

**PROCEEDING OF ADVANCE RULING AUTHORITY UNDER SECTION 55 OF MVAT ACT, 2002 AND UNDER RULE 63 OF MVAT RULES, 2005**

SR.NO.	PARTICULARS	DETAILS
1	Name of Applicant	M/s Star Motors & other 27 applicants
a)	Address	444, Wanjara Layout, Kamptee Road, Nagpur
b)	TIN	27920000800V
c)	Details of application	ARA. (Mumbai) No.
d)	Jurisdictional Assessing Authority	NAG-VAT-E-004
2	Heard	Ravindra Paturkar Adv.
3	E-mail	ravipaturkar@gmail.com
4	Advance Ruling Authority	Shri G.V. Bilolikar(Chairman), Shri. P.G. Joshi (Member) Shri S.S.Lohar(Member)

**STAR MOTORS & NAME OF THE OTHERS 27 APPLICANTS and Applications reference No ( as Per list below)**

Sr No	Name Of the Applicant	TIN	Application reference number
1	M/s.STAR MOTORS, NAGPUR	27920000800V	4
2	M/s.MICROPARK LOGISTICS PVT.LTD.	27480080776V	5
3	M/s.JAIMAL AUTO	27690674931V	6
4	M/s.JITENDRA AUTOMOBILE PVT.LTD.	27730298937V	7
5	M/s.JITENDRA MOTORS PRIVATE LIMITED	27110011382V	8
6	M/s.JITENDRA WHEELS (N) PVT.LTD.	27630001105V	9
7	M/s.KAMAL CARLINE PVT.LTD.	27930008409V	10
8	M/s.REGENT AUTO POINTS PVT.LTD.	27130401796V	11
9	M/s.SHRIKRUPA AUTOMOBILE PVT.LTD.	27660646963V	12
10	M/s.KAMAL AUTO CARE PVT.LTD.	27120000949V	13
11	M/s.BHAVIN WHEELS PVT.LTD.	27890964948V	14
12	M/s.SACHI AUTONET PVT.LTD.	27370584897V	15
13	M/s.CHOPDA AUTO WHEEL PVT.LTD.	27800895788V	16
14	M/s.RISHABH MOTORS PVT.LTD.	27610000631V	17
15	M/s.SEVA AUTOMOTIVE PVT.LTD.	27960000099V	18
16	M/s.MASCOT MOTORS	27360001302V	19
17	M/s.THE SHELAR AUTOMOTIVE	27930742990V	20
18	M/s.KAMDHENU MOTORS	27400691144V	21
19	M/s.SHAMAN MOTORS PVT.LTD.	27280000279V	22
20	M/s.N.G.SALES	27240611304V	23
21	M/s.THAPARSONS MOTORS/THAPARSON CARS	27040613160V	24
22	M/s.KUNDAN CARS PVT.LTD.	27110639942V	25
23	M/s.KIFS MOTORS	27031079493V	26
24	M/s.MANDHAN MOTORS PVT.LTD.	27610809805V	27
25	M/s.NATIONAL AUTO WHEELS PVT.LTD.	27660810505V	31
26	M/s.SOMANI MOTORS PVT.LTD.	27060813163V	32
27	M/s.SHAMAN CARS PVT.LTD	27220712777V	33
28	M/s.SHAMAN CARS INDIA PVT.LTD.	27160004710V	34



**ORDER NO. ARA –MAHARASHTRA VALUE ADDED TAX, MUMBAI – 4 to  
27 and 31 to 34/ 2021-22 – DISP.REG 04 DATED – 18.04.2022  
(ORDER UNDER SECTION 55 (5) AND (9) OF MVAT ACT, 2002)**


The applicant M/s. Star Motors Private Limited, a registered dealer under Maharashtra Value Added Tax Act, 2002, alongwith 27 other Co-Applicants viz. M/S. Micropark Logistice Pvt. Ltd., M/s. Jaimal Auto, M/s. Jitendra Automobile Pvt. Ltd, M/s. Jitendra Motars Automobile Pvt. Ltd, M/s. Jitendra wheels (N) Pvt. Ltd, M/s. Kamal Carline Pvt. Ltd, Regent Auto Points Pvt.Ltd, M/s. Shrikrupa Automobile Pvt. Ltd., M/s. Kamal Auto Care Pvt. Ltd., M/s. Bhavin Wheels Pvt. Ltd, M/s. Sachi Autonet Pvt. Ltd, M/s. Chopda Auto Wheel Pvt. Ltd, M/s. Rishabh Motors Pvt. Ltd, M/s. Seva Automotive Pvt. Ltd, Mascot Motors, M/s. The shelar Automotive, N.G. Sales, M/s. Thaparsons motars/ Thaparson Cars, M/s. Kundan Cars Pvt Ltd, Kifs Motors, M/s. Mandhan Motors Pvt. Ltd, M/s.National Auto Wheels Pvt. Ltd, M/s.Somani Motors Pvt Ltd, M/s. Shaman cars Pvt. Ltd, M/s. Shaman Motors Pt. Ltd, M/s. Shaman Cars India Pvt. Ltd., M/s. Kamdhenu Motors (hereinafter jointly referred to as the applicant for sake of brevity) have submitted applications under section 55 of the Maharashtra Value Added Tax Act, 2002(MVAT Act, 2002) and have raised the issues as framed vide his application dated 26/03/2021.

That on going through the proceedings and defenses raised on behalf of the Applicants, following Issues arises to be considered for dealing of the aspect of levying of tax under MVAT Act, 2002

**I. ISSUES AND QUESTIONS RAISED FOR ADVANCE RULING ARE  
FRAMED IN LOGICAL MANNER AS UNDER:**

1. Whether the One time "RTO Tax (Road Tax),"required to be paid to Maharashtra Government for use of Motor Vehicle collect and paid by the dealer for the purchaser of Motor Vehicle and "insurance premium" after registration of Motor Vehicle on the name of purchaser in the office of registration (Regional Transport office) form a part of sale price





considering the provisions section 2 (24) and 2(25) and liable to tax under the provision of MVAT Act, 2002.

2. Whether the one time 'RTO Tax (Road Tax)' required to pay as per Motor vehicle act, be treated as "any sum charged for anything done by the seller in respect of the goods at the time of or on before the delivery thereof" and considered as a pre delivery charges as per definition of Sales price u/s 2(25) of MVAT Act, 2002.
3. Whether the insurance premium required to pay as per as per motor vehicle act, and under the norms of insurance regulatory authority be treated "any sum charged for anything done by the seller in respect of the goods at the time of or before the delivery thereof" and consider as a pre delivery charges as per definition of Sales price u/s 2(25) of MVAT Act, 2002.

Since Issues No.1 raised and framed includes the Issue No. 2 and 3 as discussed above, the same are dealt with in Issue No.1 itself, as co related to each other forming part of common Issue as framed in Issue Number 1.

The applicants have stated that these above mentioned 27 applications are based on similar issues and facts based on which questions have been raised by each applicant is similar in nature. The applicants had requested to hear all these applications referred above all together and dispose of accordingly.

**II. The Brief Facts obtained in the matter from the proceedings are as under:**

The applicant has narrated the fact of case as under :-

It is contended on behalf of the Applicants through Mr. Paturkar, Advocate, appearing on behalf of all the applicants that the nature of transaction of sales of Motor vehicles takes place in the manner as enumerated below:


- a. The applicants are a registered dealers who deals in sell of Motor Vehicles viz. Passenger cars, parts and components and accessories thereof, and renders various services to various persons.





- b. For the number of tax period of assessments 2015-16 and 2016-17 the applicant dealers received a show cause notice from respective assessing authority of State Tax officers.
- c. In the case of M/S Star Motors, learned Assessing officer had issued show cause notice dated 19/03/2020 for the assessment period 2015-2016 to the said applicant and called upon to submit the details of other charges like RTO charges, RTO tax, insurance charges, Insurance premium and registration charges recovered from customer and paid on behalf of them and as to why MVAT should not be levied on these amount including RTO Tax and Insurance Premium; as per the order passed by Advance ruling authority in the case of M/s. B.U. Bhandari 170/2017-18 DIP Reg No 38 dated 20/06/2018 Under section 55 (5) and (9) of MVAT Act,2002.
- d. It is communicated by the learned Deputy Commissioner to the applicant vide letter B-585 dt 19.03.2020 that "During the verification of books of accounts and other documents it is noticed that applicant had received RTO registration charges including RTO Tax at Rs.3409228/- and insurance charges including Insurance premium at Rs.1267714/- which were paid on behalf of the customer.
- e. After that Applicant had filed applications in 28 cases to ARA in form 703 and have stated that, the facts mentioned in the Judgment delivered by ARA in case of M/s B.U. Bhandari 170/2017-18 DIP Reg No 38 dated 20/06/2018, are different and applicants are "not Similarly situated persons" as provided in the section55 (8) of the MVAT Act, 2002.
- f. According to the applicant, the said Advance ruling deals with the Registration charges only but do not deal with "RTO Tax "which has to be paid under section 2 of the Motor Vehicle Act And Registration charges, registration fees and one time road tax are different.
- g. In this the ARA Authority, considered and held that the registration charges, Insurance charges, handling charges received and paid on behalf of the customer of a motor vehicle form a part of the " sale price" and hence attract tax under MVAT Act.
- h. In the said order of Advance ruling referred above, the issue of RTO tax is neither mentioned nor argued, only registration charges are mentioned. It is stated by the applicant that registration charges and RTO tax both are different things.
- i. It is further contended on behalf of the Applicant that registration charges / registration fees mean it is also registration fees required to be paid by the purchaser of Motor vehicle to the Regional Transport Office which





was incurred to get the vehicle ready for registration. According to applicant this aspect is not discussed in the aforesaid Advance ruling.

- j. It is further submitted on behalf of the Applicant that after issuance of fitness certificate and sales certificate by the applicant himself and Manufacturer then only the purchaser / Customer pays RTO fees for registration. RTO tax is the road tax that is payable only after vehicle get registered in the name of customer of Motor vehicle. As per Form no 20 and rule 47 of Motor vehicle act, the consumer has to apply to the registration authority for getting the vehicle registered. Further RTO tax has to be paid on the percentage prescribed under Motor Vehicle act on Ex- showroom price alongwith excise duty and VAT. It is stated further that if registration is being cancelled at RTO or at the time of scrapping the vehicle, refund of tax which was paid can be claimed on the condition that the vehicle is required to have been used for less than 15 years.
- k. It is stated by the applicants that the facts mentioned in the decision of Hon'ble Supreme Court in case of M/s KTC automobile as well as in ARA judgment are not applicable concerning the issues mentioned above as applicant is not similarly situated person. Hence RTO tax and Insurance Premium cannot form or be treated as forming part of Sale price as per definition 2 (25) of the MVAT Act 2002.
- l. Accordingly it is submitted on behalf of the Applicant that Insurance charges and insurance premium are two different things. Insurance premium is to be paid by the purchaser /owner of the motor vehicle and that is after becoming the owner of the motor vehicle and hence do not attract tax liability under the MVAT Act.

### **III. PRAYER OF THE APPLICANT**

1. Advance ruling passed in the case of M/S B.U. Bhandari 170/2017-18 DIP Reg No 38 dated 20/06/2018, Under section 55 (5) and (9) of MVAT Act,2002, is not applicable to the applicant's case "as not similarly situated person" u/s 55 (8) of the MVAT Act.
2. RTO Tax and Insurance Premium do not form or be treated as forming part of Sale price as per definition 2 (25) of the MVAT Act, 2002.

### **IV. SUBMISSION MADE BY THE APPLICANT:-**

Subsequently, the applicant gave a written submission dated 27.01.2022 and 02.03.2022, the details of which are given below:-

- a. Mr. R. Paturkar (Advocate) has stated that the registration charges and registration fees are different from "One Time RTO tax", the registration


charges and registration fees are required to be paid to the RTO office for the preparation of the documents for registration or for issuing a license, postage and other expenses, after paying the registration charges and registration fees then only the vehicle get registered in the name of purchaser. Only after the purchaser become the owner of the motor vehicle, the one-time RTO tax can be paid to the RTO on the cost of vehicle as provided in the section 2 of the motor vehicle and taxation Act and percentage prescribed by the schedule.

- b. Here applicant emphasized on the definition as per section 2 (1A) of the Maharashtra Motor Vehicles Tax Act, 1958, which states that "Cost of Vehicle"-

"a vehicle manufactured in India means cost as per final cost mentioned in the purchase invoice of the vehicle issued either by the manufacturer or the dealer of the vehicle which shall include the basic manufacturing cost, excise duty and state tax payable in the state of Maharashtra".

Applicant has relied on:-

- (i) Definition of "Cost of Vehicles" as per section 2 (1A) of the Maharashtra Motor Vehicles Tax Act, 1958, Explanation of manufacturing process submitted by Manufacturer. RTO tax has to be paid as per section 2 of the MV Act on the cost of the vehicle on the percentage prescribed under Motor Vehicle act on Ex- show room cost that is purchase price + Excise duty + VAT and submitted that presently RTO Tax has to be paid "one time" for 15 years and it is called as "One time Tax" on a specific percentage depending on the classification of the motor vehicle as discussed above.
- (ii) According to applicant Advance ruling in the case of M/S B.U. Bhandari, Under section 55 (5) and (9) of MVAT Act, 2002, do not apply to the applicants case as not similarly situated person u/s. 55 (8) of the MVAT Act. In this ARA has considered that the registration charges, Insurance charges, handling charges received and paid on behalf of the customer of a motor vehicle form a part of the "sale price".
- (iii) It is further submitted by the Applicant that Insurance premium and Insurance charges are also different. Insurance premium is a recurring event and which has to be paid every year till the ownership of the vehicle as per the guideline of the insurance regulatory authority and also as per motor vehicle Act. The insurance company issues a bill in the name of the purchaser and not in the name of the dealer of the vehicle.



Applicant stated that the amount paid for insurance premium does not form the part of sales price as per the definition of sales price.

**V. The report and fact finding communicated by Assessing Authority and legal submission:-**

The report was called from Assessing officer on the issues raised by the applicant. The assessing officer has submitted the report on the following issues through concerned Joint Commissioner.

- a. According to the learned Deputy Commissioner, the said issue is already decided by the Hon'ble Supreme court in the case of M/s. KTC Automobile V/S Commissioner of Commercial Tax, Kerala dated 29.01.2016 and under Advance Ruling in case of M/S B.U Bhandari Pvt. Ltd. which held that "a motor vehicle remains in the category of unascertained or future goods till its appropriation to the contract of sales by the seller occasioned by handing over its possession at or near the office of registration authority in a deliverable and registerable state. These charges were received to comply the conditions prescribed under Motor vehicle act and therefore attract tax under Act.
- b. These charges received from the customer before the registration of vehicle that too before the delivery of vehicle to the ultimate buyer. Hence all the charges collected from the customer and paid by the applicant, before legally passing of the property in goods would be considered as per the definition of sales price u/s 2(25) of the MVAT Act.
- c. It is explained by the Assessing Authority that these charges are received at the time of or before delivery hence these charges forms part of sales price and liable for taxation @12.5% to be recovered during 01.04.2016 to 16.09.2016 and 13.5% recovered as per MVAT Act 2002, during 17.09.2016 to 31.03.2017.
- d. Considering facts and judgment cited supra the amount at Rs.34,09,228/- (RTO tax ) and at Rs.12,67,714/- Insurance charges are taxed @ 12.5% for the period 29.01.2016 to 31.03.2016 after giving opportunity of being heard to the dealer.
- e. As referred Judgment of Apex court in case of M/S KTC Automobile and ARA Judgment is on the same facts having binding precedent as per Article 141 of the constitution of India. Hence all charges related and paid by the customer before legally passing of property as goods would be considered in the sales price.



- f. Hon'ble Supreme Court in the Judgment delivered in case of Commissioner of Commercial Taxes V/s KTC Automobile dated 29 January 2016 had elaborately explained as to "where the sales are complete". It is held that a motor vehicle remains in the category of unascertained or future goods till its appropriation to the contract of sale by the seller is occasioned by handing over its possession at or near the office of the registration authority of the State in a deliverable and registrable state.
- g. As per section 55(8) (a) of MVAT Act The Advance Ruling of the Commissioner shall be binding on all the officers, including the appellate authority or, as the case may be, on the Advance Ruling Authority in respect of the similarly situated persons. Hence the assessment are finalized considering the advance ruling in case of B.U. Bhandari Automotive Pvt. Ltd Pune.
- h. From the records it is clear that Applicant dealer has collected the required charges such as Insurance charges, RTO tax from the purchaser to comply the conditions prescribed under Motor Vehicle Act. The assessing authority has explained that RTO charges and insurance premium charges were received to comply the conditions prescribed under Motor Vehicle Act. In the present case also RTO tax and Insurance amount were added to ex-showroom cost of motor vehicle and total amount collected from customers before delivery of vehicle. These charges were received to comply the conditions prescribed under Motor Vehicle Act. It is seen from the record that these charges received from the customer before registration of the vehicle that too before the delivery of vehicle to ultimate buyer hence as per definition of sales price u/s 2(25) of MVAT Act the same are recoverable from dealer.

## **VI. ANALYSIS AND DISCUSSION**

### **1. Sales Price expressed under MVAT Act,2002 :-**

With the aforesaid facts discussed above, the issue is required to be first dealt by considering the legal position provided under MVAT ACT. The definition of sale price under the VAT Act is given under clause 25 of Section 2 of the Maharashtra Value Added Tax Act and it also includes certain charges by deeming provisions.

- a) "sale price" 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 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. Downloaded on 09/06/2013 17:28:42 :::

On analysis of provision it is seen that—

(i) Under the definition of the expression "sale price" in Section 2(25), valuable consideration paid or payable to a dealer for any sale made and

(ii) Under Section 2(25), by deeming fiction "any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof" i.e. pre delivery charges are brought within the meaning of the expression "sale price" and even if a sale has taken place, but delivery has not been taken, all pre-delivery charges would form part of the sale price.

## 2. Provisions related to RTO Tax under Motor Vehicle Act 1958 :-

First we have to ascertain as to what is the difference between registration charges and Road tax.

(i) Here registration charges means a fee which is required to be paid by the Purchaser of the Motor vehicle to the RTO department towards getting the vehicle ready for registration.

(ii) Whereas, in common parlance the Road Tax is a state level tax, i.e., the government of various states impose it at their individual level. And if a car is being used for more than a year, then it is compulsory to be paid the entire amount of road tax at once at time of registration.

a. As per prevailing practice, every person who buys a car in India has to pay a fee or tax amount that is levied by the state and central government. When a car is registered and purchased, this amount is added to the price of the vehicle and the customer is required to pay that final amount as sale price.

b. Therefore to understand the first part of issue raised by the applicant, the explanation under section 3 sub section (1D) of Maharashtra Motor vehicle (MV) Act 1958 is to be considered regarding levy of tax and amount payable as one time road tax, Relevant portion of the section is mentioned as below:-

Section 3. Levy of tax (1D) (a) Subject to the provisions of this Act, there Shall be levied and collected on all motor cars (all omni buses) used or kept for use in the State, a onetime tax for the lifetime of (such vehicle) :-

(i) if registered after the date of commencement of the Bombay Motor Vehicles Tax (Amendment) Act, 1997, at the rates specified in part 1 of the Third Schedule;]

(ii) if already registered before the said date on which tax is already paid under sub-section (1), at the rates specified in [Part II of the Third Schedule];



(iii) if first registered in any other State and thereafter on transfer thereof in the State of Maharashtra, a new registration mark is assigned to the same, after the said date then having regard to the month of first registration in the other State, at the rate specified in Part II of the Third Schedule.]

#### Section 6. Tax to be paid along with declaration

(1) Subject to the provisions of this section, every registered owner, or person who has possession or control, of a motor vehicle used or kept for use in the State shall fill up, sign and deliver, in the manner provided in sub-section (4), declaration, and shall along with such declaration, pay to the Taxation Authority the Tax which he appears by such declaration to be liable to pay in respect of such vehicle.


(2) Subject to the provisions of this section, a motor vehicle used or kept for use in the State, is altered or is proposed to be used in such manner as to render the registered owner, or person who has possession or control, of such vehicle is liable to the payment of an additional tax under section 7. Such owner or person shall fill up, sign and deliver in the manner provided in sub-section (4) an additional declaration and shall, along with such additional declaration (accompanied by [\* \* \*] the certificate of taxation in respect of such motor vehicle), pay to the Taxation Authority the additional tax payable under that section, which he appears by such additional declaration to be liable to pay in respect of such vehicle.

(3) Such owner, or person shall, at the time of making payment of tax under sub-section (1), or of the additional tax under sub-section (2), produce before the Taxation Authority a valid certificate of insurance, in respect to the vehicle, which complies with the requirements of a [Chapter XI of the Motor Vehicles Act, 1988]

In the light of above mentioned provisions contained in Section 6 (1), MV Act, 1958 it clearly explains that every registered owner or a person who has possession of motor car or control of motor car or kept for use can fill up the form, sign and deliver alongwith declaration and pay tax accordingly. So this shows that a person having control can also fill the declaration and pay the taxes accordingly. There is no barrier in MV Act that only purchaser of the car / register owner is liable to pay taxes.

3. Cost of Vehicle as per section 2 (1A) of Maharashtra Motor Vehicle act, 1958





To explain the said legal proposition, learned Advocate relied on the definition of "Cost of vehicle" section 2 (1A) of Motor Vehicle act 1958.

(a) a vehicle manufactured in India means cost as per final cost mentioned in the purchase invoice of the vehicle issued either by the manufacturer or the dealer of the vehicle which shall include the basic manufacturing cost, Central goods and service tax under integrated Act, and VAT under Maharashtra Value Added Tax 2002.

In the context of the said definition, and in relation to the question raised by the applicant here two issues are mainly involved:-

- (i) In relation to said raised issue, firstly, it is necessary to verify as to when the property in the vehicle passes from the dealer to the customer.
- (ii) Whether MVAT will be attracted on Ex-Showroom Price - exclusive of taxes paid to RTO and Insurance or whether the same will be attracted on the price paid after payment of RTO tax and Insurance when vehicle is ready at deliverable state for the purchaser and when the sale get concluded by way of transfer of property as per the provision of law.

4. In this context, the judgment delivered by the Hon'ble Supreme court in the case of Commissioner of Commercial Taxes vs. KTC Automobiles, is relevant to discuss here as it deals with the similar issue considering the aspects and principles related to unascertained or future goods and when the property in goods is ultimately passed to the consumer over under the circumstances.

This judgment has discussed the issue of as to when and where sale takes place in respect of motor vehicle bought by a buyer from a dealer, based on various relevant provisions of law Motor vehicle Act and sections 39, 41, 47 Central Motor vehicle 1958 as well as in Article 286(2) of the Constitution of India, Section 4(2) Central Sales Tax Act, 1956 and Sections 4, 19 and 20 of the Sale of Goods Act, 1930, Indian Contract Act, etc. It reveals the "Point of delivery" considering the conditions and principles concerning the unascertained goods such as motor cars and answer the question as to when the property in a motor vehicle actually passes to the buyer which is examined in the light of provisions of Motor Vehicles Act and the Rules framed there under as well as the other relevant provisions of law.

5. The reliance was placed upon Sections 39 and 40 of the Central Motor Vehicles Act, 1958 along with Rules 46 and 47 of the Rules framed under the



said Act, in support of the contention that, in law; the obligation to register a motor vehicle is on the owner and that necessarily implies that registration under the Motor Vehicles Act is a post-sale event.

Therefore to understand the aforesaid issue in view of cited judgments and combined reading of Section 39 and 41 of the Motor Vehicles Act, 1988;

Section 39 of Motor vehicle Act - No person shall drive any motor vehicle and, no owner of motor vehicle shall cause or permit the vehicle to be drive, in any public place or in any other place unless the vehicle is registered in accordance with this chapter and certificate of registration of the vehicle has not been suspended or cancelled.

Whereas section 41 in particular leaves no manner of doubt that application for registration of a motor vehicle is required to be made by or on behalf of the owner in the prescribed form along with prescribed fee within a specified period. The registering authority after being satisfied with all statutory compliances, has a corresponding duty to issue a certificate of registration in the form prescribed by the Central Government.

6. According to submissions advanced on behalf of applicant, for deciding the issue as to when and where sale takes place in respect of motor vehicle bought by a buyer from a dealer, the relevant provisions of law are need to be discussed - in Article 286(2) of the Constitution of India, Section 4(2) Central Sales Tax Act, 1956 and Sections 4, 19 and 20 of the Sale of Goods Act, 1930. For the sake of clarity those provisions are extracted below:


"Section 4(2) Central Sales Tax Act, 1956 – A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State –

- a. in the case of specific or ascertained goods, at the time the contract of sale is made; and
- b. in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is Prior or subsequent to such appropriation.

(i)Section 4- Sale and agreement to sell - "Sale of Goods Act, 1930

- 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 between owner and another.
- 2) A contract of sale may be absolute or conditional.





3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

5) Section 4 (4) of the Sale of Goods Act contemplates that an agreement to sell fructifies and becomes a sale when the conditions for delivery are fulfilled.

6) Section 18 of the Sale of Goods Act postulates that when a contract for sale is in respect of unascertained goods - no property in the goods is transferred to the buyer unless and until the goods are ascertained.

(ii) Section 21 of the Sale of Goods Act, in case of such a contract for sale also, when the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

(iii) Section 33 of sales of Goods Act, 1930, provides the meaning of "Delivery" as - Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

(iv) Section 36 of Sales of Goods Act, deals with rules as to delivery. Sub section (1) of that section says that, where it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract express or implied between the parties. Apart from any such contract, goods sold or to be delivered at the place at which they are at the time of the sale and the goods agreed to be sold are to be delivered at the place at which they are at the time of agreement to sell or if not then in existence, at the place at which they are manufactured or produced.

Explanation:-


A contract of sale becomes a sale under the Sale of goods Act, only when the property in the goods is transferred to the buyer under the terms of the contract itself.



7. It is cleared from the above definitions that until the vehicle is registered in accordance with the provisions in Chapter IV of the Motor Vehicles Act, 1988 read with the Central Motor Vehicles Rules, it continues to have the character of an unascertained good. In other words, till the engine number, chassis number is ascertained by the registering authority on physical verification of the vehicle and entered into the prescribed form for showing registration, the vehicle cannot be identified as one belonging to the purchaser. Only upon valid registration, as, the vehicle is appropriated to the purchaser.

8. It must be carefully seen as to when the properties, particularly possession of a motor vehicle passes or can pass legally to the purchaser, authorizing him to apply for registration. Only after obtaining valid registration under the Motor Vehicles Act, the purchaser gets entitled to use the vehicle in public places. Under the scheme of Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989 the dealer cannot permit the Purchaser to use the motor vehicle and thus enjoy its possession unless and until a temporary or permanent registration is obtained by him. Only thereafter, the vehicle can safely be said to be no more under possession of the dealer. Clearly, mere mentioning of engine number and chassis number of a motor vehicle in the invoice of sale does not entitle the intending purchaser to appropriate all the goods, i.e. the motor vehicle till it's possession is or can be lawfully handed over to him by the dealer without violating the statutory provisions governing motor vehicles. Such transfer of possession can take place only when the vehicle reaches the place where the registering authority will be obliged to inspect for the purpose of finding out whether it is a roadworthy and register-able motor vehicle and whether its identification marks tally with those given in the sale invoice and the application for registration. The possession can lawfully be handed over to the purchaser at this juncture because law requires the purchaser as an "owner" to make an application for registration but at the same time the law also prohibits use of the motor vehicle by the owner until it is duly registered by the Registering Authority. Hence, in order to satisfy the requirement of law noticed above, the dealer can deliver possession and owner can take possession and present the vehicle for registration only when it reaches the office of Registering Authority. With the handing over of the possession of a specific motor vehicle just prior to registration, the dealer completes the agreement of sale rendering it a perfected sale. The purchaser as an "owner" under the Motor Vehicles Act is thereafter obliged to obtain certificate of registration which alone entitles him to enjoy the possession of the vehicle in practical terms by enjoying the right to use the vehicle at public places, after meeting the other statutory obligations of





Insurance etc. Hence lawful possession with the right of use is permissible to be given to the intended owner only after reaching the vehicle to the office of Registering Authority. Thus seen, in practical terms though sale precedes the event of registration, in normal circumstances and as the law stands, it is co-terminus with registration of a new motor vehicle.

But as discussed earlier, on account of statutory provisions governing motor vehicles, the intending owner or buyer of a motor vehicle cannot ascertain the particulars of the vehicle for appropriating it to the contract of sale till its possession is handed over to him after observing the requirement of Motor Vehicles Act and Rules. Such possession can be given only at the registering office immediately preceding the registration. Thereafter only the goods can stand ascertained when the owner can actually verify the engine number and chassis number of the Vehicle of which he gets possession. Then he can fill up those particulars claiming them to be true to his knowledge and seek registration of the vehicle in his name in accordance with law. Because of such legal position, prior to getting possession of a motor vehicle, the intending purchaser/owner does not have claim over any ascertained motor vehicle. Apropos the above, there can be no difficulty in holding that a motor vehicle remains in the category of unascertained or future goods till its appropriation to the contract of sale by the seller is occasioned by handing over its possession at or near the office of registration authority in a deliverable and registrable state. Only after getting certificate of registration the owner becomes entitled to enjoy the benefits of possession and can obtain required certificate of insurance in his name and meet other requirements of law to use the motor vehicle at any public place. In the light of legal formulations discussed and noticed above, we find that in law, the motor vehicles in question could come into the category of ascertained goods and could get appropriated to the contract of sale at the registration office. The aforesaid view, in the context of motor vehicles gets support from sub-section (4) of Section 4 of the Sale of Goods Act. It contemplates that an agreement to sell fructifies and becomes a sale when the conditions are fulfilled subject to which the properties of the goods is to be transferred. In case of motor vehicles the possession can be handed over, as noticed earlier, only at or near the office of registering authority, normally at the time of registration. In case there is a major accident when the dealer is taking the motor vehicle to the registration office and vehicle can no longer be ascertained or declared fit for registration, clearly the conditions for transfer of property in the goods do not get satisfied or fulfilled. Section 18 of the Sale of Goods Act postulates that when a contract for sale is in respect of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained. Even when the contract for sale is in respect of specific or ascertained



goods, the property in such goods is transferred to the buyer only at such time as the parties intend. The intention of the parties in this regard is to be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case. Even if the motor vehicles were to be treated as specific and ascertained goods at the time when the sale invoice with all the specific particulars may be issued, according to Section 21 of the Sale of Goods Act, in case of such a contract for sale also, when the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof. In the light of circumstances governing motor vehicles which may safely be gathered even from the Motor Vehicles Act and the Rules, it is obvious that the seller or the manufacturer/dealer is bound to transport the motor vehicle to the office of registering authority and only when it reaches there safe and sound, in accordance with the statutory provisions governing motor vehicles it can be said to be in deliverable state and only then the property in such a motor vehicle is fit and ready for his lawful possession and registration.

## VII. OBSERVATIONS AND DECISION:-

### 1. Prevalent Motor Vehicle Purchase Process & Procedure:

In the light of the said discussion, it is to mention that, it is a common practice in the market & Motor vehicle Industry that the Car Manufacturers or Importers appoint vehicle dealers, who keep these vehicles in their showrooms and Godown. In case of manufactured vehicles sample vehicles are kept in showroom and on receiving bookings from customers same are booked with the manufacturers / importers as the case may be.

Customers on their part, visit the Show room of Vehicle dealer and see, verify, select the particular vehicle depending on their choice, requirements, make, color and variant. After discussion about manufacturer's promotions, offers of the dealer, discounts and free accessories/ requisite fittings to be made in selected vehicle; the customer finalizes his selection. Depending upon his current financial position and business requirements the customer opts for outright payment or Debt finance option with either a financial institution having tie up with the dealer or arranges his own loan through his choice of Bank. In any case he makes the payment of initial booking amount, which is generally nominal. After payment of booking amount the Vehicle dealer and customer decide and finalize the Date of the Delivery of the Vehicle depending on the Customer's choice of special day, such as Birthday, marriage anniversary or festive occasion. Customer makes or arranges the final payments to the Dealer, and then the





Dealer proceeds to undertake activities like Registration of the vehicle with the RTO, Insuring the vehicle with Insurance Agency, etc.

For a vehicle to be pliable on road, it needs to be registered with the RTO as per the Motor Vehicle Act and similarly it is mandatory to be insured at least in respect of Third Party insurance as per the Provisions of the Chapter X & Chapter XI, Motor Vehicles Act, 1988.

2. Thus at the time of issuing of Proforma invoice details of all costs and taxes whether it is shown in the cost of the invoice or collected separately are discussed with the consumer and final cost of vehicle on road is communicated to the customer. Since these charges / taxes represent expenditure are incurred by the dealer in making the goods available to the purchaser at deliverable state, the seller constitutes an addition to the cost of the goods and would clearly be the component of price to the purchaser. Though the amount of RTO tax paid here is a statutory requirement, it forms a part for consideration to the consumer.

3. The copy of Invoice of M/s Star Motors alongwith Registration Tax – Form TC (Rule 11, Proof of Insurance policy Payment and ledger copy of one of the customer is submitted by the applicant for reference for the financial period October 2016, which indicates the amount received against booking, handling charges, Depot charges, RTO tax, Insurance etc. from the customer before /on the date of delivery.

4. In the Instant case also, the Close scrutiny of documents submitted on record and relied upon by the applicant, The Vehicle purchase by one of the customer of M/s Star Motors have following details which shows that the receipts of RTO tax as well as Insurance premium are separately charged and collected from the customer towards the services rendered for the delivery of vehicles to the customer forming part of sale transaction as per the books of accounts of the applicant.

Details of Vehicle purchased by a customer, Nagpur		
1	Particulars	Details
2	Insurance Policy payment:	Cover Note no. 4284477 of Royal Sundaram General Insurance Co. Ltd. Shows payment of Rs. 45,147/- for Insured declared value of Rs. 971999/- in the name of customer insured for the period 24.10.2016 to 23.10.2017.
3	Registration Tax – Form TC (Rule 11)	Sr. No. 005673/AU 28384 shows Current paid as Rs. 106,414/- And the computer printed line shows as "GRN No. MH 005455926201617E Dt. 24th Oct 2016 of Rs. 108542/- of Govt. Receipt"



4	Invoice of Star Motors	Invoice no. SM/VSR/16-17/127 Dt. 24.10.16 for Tavera NE03LSPS10A – BS III in the name of customer hypothecated to Axis Bank Ltd. The Net amount is Rs. 852330 + VAT 13.5% at Rs. 115064 = 967394/-
5	Ledger Copy of customer in the books of Star Motors	The Ledger of said customer shows entries on credit side i.e. receipts from said customer as 29.9.16 = Rs. 10000/- then on 20.10.2016 = Rs. 321689/- and finally on 21.10.16 = Rs. 815000/- Total receipts as Rs. 11,46,689/- The Debit side shows all entries on 24.10.2016 as follows Rs. 45147/- no particulars thereof , Rs. 967394/- for Vehicle Sale, Rs. 18000/- for Depo colour handling etc. , Rs. 7506/- for corp. warranties and Rs. 108542/- to IDBI bank.


5. The above details of the Registration Tax payments, Insurance premium payments and Motor vehicle Invoice and the payments received from customer, shows that there was an implied condition in the transaction that customer will make all payments and only then the dealer will make Registration tax payments and Insurance premium payments. The final invoice and delivery is made after the vehicle becomes pliable and roadworthy after complying with all the statutory compliances as per Motor Vehicle Act.

6. Sale price: Basically Motor Vehicles are fall under the category of ascertained goods but in the instant case of applicant unless the Motor Vehicles due registration tax and applicable insurance is not paid and is not appropriately insured as per the norms of applicable statutory acts ,it does not become pliable on road. Hence till then the vehicles remain unascertained and future goods.

In the instant case the applicant collects all the taxes and insurance premium from the customers ,makes the necessary payment, then issues the final invoice and the delivery of vehicles is effected. Unless the registration taxes are paid and vehicle is properly insured it is not a legal vehicle which is pliable on road. Hence the collection and payment of the taxes and insurance premium amounts to the “anything and everything to be done before the delivery of goods” and will form part of sale price and will be taxable.

7. It was argued by the Advocate as to “How the sales tax would be levied on the RTO tax as RTO tax itself levied after levying VAT on sales of Motor vehicles. It was discussed that these taxes are imposed by two different legislative authorities. The purpose of levy of these taxes on vehicle by two departments is altogether different. RTO department levies one time tax for registration of vehicles and Sales Tax Department levies the VAT on “Sale of





Goods / Transfer of right to use “. Thus the joint operations of different statutes may therefore result in liability of different taxes. So here there is no scope for validating such arguments.

8. Double Taxation: Applicant during the course of argument has objected that

levy of tax is hit by double taxation. The issue of double taxation is irrelevant in the indirect tax regime i.e. various statutory authorities levies, statutory taxes, duties, cess, etc. in the event of particular eventuality as envisaged in the corresponding statute e.g.

When a manufacturer manufactures goods and clears from his factory or Godown the excise duty is levied under the Central Excise Act /when goods are imported customs duty is levied.

When these goods cross state boundaries entry taxes are levied wherever applicable. Similarly when these goods enter into geographical limits of local bodies, octroi or LBT are levied wherever applicable. And finally at the time of sale VAT is levied by State authorities.

Thus in the normal course manufactured goods or imported goods are subjected to excise duty or custom duty as the case maybe and in addition to that it is subjected to entry tax, octroi duty etc. and finally Sales Tax or VAT .

Hence, the arguments of the applicant amounting to double taxation has no substance and does not stand the test of prevalent and statutory historical indirect taxation practices.

9. In this respect, there are events confirmed by rule of law, wherein double taxation was held to be valid as discussed herein: -

The Supreme Court's Judgement in case of Avinder Singh Etc vs State of Punjab clarifies the law, wherein it has been held that merely because a transaction is amenable to service tax, there is no ban to tax the same transaction for sales tax. In absence of any express legislation, the Supreme Court of India has expressly held that there is no constitutional provision that prohibits the imposition of double taxation. It would be useful to reproduce the said observation herein -

"A feeble plea that the tax is bad because of the vice of double taxation and is unreasonable because there are heavy prior levies was also voiced. There is nothing in article 265 of the Constitution from which one can spin out the constitutional vice called double taxation. (Bad economics may be good law and vice versa).

Dealing with a somewhat similar argument, the Bombay High Court also explained in the case of Western India theatres Ltd AIR 1954, If on the same subject-matter the Legislature chooses to levy tax twice over

there is no inherent invalidity in the fiscal adventure save where other prohibitions exist."



10. It is implied that the Vehicle Dealer will be doing everything required to make the Motor Vehicle road worthy and pliable on road as per the existing provisions of the Motor Vehicle acts, i.e. Registration, statutory insurance of the Vehicle and the third party insurance before the delivery of Motor Vehicle to the customer. Hence the Sale Price will be inclusive of the all these expenses and charges, taxes, insurance etc incurred by the Dealer.

11. The above Transaction and its documentation clearly shows and prove that the Dealer does all things necessary for making the vehicle Road worthy and ready to be plied on road as per the existing statutory provisions before the final delivery of the vehicle to the customer. Thus whatever dealer has done before the delivery is inclusive in Sale Price, though the dealer has issued invoice for only Vehicle price and taxed it accordingly. All the expenses incurred by the dealer in respect of the vehicle which is reimbursed by the Customer to him will form part of sale price as per the provisions of MVAT Act, 2002 and the entire amount will be its Sale price and will be subjected to levy of MVAT at the hands of Dealer only.

12. Under the aforesaid circumstances, in view of observations held hereinabove the issue framed as under and thereby confirming the ruling of the ARA. Whereby it is held that the payments received and paid on behalf of the customer towards "RTO taxes and Insurance premium" will form the price of vehicle before delivery and also forms a part of Sales price as per definition 2(25) of MVAT Act 2002.


13. Applicant is entitled to pay taxes under MVAT Act over the payments made by the Customer to the Dealer/Applicant on or before the date of actual delivery wherein purchaser is entitled to take legal possession of vehicle on road. That the payments made by the customer to the Applicant dealer prior to the date of actual delivery will therefore attract tax liability under the MVAT Act and therefore are recoverable from the Applicant.





14. In these circumstances we do exercise the powers to protect tax liability. The all 27 applications bearing no 4 to 27 and 31 to 34 Of 2021 are based on the similar issue and argued together by the applicant have been disposed of with this common order:-

Sr No.	The questions posed by the applicant	Held as ---
1	1. <u>Whether the One time "RTO Tax (Road Tax),"required to be paid to Maharashtra Government for use of Motor Vehicle collect and paid by the dealer for the purchaser of Motor Vehicle and "insurance premium" after registration of Motor Vehicle on the name of purchaser in the office of registration (Regional Transport office) form a part of sale price considering the provisions section 2 (24) and 2(25) and liable to tax under the provision of MVAT Act, 2002.</u>	In affirmative , A) The RTO Tax collected and paid by the dealer on behalf of the customer of a motor vehicle, forms a part of "sales price" as per MVAT Act, 2002. And B) The INSURANCE PREMIUM collected and paid by the dealer on behalf of the customer of a motor vehicle, forms a part of "sales price" as per MVAT Act, 2002.

  
S. S. LOHAR  
(MEMBER)

  
P. G. JOSHI  
(MEMBER)

  
G. V. BILOLIKAR  
(CHAIRMAN)

Note: If the applicant is aggrieved by this order then Appeal may be filed before the MSTT, Mumbai within the prescribed time (Thirty days) as provided in the relevant Section of the Act.

No. ARA. (Mumbai) 4 to 27 & 31 to 34 /2021-22/B- -Dated: 18/04/2022

Copy to:-

1. Commissioner of State GST. M. S. Mumbai.
2. To nodal officers of 28 applicants through the respective administrative joint commissioners.
3. To 28 applicants as mentioned on Page no-1



