IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.07.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.Nos.35129 to 35131 of 2013
and
M.P.No.1 of 2013 (in all the W.Ps)

M/s.Kun Auto Company Pvt.Ltd.,
C-48, 2nd Avenue, Anna Nagar East,
Chennai-600 102 ... Petitioner in all the W.Ps.

vs.

The Assistant Commissioner(CT)(Main)
Aminjakarai Assessment Circle,
Kuralagam Annexe Building,
3rd Floor,
Chennai-600 108 ... Respondent in all the W.Ps.

Writ petitions filed under Article 226 of the Constitution of India praying for a writ of certiorari to call for the records of the respondent in the impugned order in TIN/3347, 1024374/2006-07, 1024374/2007-08, 1024374/2008-09 dated 31.10.2013, quash the same as it is being passed contrary to the G.O.No.79, dated 23.03.2007, issued by the Government of Tamil Nadu, regarding the rate of tax on used cars.

For Petitioner : Mr.AR.L.Sundaresan,Sr,counsel for Mr.V.S.Manoj

For Respondent :Mr.S.Kanmani Annamalai,A.G.P.

COMMON ORDER

Heard Mr.A.RL.Sundaresan, learned Senior counsel appearing for Mr.V.S.Manoj, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondent.

2. The petitioner, in these writ petitions, has challenged the assessment orders for the period from 1.1.2007 to 31.03.2007, 2007-08 and 2008-09. The common issue in all these matters is as to whether the petitioner would be entitled to the

benefit of the Notification issued by the Government in G.O.Ms.No.79, Commercial Taxes and Registration (B2) Department, dated 23.3.2007, by which the Government reduced the rate of tax payable by a dealer on sale of used cars/motor vehicles on value addition without in put tax credit. The respondent issued pre-revision notices to the petitioner, for the afore mentioned period, on 27.4.2010, stating that an audit was conducted at the petitioner's place of business, by the Enforcement Wing Officers, on 22.9.2009, in which it was found that the petitioner is a re-seller of Hundai Cars and spares and they have purchased old cars and sold them and they have paid tax at 4% for the value addition only and not paid tax on the purchase of old cars from the customers. The petitioner submitted their objections to the notices by placing reliance on the Notification issued by the Government G.O.Ms.No.79, dated 23.3.2007 and also stated that they are purchasing old cars from various parties and those are put up for sale, after carrying out repairs. Thereafter, another notice was issued to the petitioner on 30.08.2010 with a view to afford one more opportunity, in which, the petitioner had placed additional facts with regard to the nature of transaction done by them. The respondent, while completing the assessments, came to the conclusion that what were sold by the petitioner are not used cars, by stating that the petitioner has issued sale bill for the cars to the buyers, who have approached the Regional Transport Officers for allotment of new Registration Numbers. This appears to be the basis for coming to the conclusion that the cars sold by the petitioner are not used cars.

3. The specific case of the petitioner is that they have purchased cars from registered owners, which is evident from the Registration Certificates and the cars were already Registered under the provisions of the Motor Vehicles Act and Registration Numbers have been obtained.

4. It is not in dispute that the petitioner has paid Value Added Tax on the value added portion without input tax credit. Therefore, the petitioner's case is that once these conditions are satisfied, there is no justification to deny the benefit of the Notification issued by the Government in G.O.Ms.No.79, dated 23.3.2007.

5. On a perusal of the impugned assessment orders, it is seen that there are inconsistency of facts and the finding rendered by the assessing officer that the buyers of the cars obtained new Registration Numbers, appears to have been a finding not supported by any document. In such circumstances, the impugned assessment orders, which were passed on account of erroneous factual findings, not supported by any document, warrant interference by this Court.

6. Accordingly, the writ petitions are allowed. The impugned assessment orders are quashed and the matter is remanded to the respondent for fresh consideration. The respondent is directed to afford an opportunity of personal hearing to the petitioner, during which the petitioner can file additional objections and produce all documents which are under their custody to show that what have been sold by them are used cars, purchased from Registered owners, in whose favour Registration certificates have already been granted and after considering all the factual aspects, the respondent shall proceed to complete the assessment in accordance with law. No costs. Connected miscellaneous petitions are closed.

msk

-s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner(CT)(Main)
Aminjakarai Assessment Circle,
Kuralagam Annexe Building,
3rd Floor,
Chennai-600 108

+ 1 cc to the Spl. Govt.Pleaer (Taxes), SR 41090

+ 1 cc to M/s.K.Vaitheeswaran, Advocate SR 41170

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