IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).No. 1774 of 2015 (V)

PETITIONER(S):

DR.DEVIPRASAD S, AGED 40 YEARS
S/O.P.SADASIVAN PILLAI, 421 (17/764), 'AJITH BHAVAN'
ARUNOOTTIMANGALAM, MANGADU, KOLLAM-691015.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS

RESPONDENT(S):

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1. **STATE OF KERALA**
   REPRESENTED BY THE SECRETARY TO GOVERNMENT
   TRANSPORT DEPARTMENT, GOVERNMENT SECRETARIAT
   THIRUVANANTHAPURAM-695001.

2. **REGIONAL TRANSPORT OFFICER (TAXATION OFFICER)**
   REGIONAL TRANSPORT OFFICE, AANANDAVALLESWARAM
   CIVIL STATION P.O., KOLLAM-695013.

R BY GOVERNMENT PLEADER SRI. RENNY STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 1774 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1 : **TRUE COPY OF THE TAX INVOICE ISSUED BY RAJASREE MOTORS PRIVATE LIMITED ON 29-10-2014.**

EXT. P2 : **TRUE COPY OF THE TEMPORARY CERTIFICATE OF REGISTRATION DT.30-10-2014.**

EXT. P3 : **TRUE COPY OF THE SALE LETTER ISSUED BY RAJASREE MOTORS PRIVATE LIMITED.**

EXT. P4 : **TRUE COPY OF THE KERALA MOTOR VEHICLES TAXATION (AMENDMENT) ORDINANCE, 2014 ISSUED ON 13-11-2014.**

EXT. P5 : **TRUE COPY OF THE LAWYER NOTICE DT.19-12-2014 ISSUED AT THE INSTANCE OF THE PETITIONER TO R2**

EXT. P6 : **TRUE COPY OF THE COMMUNICATION BEARING NO.F2/KL-02/AT-5454/14/Q DT.25-11-2014.**

EXT. P7 : **TRUE COPY OF THE POSTAL COVER IN WHICH EXT.P6 COMMUNICATION WAS ISSUED TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS: **NIL**

// TRUE COPY //

P.A TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.1774 of 2015 - V

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Dated this the 29th day of January, 2015

J U D G M E N T

The petitioner is aggrieved with the demand for enhanced tax, as per an amendment, brought by way of an Ordinance, under the Kerala Motor Vehicles Taxation Act, 1976 on 13.11.2014. The petitioner admittedly purchased the vehicle on 29.10.2014 evidenced at Ext.P1 invoice. On 30.10.2014, the petitioner was issued with Ext.P2 temporary registration certificate. The petitioner was obliged to register the vehicle within a month from the date of temporary registration. The petitioner produced the vehicle for permanent registration before the authority under whose jurisdiction, the petitioner resides on 13.11.2014, upon which, the petitioner was directed to pay the tax as amended on the said date, which is challenged by the petitioner herein. The petitioner's contention is that the entire tax having been paid on 30.10.2014, there could be no further tax demanded on the basis of a subsequent amendment.

2. The learned Government Pleader relies on a Division Bench decision of this Court in **Hilal** v. **State of Kerala [2012(3) KLT 438]**, wherein, it has been unequivocally held that, the taxation event occurs, on the permanent registration under Section 40 of the Motor Vehicle Act, 1988 (for brevity, 'the MV Act') and not when a temporary registration is granted under Section 43 of the MV Act. The learned Counsel for the petitioner however, would seek to contend that the Larger Bench decision reported in **Jomon M. Arackal** v. **Tahsildar, Muvattupuzha Taluk and Others [2015 (1) KHC 1]**, though in a different context, would by the dictum laid down, substantially overrule the declaration of the Division Bench that the taxation event is on the permanent

registration.

3. **Hilal** (supra) was a case, in identical circumstances, in which the tax was collected when the temporary registration was granted and on the permanent registration, the tax as enhanced by an amendment in the meanwhile, was demanded. Here too the permanent registration took place after allotment of a 'fancy number', to the vehicle, as applied for by the owner. The Division Bench referred to the charging section of the Kerala Motor Vehicles Taxation Act, section 3, to find that the levy of tax on new vehicles is at the time of the 'first registration' of the vehicle, which 'first registration' has to be understood as the permanent registration under Section 40 of the Motor Vehicles Act. The Larger Bench does not at all deal with the said issue. The only issue which was referred for consideration of the Larger Bench was as to whether a G-form has to be filed in cases, where the Police authorities had taken custody of the vehicle inter alia for non-payment of tax due.

4. A Full Bench of this Court in **Regional Transport Officer** v. **Abdurahiman [2007(1) KHC 636]** considering a notification issued by the State Government, found that G-form has to be filed, even when the vehicle is in the custody of the Police, for commission of any offence other than for non-payment of tax. The Full Bench found that, even in cases, where the seizure is for non-payment of tax, the exemption under Section 5 of the Motor Vehicles Taxation Act, would be applicable, if a G-form is filed. Subsequently, another Full Bench in **Jomon M. Arackal** (supra) doubted the said finding. In the case of a detention, whether it be for non-payment of tax or otherwise, there would be no possibility of the owner having a prior-intention of non-user of the vehicle was the reasoning. It was observed that the details insisted upon in the G-form, as to where the vehicle is garaged, would not be in the knowledge of the owner of the vehicle, since the vehicle is in the custody of the police.

5. The filing of a G-form, in such circumstance,

was the only issue referred to the Larger Bench and the Larger Bench found that in such cases, where the vehicle is seized for a tax offence, definitely, a G-form would have to be filed and on detention for any other offence, the claim would be for an exemption under Section 22 of the Act read with S.R.O 878/1975. There is no dictum discernible from the said decision to upset the Division Bench ruling in **Hilal** (supra). The Larger Bench decision is not at all applicable in the facts revealed herein.

6. The learned Counsel for the petitioner, then relies on the 6th proviso to Section 4, which reads as under:-

> [Provided also that the registered owner or a person liable to pay tax in respect of vehicles specified in items 1, 2, 3(i)(a) to 3(i)(e), 3(ii)(a) to 3(ii)(e), 6, 7(i)(a) to 7(i)(c), 10(iii) and 11(c) of the Schedule for which one time or lump sum tax has been paid, shall not be liable to pay any periodical increase in tax during the period for which he has paid tax for such vehicle].

7. The said proviso only deals with periodic increase in tax, in the case of vehicles, which are obliged to lump sum tax for a specific period, when such periodical increase is made after the 'first registration'. The said

proviso does not aid the petitioner to seek for setting aside the impugned order, since, the petitioner's 'first registration' was only after the enhancement of tax. The 'first registration' is the incidence of the tax, which attracts the levy, for the intended use of the vehicle on the roads. Motor vehicle tax, as is trite, is a compensatory tax for such user. A payment of tax at the time of temporary registration is only an advance payment made and even if it is in full, there can be no user of the vehicle on the roads without a permanent registration under Section 40 of the M.V Act. The tax levied, is that applicable, when the incidence of tax occurs.

The writ petition is devoid of merit and would stand dismissed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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// true copy //

P.A to Judge