IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 25953 of 2015 (T)

PETITIONER(S):

THOMAS K SAMUEL, AGED 35 YEARS
S/O. SAMUEL, KAKKATTUKUZHIYIL HOUSE, EDAPPAVOOR P.O.
AYIROOR, KOTTATHOOR, PATHANAMTHITTA-680 614.

BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.

RESPONDENT(S):
----

1. THE JOINT REGIONAL TRANSPORT OFFIER
RANNI-689 672.

2. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT
FINANCE DEPARTMENT, NORTH BLOCK, SECRETARIAT
THIRUVANANTHAPURAM-695 001.

3. THE TRANSPORT COMMISSIONER
TRANS TOWERS, VAZHUTHACAUD
THIRUVANANTHAPURAM-695 014.

R1-R3 BY ADV. GOVERNMENT PLEADER DR. SEBASTIAN CHEMPAPILLY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 25953 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : **COPY OF THE INVOICE DTD.31.7.2014 ISSUED BY THE DEALER M/S. RAJASREE MOTORS PRIVATE LIMITED EVIDENCING PURCHASE OF A MERCEDEZ BENZ E 250 CDI BY THE PETITIONER.**

EXT.P2 : **COPY OF THE REGISTRATION CERTIFICATE OF MOTOR CAB BEARING REGISTRATION NO.KL-62/B 3400.**

EXT.P3 : **COPY OF THE CIRCULAR NO.7/2014 ISSUED BY THE TRANSPORT COMMISSIONER.**

EXT.P4 : **COPY OF THE DEMAND NOTICE DTD.5.2.2015 ISSUED BY THE RESPONDENT DEMANDING A SUM OF RS.309900/- PLUS ADDITIONAL TAX AS MOTOR VEHICLE TAX DUE ON THE VEHICLE MENTIONED IN EXT.P2 FOR THE PERIODS 20.11.22014 TO 30.9.2019.**

EXT.P5 : **COPY OF THE NOTIFICATION ISSUED IN PURSUANCE TO ORDINANCE NO.36/2014 DTD.13.11.2014 BY THE GOVERNMENT OF KERALA.**

EXT.P6 : **COPY OF THE RELEVANT PORTION OF THE FINANCE BILL RELATING THE VARIOUS AMENDMENTS MADE IN THE MOTOR VEHICLE TAXATION ACT FOR THE FINANCE YEAR 2015-2015.**

EXT.P7 **COPY OF THE NOTICE DTD. 26.8.15 ISSUED BY TE 1ST RESPONDENT DEMANDING A SUM OF RS. 9,29,746/-**

EXT.P8 **COPY OF THE NOTIFICATION NO. 2500/LEG.A2/2014/LAW DTD. 23.07.14 (RELEVANT PAGES)**

RESPONDENT(S)' EXHIBITS

ANNEXURE R1(A) **RELEVANT PORTION OF THE ACT 1 OF 2015**

ANNEXURE R1(B) **COPY OF E-MAIL FROM MS/. RAJASREE MOTORS, KOCHI**

ANNEXURE R3(A) **COPY OF THE JUDGMENT DTD. 25.2.15 IN W.P.(C) NO. 5017/2015**

ANNEXURE R3(B) **COPY OF THE E-MAIL DTD. 23.9.15 SENT BY SUB REGIONAL TRANSPORT OFFICER, RANNI**

CONTD ..2..

WP(C).No. 25953 of 2015 (T)

ANNEXURE R3(C)	**COPY OF THE E-MAIL RECEIVED FROM ICICI BANK DTD. 26.9.15**
ANNEXURER3(D)	**COPY OF THE CHECK REPORT DTD. 14.5.15**
ANNEXURE R3(E)	**COPY OF THE CIRCULAR NO. 14902/B2/08/ TRAN DTD. 20.4.09**
ANNEXURE R3(F)	**COPY OF THE CIRCULAR NO.15437/B2/2012/TRAN DTD. 12.11.12.**
ANNEXURE R3(G)	**COPY OF G.O(RT) NO. 274/2015/TRAN. DTD. 24.7.15**
ANNEXURE R3(H)	**COPY OF G.O(RT) NO. 28/2014/TRAN DTD. 19.3.14**
ANNEXURE R3(I)	**COPY OF THE LETTER NO. B2/20077/TC/2015 DTD. 5.10.15 OF THE TRANSPORT COMMISSIONER, TVM.**

// TRUE COPY //

P.A TO JUDGE.

SB

K. VINOD CHANDRAN, J.

======================

W.P.(C) No.25953 of 2015 - T

======================

Dated this the 11th day of November, 2015

J U D G M E N T

The petitioner, the owner of a Mercedes Benz car is before this Court challenging Ext.P4 proceedings, by which the petitioner was directed to pay one time tax @ 20% of the purchase value of the vehicle, failing which steps under the Revenue Recovery Act was threatened.

2. The learned Counsel for the petitioner has two submissions; one, that going by Ext.P3 Circular of the Transport Commissioner, he was liable to pay only Rs. 8,500/- as motor vehicle tax for a period of five years. Immediately, it is to be noticed that despite the petitioner raising such contention, he has not cared even to pay the said amount to the Department, which shall be noticed, when the facts are narrated. The next contention is that proviso substituted for the 7th proviso in the

Kerala Motor Vehicles Taxation Act, 1976 as amended by the Kerala Finance Act, 2015 (Act 29 of 2014) would enable the payment of one time tax within five instalments in the 5 years subsequent to the purchase of the vehicle.

3. The learned Special Government Pleader however would, on the basis of the various dates and on a reference to the amendment brought in the Kerala Motor Vehicles Taxation Act, submit that both the contentions of the petitioner cannot be sustained. The petitioner purchased a vehicle with an invoice dated 31.07.2014 and the delivery was effected on 19.08.2014. The petitioner had obtained a temporary registration on 19.08.2014 itself, which validity was current till 17.09.2014. The petitioner hence ought to have produced the vehicle for permanent registration and payment of tax, within the one month period, in which the temporary registration was valid.

4. Admittedly, the petitioner did not produce the said vehicle for permanent registration. At that point of time, the tax

applicable to the Luxury Motor Cabs was 15% of the purchase value of the vehicle, being the life time tax for 15 years. However by amendment brought in by the Kerala Taxation Laws (Amendment) Act 2014 (Act 1 of 2015), the rate of tax was enhanced to 20% of the purchase value. The petitioner brought the vehicle for permanent registration on 15.11.2014 and produced the vehicle for inspection on 17.11.2014. The petitioner's vehicle was granted registration No. KL/62B/3400, but however no tax was paid. The petitioner again made an application for taxi permit on 20.11.2014, but however did not pursue the same nor did he produce the vehicle or pay the tax due as per the permanent registration granted by the department.

5. The petitioner's vehicle was detained on 14.05.2015, when the vehicle was transporting a newly married couple. Only because of the presence of the newly married couple, the Motor Vehicles Officer did not seize the vehicle but

issued a check report, which eventually led to Ext.P4 proceedings, which is now said to be again revised on the basis of the current tax liability.

6. Act 1 of 2015 having amended the schedule of the Taxation Act and enhanced the rate of tax from 15% to 20% w.e.f 13.11.2014, the petitioner cannot claim for a levy of tax at the rates applicable earlier, since the petitioner brought the vehicle for registration only after 13.11.2014. Sufficient support can be garnered for the above proposition from **Hilal** v. **State of Kerala [2012 (3) KLT 438]**. The further contention with respect to the Circular also would not be tenable since, the Act specifically provided for the tax liability.

7. The next contention is with respect to the payment of tax in five instalments as provided in the 7th proviso substituted by Act 29 of 2014. The learned Special Government Pleader has produced the Kerala Motor Vehicle Taxation Act 1976 as amended by Kerala Finance Act 2015, which does not

contain the said proviso.

8. In such circumstance, the writ petition is devoid of merit and the same is liable to be dismissed. The petitioner shall comply with the demand made by the department. The department shall hence issue a fresh demand in accordance with the present tax liability as per the Kerala Motor Vehicles Taxation Act 1976 as amended by the Kerala Finance Act, 2015 within a period of two weeks from today and the petitioner shall satisfy the same within a further period of one month from the date of issuance of the communication. If the petitioner does not pay the said amount, the vehicle shall be liable for seizure and for sale for realisation of the dues to the Government.

The writ petition would stand dismissed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB/12/11/2015

// true copy //

P.A to Judge.