IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 25314 of 2013 (L)

PETITIONER:

MOIDU KALLANGODAN, AGED 65 YEARS,
S/O.KUNHAMMAD HAJEE KALLANGODAN,
KALLANGODAN HOUSE, PWD OFFICE ROAD,
KALPETTA P.O, WAYANAD - 673 121.

BY ADVS.SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN
SRI.JIKKU SEBAN GEORGE

RESPONDENT:

THE JOINT REGIONAL TRANSPORT OFFICER,
KALPETTA, WAYANAD - 673 121.

BY SENIOR GOVERNMENT PLEADER : SRI. T. J. MICHAEL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 25314 of 2013 (L)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: COPY OF THE INVOICE NO.INV130001128 DATED 12.09.2013 ISSUED BY AMANA TOTOYA TO THE PETITIONER.

EXHIBIT P2 : COPY OF THE SALE CERTIFICATE DATED 13.09.2013 SHOWING THE DELIVERY OF VEHICLE TO THE PETITIONER.

EXHIBIT P3 : COPY OF THE VEHICLE DATA SHEET DATED 13.09.2013 ISSUED BY AMANA TOYOTA TO THE PETITIONER.

EXHIBIT P4 : COPY OF THE TEMPORARY CERTIFICATE OF REGISTRATION DATED 13.09.2013 ISSUED BY THE RTO, KOZHIKODE TO THE PETITIONER.

EXHIBIT P5 : COPY OF THE ORDER OF THIS HON'BLE COURT IN WP(C) NO.23883 OF 2013 DATED 03.10.2013.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE

skr

ANIL K.NARENDRAN, J.

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W.P.(C). No. 25314 of 2013

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Dated this the 28th day of September, 2015

J U D G M E N T

The petitioner who is the registered owner of a car manufactured by Toyota Kirloskar Motor Ltd., purchased vide Ext.P1 invoice dated 12.09.2013 has approached this Court in this writ petition seeking a writ of mandamus commanding the respondents to register his vehicle covered by Exts. P1 to P3 after realising one time tax under the Kerala Motor Vehicles Taxation Act, 1975 @ 15% on its purchase value, ie., ₹20,58,679.83/-. He has also sought for a declaration that the one time tax levied under the Kerala Motor Vehicles Taxation Act, 1975 for the vehicle purchased by him shall be determined by the respondent for the purpose of granting permanent registration applying the rate of 15% applicable to the purchase value of ₹20,58,679.83/-.

2. By order dated 17.10.2013, this Court ordered that the petitioner shall pay life time tax for the vehicle in question on the whole sale consideration including Value Added Tax and that excess amount, if any, shall be refunded to him dependent on the outcome of the writ petition.

3. The issue raised in this writ petition is covered against the petitioner by the judgment of a Division Bench of this Court in Nagendra Mani N. v. State of Kerala and others (2015 (4) KHC 313 (DB)), in which it was 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 out 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 by way of a statutory memo. 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 such circumstances, the petitioner is not entitled to the reliefs sought for in this writ petition. The writ petition fails and the same is dismissed. No order as to costs.

Sd/-
ANIL K.NARENDRAN,
JUDGE.

skr