

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 24th DAY OF SEPTEMBER 2018

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

**WRIT PETITION Nos.60480/2016 &
62125-135/2016 (T-RES)**

BETWEEN:

M/S. KALYANI MOTORS PVT LTD
NO.24/1, 25/1, NEAR NAYANDAHALLI
100 FEET RING ROAD
MYSORE ROAD, BANGALORE-560 039.
(REPRESENTED BY MF. A. MOHAN RAJU
MANAGING DIRECTOR, AGED ABOUT 48 YEARS
S/O S. ANANTHA RAJU).

... PETITIONER

(By Mr. RAGHURAMAN V, ADV.,)

AND:

1. DEPUTY COMMISSIONER OF
COMMERCIAL TAXES (AUDIT)-2.4
DVO-2, VAT DIVISION II, VTK-2, 'B' BLOCK
30FT ROAD, RAJENDRA NAGAR
KORAMANGALA, BENGALURU-560 047.
2. DEPUTY COMMISSIONER OF
COMMERCIAL TAXES
(ENFORCEMENT)-3, SOUTH ZONE
VTK-2, 'B' BLOCK, 80 FT ROAD
RAJENDRA NAGAR
KORAMANGALA, BENGALURU-560 047.

... RESPONDENTS

(By Mr. T.K. VEDAMURTHY, AGA)

THESE W.Ps. ARE FILED UNDER ARTICLES 226 & 227 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH THE

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REASSESSMENT ORDER DATED 28.10.2016 ENCLOSED IN ANNEX-A FOR THE PERIOD APRIL 2011 TO MARCH 2012 PASSED BY R-1 AS BEING WITHOUT JURISDICTION, PERVERSE, ARBITRARY AND OPPRESSIVE BEING VIOLATIVE OF ARTICLE 14, 19 AND 265 OF THE AGAINST THE STATUTORY SCHEME OF THE KARNATAKA VAT ACT 2003 & ETC.,

THESE W.Ps. COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Mr. Raghuraman V, Adv. for Petitioner

Mr. T.K. Vedamurthy, AGA for Respondents

1. The petitioner-assessee M/s.Kalyani Motors Pvt. Ltd., has filed this writ petition against the reassessment order **Annexure-A** dated **28.10.2016** passed by the 1st Respondent-Deputy Commissioner of Commercial Taxes (Audit) - 2.4, Koramangala, Bengaluru of the Respondent-Department of Commercial Taxes, raising a Demand of **Rs.8,04,88,670/-** against the assessee for the period **01.04.2011** to **31.08.2015** imposing difference of purchase tax **u/s.3(2)** of the **KVAT Act, 2003**.

2. The Assessee deals with the sale and purchase of used cars.

3. The learned counsel for the petitioner Mr.V.Raghuraman submits that though under the specific **Notification No. FD 82 CSL 10(VI)**, Bangalore, dated **31.03.2010**, the assessee was entitled to pay only **5%** of the tax on the difference of value between the taxable turnover in respect of such sales of used motor vehicles and the amount paid towards the purchase of such used motor vehicles, subject to the conditions stipulated in such Notification but ignoring the said Notification, the Respondent-authority has demanded the purchase tax from the assessee and has denied the claim of input tax credit also, raising the aforesaid Demand on the ground that no returns were filed in support of the claim of ITC made by him. Though a reference to the said Notification has been noted in the Table of Notifications by the said authority given in the impugned order, the said authority has not discussed

the same as to why such Notification will not cover the case of the assessee.

4. The said Notification is quoted below for ready reference:-

“ NOTIFICATION

No.FD 82 CSL 10(VI), Bangalore dated 31-3-2010

*In exercise of powers conferred by sub-section (3) of Section 4 of the Karnataka Value Added Tax Act, 2003 (Karnataka Act 32 of 2004) read with Section 21 of the Karnataka General Clauses Act, 1899 (Karnataka Act III of 1899), and in supersession of Notification No.FD 182 CSL 2008(V), dated 31st July, 2008 (See Sl.No.109), published in Karnataka Gazette, Extraordinary, dated 31st July, 2008, the Government of Karnataka **hereby reduces with effect the First day of April, 2010, the tax payable by a dealer engaged in the purchase and sale of used motor vehicles, on the sale of all kinds of used motor vehicles including used motor cycles** under sub-section (1) of Section 4 of the said Act to **five per cent of the difference** between the **taxable turnover in respect of such sale and the amount paid***

towards purchase of such motor vehicles subject to the condition that :-

- (1) **no deduction of input tax** is claimed by the dealer in respect of purchase of any goods used in the motor vehicles sold ; and
- (2) such **motor vehicles have been registered** in the State prior to their sale under the provisions of the Motor Vehicles Act, 1988 (Central Act 59 of 1988).

Note: For the words “five per cent”, the words “five and one half per cent” shall be substituted by Notification No.FD 143 CSL 12(III), dated 31-07-2012 (Sl.No.164)”.

5. The learned AGA for the Respondent-Revenue Mr.T.K.Vedamurthy was unable to make out any ground for non applicability of the said Notification to the facts and circumstances of the case. The satisfaction of condition of the Notification by the Assessee is also not disputed by the Revenue.

6. Undisputedly, the assessee during the relevant period has dealt with the business of sales and purchase of used cars only and therefore, the

applicability of the said Notification on all fours on the case of the present assessee for the period in question is not in dispute and denied in the present case.

7. After hearing the learned counsels, this Court is surprised and is pained by the manner in which the authority has passed the impugned reassessment order in the second round of assessment for the period **01.04.2011 to March 2012** just ignoring the applicable Notification and throwing it to winds. The said order is therefore nothing less than suffering from malice-in-facts as well as malice-in-law. Therefore, the said responsible officer deserves to pay the exemplary costs for passing such whimsical order and the writ petition deserves to be allowed.

8. Accordingly, the writ petition is allowed and the impugned order **Annexure-A** dated **28.10.2016** passed by the 1st Respondent is hereby quashed and set aside.

The 1st Respondent-Assessing Authority

Ms.K.C.Sujatha, Deputy Commissioner of Commercial Taxes (Audit) – 2.4, Bengaluru, is directed to deposit the costs quantified at **Rs.50,000/-** from her personal resources with the Registrar General of this Court within a period of one month from today, failing which, the same may be deducted from her salary by the Commissioner, Commercial Tax Department and the same to be paid to the Registrar General of this Court. The amount upon deposit shall be remitted to the **‘Prime Minister’s Relief Fund’**, Delhi, for meeting the costs of relief to sufferers of natural disasters.

**Sd/-
JUDGE**

Srl.