

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR  
BENCH, JAIPUR

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1. S.B. SALES TAX REVISION PETITION NO. 123 of 2014  
Commercial Taxes Officer, Commercial Taxes  
Department, Gangapurcity, Rajasthan.  
Versus  
M/s. Gupta Motors, Allanoor Link Road,  
Sawaimandhopur.
2. S.B. SALES TAX REVISION PETITION NO. 12 of 2010  
Commercial Taxes Officer,  
Special Circle, Kota (Raj.)  
Versus  
M/s. Kota Motor Company,  
Jhalawar Road, Kota (Raj.)
3. S.B. SALES TAX REVISION PETITION NO. 44 of 2010  
Commercial Taxes Officer,  
Special Circle, Kota (Raj.)  
Versus  
M/s. Moondra Motors Pvt. Ltd.,  
Jhalawar Road, Kota (Raj.)
4. S.B. SALES TAX REVISION PETITION NO. 481 of 2011  
Assistant Commissioner, Commercial  
Taxes Department, Special Circle,  
Rajasthan, Jaipur  
Versus  
M/s. Kamal Auto Industries,  
M.I. Road, Jaipur.
5. S.B. SALES TAX REVISION PETITION NO. 491 of 2011  
Assistant Commissioner, Commercial  
Taxes Department, Special Circle,  
Rajasthan, Jaipur  
Versus  
M/s. Nidhi Kamal and Company Pvt. Ltd.,  
M.I. Road, Jaipur.
6. S.B. SALES TAX REVISION PETITION NO. 565 of 2011  
Assistant Commissioner, Commercial Taxes  
Department, Anti-Evasion, Rajasthan,  
Circle-III, Jaipur  
Versus  
M/s. K.S. Motors Ltd.  
M.I. Road, Jaipur.
7. S.B. SALES TAX REVISION PETITION NO. 566 of 2011  
Assistant Commissioner, Commercial Taxes  
Department, Anti-Evasion, Rajasthan,  
Circle-III, Jaipur  
Versus  
M/s. K.S. Motors Ltd.  
M.I. Road, Jaipur.
8. S.B. SALES TAX REVISION PETITION NO. 567 of 2011  
Assistant Commissioner, Commercial Taxes  
Department, Anti-Evasion, Rajasthan,  
Circle-III, Jaipur  
Versus  
M/s. K.S. Motors Ltd.  
M.I. Road, Jaipur.
9. S.B. SALES TAX REVISION PETITION NO. 568 of 2011  
Assistant Commissioner, Commercial Taxes  
Department, Anti-Evasion, Rajasthan,  
Circle-III, Jaipur  
Versus  
M/s. K.S. Motors Ltd.  
M.I. Road, Jaipur.
10. S.B. SALES TAX REVISION PETITION NO. 569 of 2011  
Assistant Commissioner, Commercial Taxes  
Department, Anti-Evasion, Rajasthan,  
Circle-III, Jaipur  
Versus  
M/s. K.S. Motors Ltd.  
M.I. Road, Jaipur.

11. S.B. SALES TAX REVISION PETITION NO. 570 of 2011  
 Assistant Commissioner, Commercial Taxes  
 Department, Anti-Evasion, Rajasthan,  
 Circle-III, Jaipur  
 Versus  
 M/s. K.S. Motors Ltd.  
 M.I. Road, Jaipur.
12. S.B. SALES TAX REVISION PETITION NO. 3 of 2012  
 Assistant Commissioner, Commercial Taxes  
 Department, Anti-Evasion, Rajasthan,  
 Circle-III, Jaipur  
 Versus  
 M/s. Gehlot Enterprises Pvt. Ltd.  
 M.I. Road, Jaipur.
13. S.B. SALES TAX REVISION PETITION NO. 4 of 2012  
 Assistant Commissioner, Commercial Taxes  
 Department, Anti-Evasion, Rajasthan,  
 Circle-III, Jaipur  
 Versus  
 M/s. Gehlot Enterprises Pvt. Ltd.  
 M.I. Road, Jaipur.
14. S.B. SALES TAX REVISION PETITION NO. 5 of 2012  
 Assistant Commissioner, Commercial Taxes  
 Department, Anti-Evasion, Rajasthan,  
 Circle-III, Jaipur  
 Versus  
 M/s. Gehlot Enterprises Pvt. Ltd.  
 M.I. Road, Jaipur.
15. S.B. SALES TAX REVISION PETITION NO. 6 of 2012  
 Assistant Commissioner, Commercial Taxes  
 Department, Anti-Evasion, Rajasthan,  
 Circle-III, Jaipur  
 Versus  
 M/s. Gehlot Enterprises Pvt. Ltd.  
 M.I. Road, Jaipur.
16. S.B. SALES TAX REVISION PETITION NO. 37 of 2012  
 Assistant Commissioner, Commercial Taxes  
 Department, Anti-Evasion, Rajasthan,  
 Circle-III, Jaipur  
 Versus  
 M/s. Sanghi Cars India Pvt. Ltd.  
 Sanghi Garden, Tonk Road, Jaipur.
17. S.B. SALES TAX REVISION PETITION NO. 41 of 2012  
 Assistant Commissioner, Commercial Taxes  
 Department, Anti-Evasion, Rajasthan,  
 Circle-III, Jaipur  
 Versus  
 M/s. Sanghi Cars India Pvt. Ltd.  
 Sanghi Garden, Tonk Road, Jaipur.
18. S.B. SALES TAX REVISION PETITION NO. 216 of 2012  
 Assistant Commissioner, Commercial Taxes  
 Department, Anti-Evasion, Rajasthan,  
 Circle-III, Jaipur  
 Versus  
 M/s. K.S. Cars Ltd.  
 New Sanganer Road, Jaipur.
19. S.B. SALES TAX REVISION PETITION NO. 231 of 2012  
 Assistant Commissioner, Commercial Taxes  
 Department, Anti-Evasion, Zone-III, Jaipur  
 Versus  
 M/s. Gehlot Enterprises Pvt. Ltd.  
 National Motors Building,  
 M.I. Road, Jaipur.
20. S.B. SALES TAX REVISION PETITION NO. 232 of 2012  
 Commercial Taxes Officer,  
 Circle Gangapurcity, Sawai Madhopur  
 Versus  
 M/s. Gahlot Tractors Pvt. Ltd.  
 Gangapurcity, District Sawai Madhopur
21. S.B. SALES TAX REVISION PETITION NO. 25 of 2013  
 Assistant Commissioner, Commercial Taxes,  
 Special Circle, Rajasthan, Jaipur.

## Versus

M/s. Rajesh Motors (Pvt. Ltd.), 12, Jadaun house,  
Opp. Hotel Maharani Palace, Station Road, Jaipur.

22. S.B. SALES TAX REVISION PETITION NO. 26 of 2013  
Assistant Commissioner, Commercial Taxes,  
Special Circle, Rajasthan, Jaipur.

Versus

M/s. Rajesh Motors (Pvt. Ltd.), 12, Jadaun house,  
Opp. Hotel Maharani Palace, Station Road, Jaipur.

23. S.B. SALES TAX REVISION PETITION NO. 141 of 2013  
Assistant Commissioner, Commercial Taxes  
Department, Anti-Evasion, Rajasthan,  
Circle-III Jaipur.

Versus

M/s. K.S. Cars Ltd., New Sanganer Road, Jaipur.

24. S.B. SALES TAX REVISION PETITION NO. 144 of 2013  
Assistant Commissioner, Commercial Taxes  
Department, Anti-Evasion, Rajasthan,  
Circle-III Jaipur.

Versus

M/s. K.S. Cars Ltd., New Sanganer Road, Jaipur

Judgment Reserved on : 16<sup>th</sup> Sept. 2016  
Judgment pronounced on: 30<sup>th</sup> Sept. 2016

HON'BLE MR. JAINENDRA KUMAR RANKA, J.

Mr. R.B. Mathur for the Petitioner  
Mr. V.K Gogra for the Respondent  
Mr. Alkesh Sharma for the Respondent

## ORDER

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1. All these petitions are directed against the orders of the Rajasthan Tax Board passed from time to time. Since the same and identical controversy raised by the revenue in all the instant petitions is the same relating to the replacement of the parts to the customers of spare parts as to whether it is sale or not. Being identical all the petitions are decided by this common order.

2. All the respondent/assessees are dealers of various automobiles companies and their claim was that during the warranty period they have to replace defective parts and as per the agreement with the manufacturer of the vehicles, the respondent/assessee being a dealer replaces the same and neither any amount is charged by the respondent/assessees from the consumer nor chargeable. The manufacturer companies of the

vehicles gives/issues credit notes to the respondent dealers. It was contended that the respondent has a contract with the manufacturer of the vehicles where the respondent, effect sale of the vehicle manufactured, spare parts and provide service support and is under contractual obligation to provide support during warranty period. Though the respondent/dealer issues its own invoices for sale of car, collecting local sales tax but the price cannot exceed maximum price prescribed by the manufacturer. However, under the warranty, if some parts have gone defective, such parts have to be replaced, free of cost to the customers of the respondent and the respondent is duty bound to replace the parts free of cost and later on, raises credit note with the manufacturer. It was claimed that such replacement of defective parts during the warranty is neither liable to sales tax, as there is no sale nor liable for value Added Tax (VAT) / Sales Tax.

3. The Assessing Officer, taking into consideration the judgment rendered by the Apex Court in the case of Mohd. Ekram Khan & Sons (2004), AIR 2006 STC 183 held that Sales Tax is chargeable, is required to be levied and accordingly held that even on such replacement of defective parts the same is liable to be assessed and is liable to Sales Tax.

4. However, on an appeal the Deputy Commissioner (Appeals) taking into consideration the judgment rendered by this Court in the case of M/s Marudhara Motors (2009)-23 Tax Up-date-249 (Raj.) where the judgment of Apex Court in the case of Mohd. Ekram Khan & Sons (supra) was distinguished, allowed the appeal and held that replacement cannot

be treated as sale. On a further appeal by the revenue, before Rajasthan Tax Board also resulted into dismissal of the appeal.

5. Ld. Counsel for the Revenue contended that the Judgment in the case of Mohd. Ekram Khan & Sons (supra) lays down the correct law and further contended that the judgment of M/s Marudhara Motors (supra) is itself distinguishable to the judgment of Mohd. Ekram's Khan & Sons (supra). It was further contended that the Kerala High Court in the case of MGF Motors Ltd. vs. State of Kerala: (2012) 55 VST 81 (Ker) and Gujarat High Court in the case of Kataria Automobiles (P.) Ltd. vs. State of Gujarat : 2015 (4) TMI 777 have squarely followed the judgment of Mohd. Ekram Khan & Sons (supra). He also pointed that even the High Court of Gujarat in Kataria Automobiles (P.) Ltd. (supra) has distinguished the Judgment of this court in M/s Marudhara Motors (supra). In the alternative he contended that the judgment of this Court in the case of M/s Marudhara Motors (supra) has been challenged by the Revenue before the Apex Court and SLP has been admitted by the Apex Court.

6. Counsel for the revenue also relied upon the judgment of Apex Court in the Case of Official Liquidator vs. Dayanand and Ors. (2008) 10 SCC, 1 to support, that the judgment of the Apex Court is binding on all courts and cannot be discarded by other forums.

7. Per contra learned counsel for the assessee's contended that the facts of the case of M/s Marudhara Motors (supra) are identical and as in the case of M/s Marudhara Motors, the present assessee's are all dealers of respected

manufacturer companies of the vehicles. They contended that the nature of business remains the same as that of M/s Marudhara Motors (supra) and contended that the judgment of Mohd. Ekram Khan & Sons (supra) has rightly been distinguished by this Court by a detailed order and is required to be followed. Learned counsel for the Assessee thus contended that the petitions deserves to be dismissed.

8. I have considered the arguments advanced by the counsel of the parties and admittedly the judgment of the Apex Court in the case of Mohd. Ekram Khan & Sons has been distinguished by this Court in the case of M/s. Marudhara Motors (supra) and it is also an admitted fact that the matter of M/s Marudhara Motors (supra) has been challenged in Apex Court, which is still pending.

9. Both the counsels for the Revenue as well as the assessee after arguing for some time contended during the course of hearing, that all these petitions be disposed off by this Court, to be governed in the light of the judgment pending before Apex Court in the case of M/s Marudhara Motors (supra), to avoid multiplication of litigation which otherwise can be saved by disposing off all these petitions and in observing that all the cases would be governed by the fate of M/s Marudhara Motors (supra) pending decision before the Apex Court.

10. It is an admitted fact that Judgment of this court in M/s Marudhara Motors (supra) has distinguished the judgment of Apex Court in the case of Mohd. Ekram Khan & Sons (supra) with reasons to distinguish and the fact is that the judgment of M/s Marudhara Motors (supra) passed by this Court is in

challenge before the Apex Court and taking into consideration the prayer made by the counsel for the parties to avoid multiplication of the litigation it would be appropriate to dispose off all the petitions as raised by the Revenue to avoid multiplicity of litigation to be governed by the judgment of M/s Marudhara Motors (supra) by the Apex Court. If the civil appeal in M/s Marudhara Motors (supra) is allowed by the Apex Court in favour of the revenue then these revision petitions would be allowed automatically. However, if the Judgment of this court in M/s Marudhara Motors (supra) is upheld by the Apex Court, then all these petitions would stand automatically dismissed.

11. The directions aforesaid is being given to avoid multiplicity of litigation and prayer made by the counsels for the parties.

12. In view of the above it would be appropriate to dispose off the present petitions to say and to hold that the outcome of these petitions would be governed finally by the outcome of the SLP pending before the Apex Court on the same challenge in the case of M/s Marudhara Motors (supra).

13. with the aforesaid directions all the revision petitions stands disposed off.

( JAINENDRA KUMAR RANKA ),J.

Monika Chugh/118-141