

**GIB/TN/M/S.T.V.SUNDRAM IYENGAR/30.03.2021/HC-196**

**High Court Category :** LEVY OF SERVICE TAX

**State :** Tamil Nadu

**Order No.:** GIB/TN/M/S.T.V.SUNDRAM IYENGAR/30.03.2021/HC-196

**Name of Entry :**

M/S.T.V.SUNDRAM IYENGAR & SONS PVT. LTD

**Date :** 30-03-2021

**Breif Issue :**

**FACTS AND ISSUE OF THE CASE:**

The petitioner is a dealer in motor vehicle parts and motor vehicle chassis. The petitioner has entered into dealership agreements with various manufacturing entities. The case of the writ petitioner is that the relationship between the petitioner and the manufacturer is on principal to principal basis. In other words, the petitioner purchases chassis from the manufacturers and resells the same in its own name and on its own account.

Respondent issued show cause notice dated 28.08.2018 proposing to levy service tax with interest and penalty on the trade discount received from the manufacturers by way of credit notes – Impugned order dated 17.12.2020 came to be passed confirming the demand of Service Tax together with interest and penalty - Questioning the same, this writ petition came to be filed.

**Decision of Advance Ruling Authority :**

**DECISION:**

Applying the ratio in SUPER POLY FABRICKS LTD., V. COMMISSIONER OF C. EX., PUNJAB to the facts on hand, even though the document may be styled as a dealership agreement and the petitioner may have to be conform to certain business standards, if read as a whole, one can come to the safe conclusion that the relationship between the parties was one of seller and buyer on principal to principal basis.

The adjudicating authority gave undue emphasis to certain individual clauses occurring in the agreement and come to the conclusion that the finding of the authority that the relationship between the parties is not on principal to principal basis is clearly unreasonable.

Various decisions were brought to the notice of the adjudicating authority. The adjudicating authority has chosen to disregard them on the ground that the revenue has filed appeal

before the Supreme Court questioning some of the decisions. It is admitted that no interim order has been granted by the Supreme Court.

The adjudicating authority ought to have followed the Tribunal decisions which clearly support the stand of the petitioner. The aforesaid Tribunal decisions were binding on the authority by deciding the issue involved in the present proceedings in defiance of the binding decisions, the impugned order has been rendered invalid and without jurisdiction. As held in *East India Commercial Co.Ltd., Calcutta vs. Collector of Customs, Calcutta*, if the proceedings are without jurisdiction, the question of applying the rule with regard to exhaustion of alternative remedy will not arise.

The order impugned is quashed. Writ petition is allowed.