the sale of goods which constitutes sale price. The test is what is the consideration passing from the purchaser to the dealer for the sale of goods. It is immaterial to enquire as to how the amount of consideration is made up. The only relevant question to ask is as to what is the amount payable by the purchaser to the dealer as consideration for the sale and not as to what is the net consideration which according to

the seller is attributable to the real price of the goods. The concept of real price or actual price is irrelevant for the purpose of determining sale price. The price of a commodity may be a particular amount because of various factors, but on sale there is only one consideration, viz, the amount paid by the purchaser because when a seller offers goods for sale, it is for him to fix the price. If the buyer agrees to the same, it is not for him to consider how it is made up. As held by Goddard L.J., in *Love v. Norman Wright (Builders) Ltd.* [1944] 1 All ER 618:

"So far as the purchaser is concerned, he pays for the goods what the seller demands, namely, the price.... That is the whole consideration for the sale and there is no reason why the whole amount paid to the seller by the purchaser should not be treated as the consideration for the sale and included in the turnover."

It may be expedient in this connection to refer to the decision of the Supreme Court in *McDowell & Co. v. Commercial Tax Officer* [1985] 59 STC 277 where the question for consideration was whether excise duty on liquor sold by the dealer which was paid directly to the excise authorities by the buyers formed part of the sale price. Ranganath Misra, J. (as his Lordship then was), speaking for the Bench, referred to section 2(s) of the Andhra Pradesh General Sales Tax Act, 1957 which defines "turnover" to mean the total amount set out in the bill of sale (or if there is no bill of sale, the total amount charged) as consideration for sale or purchase of goods, and observed:

"The definition clearly indicates that the total amount charged as the consideration for the sale is to be taken into account for determining the turnover. Where a bill of sale is issued (and obviously the bill has to state that total amount charged as consideration), the total amount set out therein is to be taken into account. In every transaction of sale, there is bound to be a seller at one end and a buyer at the other and transfer of title in the goods takes place for a consideration."

His Lordship also referred to the earlier decision of the Supreme Court in *Hindustan Sugar Mills Ltd. v. State of Rajasthan* [1979] 43 STC 13 and quoted the following observations from the said judgment:

"The test is, what is the consideration passing from the purchaser to the dealer for the sale of the goods. It is immaterial to enquire as to how the amount of consideration is made up, whether it includes excise duty or sales tax or freight. The only relevant question to ask is as to what is the amount payable by the purchaser to the dealer as consideration for the sale...."

The court also quoted the following discussion from the said decision:

"Take for example, excise duty payable by a dealer who is a manufacturer. When he sells goods manufactured by him, he always passes on the excise duty to the purchaser. Ordinarily, it is not shown as a separate item in the bill, but it is included in the price charged by him. The 'sale price' in such a case could be the entire price inclusive of excise duty because that would be the consideration payable by the purchaser for the sale of the goods. True, the excise duty component of the price would not be an addition to the coffers of the dealer, as it would go to reimburse him in respect of the excise duty already paid by him on the manufacture of the goods. But, even so, it would be part of the 'sale price' because it forms a component of the consideration payable by the purchaser. There is no other manner of liability, statutory or otherwise, under which the purchaser would be liable to pay the amount of excise duty to the dealer. And, on this reasoning, it would make no difference whether the amount of excise duty is included in the price charged by the dealer or is shown as a separate item in the bill."

and added that the position was not different when under a prior agreement the legal liability of the manufacturer-dealer for payment of excise duty is satisfied by the purchaser by direct payment to the excise authorities or to the State exchequer.

It was held that the excise duty, though paid by the purchaser to meet the liability of the appellant, was a part of the consideration for the sale and was includible in the turnover in the turnover of the appellant. The purchaser had paid the tax because the law asked him to pay it on behalf of the manufacturer.

It is clear from the above discussion that the whole of the amount payable by the purchaser as consideration for the goods constitutes 'sale price' and no deduction can be made therefrom of any amount even if it is referable to any component of such consideration.

06. In view of the above deliberations, I pass an order as follows:

### **ORDER**

(Under Section 56(1) (e) of the Maharashtra Value Added Tax Act, 2002)

NO.DDQ-11/2005/Adm-5/12/B- 3

Mumbai, dt.10.9.08

The road tax paid by the applicant, M/s. ALD Automotive Pvt. Ltd., on behalf of the lessee- Mumbai International Airport Pvt. Ltd. forms a part of the sales price for the purpose of VAT under the MVAT Act, 2002.

**(Sanjay Bhatia)**  
**Commissioner of Sales Tax,**  
**Maharashtra State, Mumbai**