

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WA.No. 568 of 2015 () IN WP(C) NO.9464/2014

AGAINST THE JUDGMENT IN WP(C) NO. 9464/2014 of HIGH COURT
OF KERALA DATED 20-12-2014.

APPELLANT(S)/PETITIONER IN W.P.(C):

NAGENDRA MANI. N.,
AGED 53 YEARS, S/O. NARAYANA SWAMI,
NARAYANA BHAVAN, PUTHIYAKAVU,
MAVELIKARA (PO),
ALAPPUZHA DISTRICT.

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SRI.ARUN BOSE

RESPONDENT(S)/RESPONDENTS IN W.P.(C):

1. STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY TO
THE GOVERNEMENT,
MOTOR VEHICLES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.
2. THE TRANSPORT COMMISSIONER,
TRANS TOWERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM, PIN-695 001.

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3. THE REGIONAL TRANSPORT OFFICER,
ALAPPUZHA, ALAPPUZHA DISTRICT,
PIN-688 001.
4. THE JOINT REGIONAL TRANSPORT OFFICER,
SUB REGIONAL TRANSPORT OFFICE,
MAVELIKKARA, ALAPPUZHA DISTRICT,
PIN-690 101.

BY SPECIAL GOVERNMENT PLEADER (TAXES,
DR. SEBASTIAN CHAMPAPPILLY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ALONG
WITH W.A.NOS.575, 611, 697 AND 700 OF 2015 27/3/2015, THE
COURT ON 31-03-2015 DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.**

W.A. Nos.568, 575, 611, 697 & 700 of 2015

Dated this the 31st day of March, 2015

JUDGMENT

Harilal, J.

The question, which had been considered by the learned single Judge, in a batch of cases, including all the writ petitions, from which these writ appeals arose was, whether the petitioners herein, who satisfied the 'One-time Tax' under the Kerala Motor Vehicles Taxation Act (hereinafter referred to as the 'MVT Act') at the prescribed rate, on the purchase value computed as inclusive of the VAT element as well, as part of it, are entitled to have refund of the alleged excess payment, in view of the law declared by the Division Bench of this Court as per the decision reported in Fathima Shirin v. Joint Regional Transport Officer (2013 (3) KLT 945), holding that the term 'purchase value' defined under Section 2(e) of the MVT Act

means only the invoice price of the vehicle, which does not include Value Added Tax paid or payable.

2. This question had been mooted from the identical facts and the same reliefs sought for, in all the writ petitions. The common facts, necessary for the determination of these writ appeals, are encapsulated below:

All the appellants are the purchasers of luxury cars of different models. They had purchased the said vehicles before the laying the decision in Fathima Shirin's case. At the time of permanent registration of the vehicles, 'one-time tax' under the Kerala Motor Vehicles Taxation Act was insisted to be paid in terms of Section 3 of the Act, fixing the purchase value, computed on total actual price of the vehicle, including tax component of value added tax. According to the appellants, they were forced to effect payment as above, for getting the vehicle registered. The grievance of the appellants is that, subsequently, a Division Bench of this Court in Fathima Shirin's case held that "Section 2(e) of the MVT Act provides that the purchase value means the value of vehicle as shown in the original purchase invoice. The definition of 'purchase value' in

Section 2(e) of the MVT Act cannot be anything beyond the value of the vehicle as shown in the original purchase invoice.” Therefore, in view of the decision in Fathima Shirin's case appellants are entitled to get back the excess tax collected from the appellants in respect of their respective vehicles, by reckoning the Value Added Tax also with value shown in the purchase invoice.

3. The 2nd respondent contended that the term 'taxable event' under the MVT Act occurs at the time of permanent registration, by which time, the value of the vehicle came to be added on and that alone can be reckoned for the purpose of taxation under the said Act. The Division Bench as per the decision in Fathima Shirin's case only interpreted the provision, particularly, the definition of the term 'purchase value' as given under Section 2(e) of the MVT Act and held that it will not include VAT component, customs duty or such other elements. This is an interpretation of law and nothing declared ultravires, illegal or wrong. This situation necessitated a clarification which was brought about by amending the definition of the term 'purchase value' as per Section 7(1)(b) of the Kerala Finance Act, 2014, retrospectively with effect from

01/04/2007 (i.e., when the provision was introduced for the first time stipulating payment of 'one-time tax'). In view of the above amendment appellants are not entitled to get back that part of the tax which had been paid by them at the time of registration.

4. After considering the rival pleas, the learned single Judge dismissed all the writ petitions holding that: (i) what has been done in Fathima Shirin's case is that a proper interpretation was given to the meaning of purchase value; (ii) the above decision interpreting the meaning of 'purchase value' caused a situation requiring a clarification of the meaning of 'purchase value' and same was done by the legislature as per the Kerala Finance Act, 2014 by adding tax, cess, customs/excise duty to purchase value with retrospective effect from 01/04/2007 and (iii) validating Act providing retrospective operation removing defect in or changing the basis of the principal Act is justifiable in view of the decisions in *Prithvi Cotton Mills Ltd. v. Broach Borough Municipality* [AIR 1970 SC 192] and *Bhuvaneshwar Singh and another v. Union of India and others* [1994 (6) SCC 77]. The legality and correctness of the above finding is under challenge in these writ appeals.

5. We have heard Sri. R. Reji, the learned counsel for the appellants in extenso. It is contended that the decision in Fathima Shirin's case is a 'declaratory law' and that the benefit under the said declaration is liable to be extended to all similarly situated parties. If any money is paid by mistake, by one of the parties to other, there is an obligation to repay the said money by virtue of Section 72 of the Indian Contract Act and the same was accepted, adopted and applied by the Apex Court in the field of taxation. To fortify the above contention the learned counsel cited the decision in Sales Tax Officer, Banaras v. Kanhaiya Lal Makund Lal Saraf (AIR 1959 SC 135). It is also contended that the Kerala Finance Act, 2014, by amending Section 2(e) of the MVT Act, virtually nullified the law laid down by the Division Bench of this Court in Fathima Shirin's case.

6. At the outset, in view of the arguments advanced at the Bar, we notice that all the writ petitions are inherently suffering from lack of pleadings and proper reliefs thereon, so as to suit the arguments advanced in appeal. In the writ petitions, there are no pleadings, challenging the legality or constitutionality of the amendment brought

about to Section 2(e) as per the Kerala Finance Act, 2014 with retrospective effect from 01/04/2007. Going by the averments in the writ petitions, it is seen that all the writ petitioners lost sight of the amendment brought about to the definition of 'purchase value' under Section 2(e) by the Kerala Finance Act, 2014 with retrospective effect from 01/04/2007, subsequent to the interpretation given to 'purchase value' in Fathima Shirin's case. Needless to say, so long as the amendment brought about to Section 2(e) of the MVT Act by the Kerala Finance Act, 2014 stands unchallenged in the writ petitions, the claim for a declaration that value of the vehicle for the purpose of computation of the motor vehicle tax is the purchase price of the vehicle alone and does not include tax component payable on the purchase price, deserves to be rejected in limine and the learned single Judge is justified in this respect.

7. Coming to the right to refund, claimed under the decision in Fathima Shirin's case, prima facie, we find that the said claim is also unsustainable, in the absence of challenge against the amendment brought about to Section 2(e) of the MVT Act, with retrospective effect from

01/04/2007. So long as the amended provision retrospectively governs the field, the appellants are not entitled to refund. As we noticed above, subsequent to the above decision giving a restrictive meaning to 'purchase value' defined under Section 2(e) of the MVT Act, by the amendment brought about the said Section, as per the Kerala Finance Act, 2014, the legislature had added more components to the purchase value, with retrospective effect from 01/04/2007. According to Section 2(e) of the MVT Act, which stood before the amendment, purchase value means the value of vehicle as shown in the original purchase invoice. But as per the amended Section 2(e), purchase value means value of the vehicle as shown in the purchase invoice and includes value added tax, cess, customs/excise duty chargeable on vehicle. In short, the amended Section 2(e) of the MVT Act shall be deemed to be in existence from 01/04/2007. If that be so, the appellants are not entitled to claim refund of the tax paid.

8. In the above context, the learned counsel contended that the said amendment virtually nullified the decision in Fathima Shirin's case. Though, the appellants had not challenged the legality of the amendment

retrospectively brought about to Section 2(e) of the MVT Act, in the writ petitions, the learned single Judge elaborately considered the same and positively affirmed the legal validity of the amendment. What is the legal effect and consequential impact thereon caused by the decision in Fathima Shirin's case? The learned counsel reiterated his contention, which was rejected by the learned Single Judge, that the verdict passed by this Court in Fathima Shirin's case is a 'declaratory judgment' and thereby the benefit under the said judgment is liable to be extended to all concerned. On an analysis of the decision in Fathima Shirin's case, it is pertinent to note that none of the provisions under the MVT Act was declared ultra vires or illegal. Since the introduction of 'one-time tax' with effect from 01/04/2007, purchase value was being reckoned including various components such as excise/customs duty, value added tax etc., and tax was being collected accordingly till the laying of decision, restricting the meaning of 'purchase value' by excluding those components, in Fathima Shirin's case. This previous practice shows that what was really intended by the legislature, while defining 'purchase value' under Section 2

(e) and the charging provision under Section 3 of the MVT Act, was to realise tax on total purchase price, including various components such as excise/customs duty, value added tax etc. Thus, the decision in Fathima Shirin's case caused a situation which necessitated to make a clarification, by way of amendment, specifically describing all the components constituting the purchase value with retrospective effect from the date of introduction of 'one-time tax'. We are also endorsing the views of the learned single Judge that amendment brought about to the term 'purchase value' under Section 2(e) of the MVT Act as per the Kerala Finance Act 2014 is only 'clarificatory in nature', as nothing new was introduced or declared or declared illegal or invalid. As rightly held by the learned single Judge, there was no attempt to nullify the decision in Fathima Shirin's case and the clarification was made to make clear the intent of the legislation, which was brought into force from 01/04/2007.

9. The scope and extent of the power of legislature to amend the existing law with retrospective effect affecting or wiping out the decision rendered earlier by the court was considered by the Constitution Bench of the

Apex Court in Sri. Prithvi Cotton Mills Ltd. etc. v. Broach Borough Municipality and others [(1969) 2 SCC 283 = AIR 1970 SC 192) and affirmed the wide power of legislature unambiguously. Again, relying on the above decision, the Apex Court reiterated the power of legislature to enact validating Acts in Bhuvaneshwar Singh and another v. Union of India and others [1994 (6) SCC 77].

10. The proposition which culled out from the above decisions can be summarised as follows: If the legislature has legislative competency, they can legislate on the subject either prospectively or retrospectively and such power cannot be questioned, provided that such legislation shall not be made in violation of the provisions of the Constitution. The legislature has power to validate action taken under a particular enactment by removing defect in the original statute retrospectively because of which the statute or the part of it had been declared ultra vires. The legislature can, at any time, make a valid law and make it retrospectively so as to bind the past transactions. The validation of tax, which was declared illegal by the court of law is legal and permissible if the grounds of illegality or invalidity are capable of being removed and are, in fact,

removed and tax thus made legal. The legislature has power to give its own meaning and interpretation of law and also to give a new meaning binding on courts. The exercise of rendering ineffective judgments or orders of competent courts by changing the very basis by legislation is a well-known device of validating legislation. Sometimes, the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. A valid and proper legislation may neutralise or render earlier decision ineffective after change of law by way of amendment.

11. In the light of the above decision, the learned single Judge is justified in rejecting the contention that the amendment to Section 2(e) of the MVT Act with retrospective effect as per the Finance Act, 2014 is intended to defeat the judgment passed in Fathima Shirin's case and thereby it is illegal and unsustainable.

12. We have meticulously considered the decision in Sales Tax Officer, Banaras v. Kanhaiya Lal Makund Lal Saraf (AIR 1959 SC 135) and we are of the opinion that the proposition laid down in the above decision is not

applicable to the instant case as the facts involved in that case stand on a different footing. In the above case, levy of sales tax on forward transactions was held to be ultra vires by the High Court of Allahabad in *Budh Prakash Jai Prakash v. Sales Tax Officer, Kanpur* (1952 All. L.J. 332) and the respondent by letter asked for a refund of the amount of sales tax paid as aforesaid. The appellant No.2, the Commissioner of Sales Tax, U.P., Lucknow, by his letter refused to refund the same. Thus, refund of an amount due to the assessee under a transaction which was held to be ultra vires, was the claim. In that case, there was no subsequent amendment with retrospective effect validating the illegality by removing the same or by giving a clarification by way of amendment as in the instant case. Moreover, going by the pleadings in the writ petitions it is seen that the appellants have no case that 'one-time tax' was paid for purchase value, including tax component by mistake or coercion. That apart, the said contention alleging mistake of law cannot be accepted in view of the fact that 'one-time tax' was being collected from all purchasers of the vehicles for the purchase value, including the value added tax component since the introduction of

'one-time tax' on 01/04/2007. Therefore, the right of refund claimed under Section 72 of the Indian Contract Act is also unsustainable, in the absence of an element of mistake. We are also affirming the findings of the learned single Judge that the payment effected by the appellants was never under any mistake in law and the mistake if at all any or the ambiguity is no more in existence in view of the amendment brought about with retrospective effect to 'purchase value' defined under Section 2(e) of the MVT Act. The learned single Judge is justified in rejecting the claim of refund in the light of the above decision.

13. We find that the learned single Judge has rightly considered the relevant law in its correct perspective. There is no illegality in any of the findings whereby the learned single Judge dismissed all the writ petitions. These writ appeals do not merit consideration.

Hence these writ appeals are dismissed, accordingly.

Sd/-

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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