IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WP(C).No.18165 of 2010 (U)

PETITIONER :

YASIR ARAFATH,
PROPRIETOR,
M/S.MOBILE WORLD, 40/4A 2908, SHOP NO.1,
PENTA MENAKA, ERNAKULAM.

BY ADVS.SRI.E.D.GEORGE
SRI.P.M.SANEER

RESPONDENTS :

1. THE REGIONAL TRANSPORT COMMISSIONER,
   ERNAKULAM.

2. STATE OF KERALA,
   REPRESENTED BY KERALA TRANSPORT COMMISSIONER,
   TRANSPORT COMMISSIONERATE,
   TRANS TOWER, THIRUVANANTHAPURAM.

R1-2 BY SR.GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.18165 of 2010 (U)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	:	TRUE COPIES OF INVOICE SALE BILL FOR PETITIONER'S VEHICLE.
EXT.P2	:	TRUE COPY OF THE TEMPORARY REGISTRATION ISSUED BY THE 1ST RESPONDENT ON 18.2.2010.
EXT.P3	:	TRUE COPY OF THE APPLICATION DULY AFFIXING THE TAX RECEIPT.
EXT.P4	:	TRUE COPY OF THE RECEIPT DTD.18.3.2010 FOR THE REMITTANCE OF THE SERVICE CHARGE FOR THE REGISTRATION OF THE VEHICLE.
EXT.P5	:	TRUE COPY OF THE PROCEEDINGS OF THE ADDL.REGISTERING AUTHORITY, ERNAKULAM DTD.20.4.2010.
EXT.P6	:	TRUE COPY OF THE ORDER DTD.26.4.2010.

RESPONDENTS' EXHIBITS:- NIL.

True copy

P.A to Judge

ANIL K.NARENDRAN, J.

W.P.(C)No.18165 of 2010

Dated this the 01st day of June, 2015

JUDGMENT

The petitioner purchased a Fortuner Car on 18.02.2010. On 18.2.2010 he obtained temporary registration from the Additional Registering Authority, Tripunithura. It is evident from Ext.P2. On 18.3.2010 the petitioner remitted vehicle tax of ₹1,13,220/- at the rate of 6% of the invoice value. By Finance Act of 2010 the rate of motor vehicle tax was enhanced from 6% to 8% with effect from 1.4.2010. When the petitioner approached the first respondent for permanent registration of the vehicle after obtaining a fancy registration number the request for registration was declined by Ext.P6 stating that the petitioner has to pay the motor vehicle tax at the revised rate which came into force with effect from 1.4.2010. It was in such circumstances the petitioner has approached this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P6 and seeking a writ of mandamus commanding the respondent to issue the number and registration certificate.

2. While admitting the Writ Petition on 16.6.2010, this Court passed the following order:-

> *"There will be an interim order to the effect that in the event of the petitioner remitting life time tax calculated at the rate of 8% of the total invoice value of the vehicle under protest, the first respondent shall register the petitioner's vehicle described in Ext.P6 order on a regular basis in accordance with law. In the event of the petitioner succeeding in the writ petition he will be entitled to claim refund of the excess life time tax paid pursuant to this order."*

3. A counter affidavit has been filed on behalf of the second respondent contending that the State Government vide Finance Act, 2010 revised the criterion of tax on Motor Cars above 1500 cc to 8% of the total invoice amount, with effect from 1.4.2010. As the petitioner failed to produce his vehicle for permanent registration by 31.3.2010, which was the last date for registration, before the revised rate came into force, he is legally bound to pay the tax in revised rate. It was in such circumstances when the vehicle was produced before the second respondent on 24.4.2010, the Inspecting Officer directed the petitioner to remit the tax at 8% of the total invoice value of the vehicle. Thus an amount of ₹37,740/- is due from the petitioner as One Time Tax in order to register the vehicle.

4. The issue raised in this writ petition is covered against the petitioner in view of the decision of a Division Bench of this Court in **Hilal.B. and another Vs. State of Kerala and others [2012 (3) KHC 284 (DB)]** this Court has categorically held that the rate of tax applicable is the rate in force as on the date of granting regular registration. 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, 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 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.*

Learned counsel for both the appellants submitted that the appellants were willing to give up their claim for fancy numbers for registration of the vehicle before 31.03.2012, so that the payment of higher rate of tax for the vehicles could be avoided on account of delay in regular registration. However, learned Government Pleader submitted that once fancy numbers are applied for after remitting the required fees, the Department is bound to follow the Rules, i.e., to open tenders and if required to conduct auction, only on the first day of the following week, which in this case happened to be 02.04.2012. Reference is also invited to Annexure A2 produced in W.A.No.838/2012, wherein it is stated that those who have applied for fancy numbers and waiting for registration on the closure of the financial year could withdraw the applications and go for registration with the ordinary numbers allotted to them. Even though appellants have a case that they were willing to forgo their claim for fancy numbers, we do not think we can at this distance of time cancel the allotments given to them and to order *registration with retrospective date with other numbers, which would have already been allotted to other vehicles. We therefore do not find any scope for ordering cancellation of registrations already granted and to direct fresh registrations with running numbers retrospectively.*

Consequently, these Writ Appeals fail and we dismiss the same.

5. In view of the principle laid down in the judgment of this Court in **Hilal's case** (supra) the challenge made against Ext.P6 cannot be sustained.

In the result, the writ petition fails and the same is dismissed. No order as to costs.

Sd/-

ANIL K.NARENDRAN, JUDGE

skj