IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

WP(C).No. 9138 of 2014 (N)

PETITIONER(S):

JOSE THOMAS.M,
JOSE BUNGALOW, PIDAVOOR P.O, PATHANAPURAM

BY ADV. SRI.M.K.CHANDRAMOHAN DAS

RESPONDENT(S):

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1. THE GOVERNMENT OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001

2. SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695001

3. THE COMMISSIONER,
COMMERCIAL TAXES, GOVERNMENT OF KERALA
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001

4. JOINT REGIONAL TRANSPORT OFFICER,
SRTO, PUNALUR 689690

5. THE TAHASILDAR (RR),
TALUK OFFICE, PATHANAPURAM 689695

6. THE DEPUTY TAHSILDAR (RR),
TALUK OFFICE, PATHANAPURAM 689695

7. THE MANAGER,
FEDERAL BANK, PATHANAPURAM 689695

R1-R6 BY ADV. T.J.MICHAEL, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 9138 of 2014 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF THE TAX INVOICE DATED 28-03-2012

EXHIBIT P2: COPY OF THE TAX RECEIPT

EXHIBIT P3: COPY OF THE INSURANCE CERTIFICATE DATED 29-03-2012

EXHIBIT P3(A):COPY OF THEINSURANCE CERTIFICATE RENEWED ON 29-03-2013

EXHIBIT P4: COPY OF THE DEMAND NOTICE NO. COLLECTORATE FILE NO. 214/171/2 ANDTALUK (C3) FILE NO. 2014/10/2/500 DATED 30-01-2014 ISSUED BY THE 6TH RESPONDENT

EXHIBIT P5: COPY OF THE LETTER NO. D1. 2014/10/2/500 FROM THE 5TH RESPONDENT TAHSILDAR ADDRESSED THE PETITIONER'S BANK, FEDERAL BANK, PATHANAPURAM

EXHIBIT P6: COPY OFTHE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.9138 of 2014

Dated this the 01st day of October, 2015

JUDGMENT

The petitioner has purchased a BMW car on 28.03.2012 from M/s.Platino Classic for an amount of Rs.40,35,043/-, including VAT amount Rs.4,46,848.62 and other taxes Rs.13,405.46, which is evident from Ext.P1 invoice. On 30.03.2012, the petitioner remitted an amount of Rs.3,22,810/- as vehicle tax and also remitted a sum of Rs.50,000/- for getting fancy registration number and a further sum of Rs.200/- towards Cess, which is evident from Ext.P2.

2. The grievance of the petitioner in this writ petition is that when the vehicle was produced before the 4th respondent registering authority on 10.04.2012 for permanent registration, he was asked to pay a balance amount of Rs.2,82,446/- towards one time tax in view of the Kerala Finance Act, 2012. When the petitioner failed to remit the aforesaid amount, Exts.P4 and P5 demand notices were issued and it was in such circumstances, the petitioner has approached this Court in this writ petition seeking a writ of certiorari to quash Exts.P4 and P5 and seeking

a writ of mandamus commanding the 2nd respondent to reimburse an amount of Rs.36,826/- collected in excess alongwith Ext.P1 invoice as tax for the entire invoice amount including VAT. He has also sought for other consequential declaratory reliefs.

3. By order dated 31.03.2014, this Court has made it clear that the petitioner is at liberty to operate the bank account referred to in Ext.P5 notice of attachment and that, the interception in Ext.P5 will remain in force only to the extent of amount shown in Exts.P4 and P5, which shall always be kept in tact, until further orders.

4. A counter affidavit has been filed on behalf of the 4th respondent justifying the demand made in Ext.P4 and that, in view of the default committed by the petitioner, the respondents are perfectly justified in initiating coercive steps against the petitioner based on Ext.P5 notice of attachment. A reading of the counter affidavit would show that, the petitioner obtained temporary registration with registration No. KL-39/E TEMP-1675 for the vehicle in question on 29.03.2012, valid from 29.03.2012 to 27.04.2012. Later, the said vehicle was produced before the 4th respondent for permanent registration only on 10.04.2012.

5. I heard the arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

6. The issue raised in this writ petition is covered against the petitioner in the Division Bench judgments of this Court in **Hilal v. State of Kerala [2012 (3) KLT 438]** and **Nagendra Mani N. v. State of Kerala and Others [2015 (4) KHC 313].**

7. In **Hilal's case** (supra), a Division Bench of this Court held that the liability to pay higher rate of tax under the revised tariff is with reference to the first registration of the vehicle referred to in Section 3 of the Motor Vehicle Taxation Act, 1976 and it cannot be with reference to the temporary registration. Hence the rate of tax applicable is as on the date of permanent registration of the vehicle under the revised tariff. Paragraph 4 of the judgment reads thus:

> 4. During hearing, learned Government Pleader submitted that there is no provision in the Taxation Act to levy tax on temporary registration which is granted only for 30 days to facilitate transport of the vehicle to the place of residence of the purchaser for him to apply for and obtain regular registration. We find force in the contention of the learned Government Pleader because there is no provision in S.3 or in any other provision in the Taxation Act for collection of tax

for the short period during which temporary registration is granted to a new vehicle, which is only to facilitate transport of vehicle on road to be taken to the regular residence of the purchaser to get the vehicle registered by following the procedure prescribed under the Act and the Rules. Even though S.3(5) of the Taxation Act talks about temporary licence and payment of tax for periods up to 7 days and beyond 7 days up to 30 days, we feel the said provision is applied to register the vehicles brought from outside State for short term use within the State. As a matter of practice, every vehicle purchased by a person other than one regularly residing within the jurisdiction of the RTO wherefrom the vehicle is purchased applies for temporary registration for transport to his place of residence or business for getting registration done within the period of validity of the temporary registration. Tax endorsement under Taxation Act is made only after regular registration which is done only on producing certificate of insurance for the vehicle, proof of residence, identity etc. of the purchaser as required under the Act and the Rules S.3 of the Taxation Act, which provides for levy of tax from motor vehicles, is as follows:-

> **"3. Levy of tax.--** (1) Subject to the provisions of this Act, on and from the date of commencement of this Act**,** a tax shall be levied on every motor vehicle used or kept for use in the State, at the rate specified for such vehicle in the Schedule:
>
> Provided that no such tax shall be levied on a motor vehicle kept by a dealer in, or a manufacturer of, such vehicle, for the purpose of trade and used under the

> authorisation of a trade certificate granted by the registering authority:
>
> Provided further that in respect of a new motor vehicle of any of the classes specified in item numbers 1, 2, 6, 10(iii) and 11 of the Schedule to this Act, <u>there shall be levied from the date of purchase of the vehicle one-time tax at the rate specified in Annexure I, at the time of first registration of the vehicle</u> and thereafter tax shall be levied at the time of renewal of such vehicle at the rate specified in the Schedule as per fourth proviso to sub-section (1) of Section 4.
>
> Provided further that in respect of new motor vehicle of any of the descriptions specified in item No.1(a) of the Schedule to this Act, there shall be levied from the date of purchase of the vehicle a tax in advance for a period of five years at the rate specified in the Schedule, at the time of first registration of the vehicle, and thereafter tax shall be levied at the rate specified in the Schedule in accordance with the fourth proviso to sub-section (1) to Section 4. (emphasis supplied)

The 2nd proviso to S.3(1) of the Taxation Act, which provides for levy of tax on new vehicles, clearly states that levy of tax on new vehicles is to be made at the time of "first registration" of the vehicle. Even though it is stated that for new vehicles one time tax at the rate specified in Annexure I of the Schedule to the Act is payable from the date of purchase of the vehicle, the rate of tax applicable is as on the date of first registration of the vehicle, which in these two cases is 02.04.2012. As already stated, there is no provision in the Taxation Act to levy tax during the period a new vehicle is granted temporary registration. So much so, the first registration referred to the 2nd proviso to S.3(1) cannot be a temporary registration granted under S.43 of the Act read with R.94 of the Kerala Motor Vehicles Rules, but can only be the permanent registration granted under S.40 of the Act. In this case, what happened is that the date of increase of tax was known to the appellants and therefore they remitted the tax in advance at the time of granting temporary registration, which they were not required to pay at that time. We do not think the payment of tax in advance before regular registration is granted affects the **liability** for tax which has to be considered with reference to the charging provision of the Taxation Act. In our view, the learned Single Judge rightly held that the rate of tax applicable is the rate in force as on the date of granting regular registration.

8. In view of the judgment of the Division Bench of this Court in **Hilal's case** (supra) the contention of the petitioner that the tariff applicable for the vehicle in question is that as on the date of its production for temporary registration can only be rejected. Admittedly, the petitioner produced the vehicle for permanent registration before the 4th respondent only on 10.04.2012. Therefore, the demand for one-time tax at higher rate, in view of the amendment made by the Kerala Finance Act,

2012 is perfectly legal.

9. In **Nagendra Mani's case** (supra) a Division Bench of this Court held that payment of one-time tax inclusive of VAT element and other taxes are not entitled for refund as excess payment, even in view of the Division Bench judgment of this Court in **Fathima Shirin v. Joint Regional Transport Officer [2013 (3) KLT 945].** The amendment brought to the term 'purchase value' as per Kerala Finance Act, 2014 with retrospective effect, made such levy, inclusive of the VAT element and other taxes legal and valid and that, the tax concession given out by a judgment can be taken away by way of a statutory amendment. Paragraph 12 of the judgment reads thus:

> "We have meticulously considered the decision in Sales Tax Officer, Banaras v. Kanhaiya Lal Makund Lal Saraf 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 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."

In view of the judgment of the Division Bench of this Court in **Nagendra Mani's case** (supra), the contentions raised by the petitioner relying on the judgment of this Court in **Fathima Sherin's case** (supra) that he is not liable to pay tax for the VAT element of the purchase tax and that he is entitled for refund of tax collected for the VAT element can only be rejected.

In that view of the matter, there is absolutely no illegality in Exts.P4 and P5. In the result, this writ petition fails and the same is dismissed. No order as to costs.

SD/-
ANIL K. NARENDRAN,
JUDGE

JV