

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JUNE 2017

PRESENT

THE HON'BLE MR. JUSTICE H.G.RAMESH

R

AND

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

WRIT APPEAL NO.4031/2016 (T-MVT)

BETWEEN :

SYNERGY UNIVERSAL PVT. LTD.
REP BY ITS MANAGING DIRECTOR
SRI PANKAJ SURANA
AGED ABOUT 42 YEARS
#104, 4TH FLOOR,
CROMA BUILDING
NEAR KALYAN NAGAR,
BUS DEPOT
KALYAN NAGAR
BANGALORE - 560 043

...APPELLANT

(BY SRI CHAITANYA V. MUDRABETTU, ADVOCATE)

AND :

1. COMMISSIONER FOR TRANSPORT IN KARNATAKA
1ST FLOOR, 'A' BLOCK, TTMC BUILDING
K.H.ROAD, SHANTHINAGAR
BANGALORE - 560 027
2. THE JOINT COMMISSIONER FOR TRANSPORT
BANGALORE (URBAN AND RURAL)
1ST FLOOR, T.T.M.C. BUILDING, 'A' BLOCK
SHANTHINAGAR, BANGALORE - 560 027
3. THE DEPUTY COMMISSIONER FOR TRANSPORT &
SENIOR REGIONAL TRANSPORT OFFICER

BANGALORE (SOUTH), JAYANAGAR
BANGALORE – 560 011

...RESPONDENTS

(BY SRI VIKRAM HUILGOL, HCGP)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 09.08.2016 PASSED IN WRIT PETITION NO.17721/2016.

THIS WRIT APPEAL COMING ON FOR PRELIMINARY HEARING, THIS DAY, **H.G.RAMESH J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

H.G.RAMESH, J. (Oral):

Whether the appellant-Company is entitled for refund of the cess paid along with the lifetime tax in respect of its Car (Audi Q5) bearing registration No.KA 05 MP 5006 in view of cancellation of registration of the Car on December 24, 2014 on account of scrapping of the Car due to an accident that occurred on September 15, 2014? This is the question that requires to be examined in this case.

2. We have heard Sri Chaitanya V.Mudrabettu, learned counsel appearing for the appellant and Sri Vikram Huilgol, learned High Court Government Pleader appearing for the respondents and perused the record.

3. It is stated that the Car was registered on March 28, 2014 and the appellant had paid Rs.9,31,501/- towards lifetime tax and Rs.1,02,467/- towards cess in respect of the aforesaid Car at the time of its registration and 93% of the lifetime tax has been refunded to the appellant on January 15, 2015.

4. To examine the above question, it is relevant to extract Sections 7 and 3-A of the Karnataka Motor Vehicles Taxation Act, 1957 ('the Act') to the extent they are necessary for this case:

"7. Refund of tax.—

(3) Notwithstanding anything contained in sub-sections (1) and (2), where tax has been paid under sub-section (3) of Section 4, the registered owner who has paid such tax shall be entitled to a refund of tax at the rate specified in Part C, Part CC, Part C1, Part C2, Part C3, Part C4 and Part C5, as the case may be of the Schedule in the case of.—

(i) removal of the vehicle to any other State on transfer of ownership or change of address; or

(ii) cancellation of registration of vehicle on account of scrapping of such vehicle due to accidents or other causes:

.....
(6)

Explanation.—For the purpose of this section tax includes surcharge and additional surcharge payable under sections 3-A and 3-B.

3-A. Levy of Cess.—

(3) The provisions of the Act and the rules made thereunder including those relating to refund or exemption from tax shall, so far as may be, apply in relation to the levy, assessment and collection of the cess payable under sub-section (1), as they apply in relation to the levy, assessment and collection of motor vehicles tax under this Act."

5. In view of what is stated in the *Explanation* to Section 7, and sub-section (3) of Section 3-A of the Act extracted above, it is clear that the provisions of the Act relating to refund of the tax shall apply in relation to the cess also. Therefore, any refund of the tax should follow appropriate refund of the amount paid under Section 3-A(1) of the Act towards the cess. Hence, as per the provisions of the Act and the facts of this case, the appellant is entitled for refund of 93% of the lifetime tax and 93% of the cess paid by it.

6. In view of the above, the impugned order of the learned Single Judge dated 09.08.2016 and the order of the Appellate Authority dated 20.02.2016 are liable to be set aside and are accordingly set aside. The appellant is held entitled for refund of 93% of the cess paid by it. The learned Government Pleader states that respondent no.3-

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W.A.No.4031/2016

Deputy Commissioner for Transport has refunded 93% of the cess to the appellant during the pendency of this writ appeal. His submission is placed on record.

Appeal disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

hkh.