IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 29700 of 2014 (J)

PETITIONER :

PAULACHAN, AGED 50 YEARS,S/O.PAILAPPAN,
VALLOORAN HOUSE, KONOOR NALUKETTU P.O.,
N.R.CHURCH, MURINGOOR, THRISSUR DISTRICT.

BY ADV. SRI.NIREESH MATHEW

RESPONDENT(S):

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1. **STATE OF KERALA,**
   REP. BY ITS SECRETARY, DEPARTMENT OF TAXES,
   GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM-695 001

2. **REGIONAL TRANSPORT OFFICER,**
   THRISSUR. PIN-680 001

3. **ADDL. REGISTERING AUTHORITY,**
   CHALAKUDY, THRISSUR DISTRICT. PIN-680 307

R1 TO R3 BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 29700 of 2014 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: COPY OF THE SALES CERTIFICATE ISSUED FROM M/S.MERCYDA SPEED GOVERNOR, SULTHAN BATHERY DATED 19.7.2013.

P2: COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DATED 27.10.2014.

P3: COPY OF THE DUPLICATE N.O.C. ISSUED TO THE PETITIONER ON 30/8/2013 FROM THANE R.T.O.

P4: COPY OF THE CERTIFICATE DATED 23/10/2013 ISSUED BY THE S.I. OF POLICE, KORATTY.

P5: COPY OF THE AFFIDAVIT DATED 26/10/2013 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

P6: COPY OF THE APPLICATION FOR ASSIGNMENT OF NEW REGISTRATION MARK TO A MOTOR VEHICLE, DATED 1/10/2014 SUBMITTED BEFORE THE 3RD RESPONDENT.

P7: COPY OF THE RECEIPT SHOWING THE REMITTANCE FOR ASSIGNMENT OF NEW REGISTRATION ON 1/10/2014 SUBMITTED BEFORE THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.29700 of 2014 (J)

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Dated this the 5th day of March, 2015

JUDGMENT

The petitioner, who had purchased a tanker lorry from a vendor in Maharashtra had, after obtaining an NOC from the registering authority in the State of Maharashtra, applied for registration of the vehicle in the State of Kerala. Towards this end he preferred an application before the 3rd respondent.

2. The facts would disclose that, although, the vehicle was purchased by the petitioner on 12.07.2013, it was registered and assigned a registration number in Kerala only on 27.10.2014. This was pursuant to an application dated 01.10.2014 preferred by the petitioner. The issue involved in this case is with regard to the tax liability of the petitioner, in respect of the vehicle, under the Kerala Motor Vehicle Taxation Act, for the period between 12.07.2013, on which date he had purchased the vehicle, and 27.10.2014 on which date the vehicle was actually registered.

3. It is the contention of the petitioner that, the delay in registration was on account of factors beyond his control, and for the said period since, admittedly, he could not use the vehicle as a goods carriage, on account of non obtaining of the required

permit for the same, there could be no tax levied on the vehicle that was not actually used as a goods transport vehicle. In the writ petition, the petitioner seeks a direction to the respondents to issue a fitness certificate and permit to the petitioner in respect of his vehicle, without insisting on a payment of tax for the period referred to above.

4. I have heard Sri.Nireesh Mathew, the learned counsel for the petitioner and Sri.Sudheesh Kumar, the learned Government Pleader for the respondents.

5. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that in terms of the provisions of the Kerala Motor Vehicle Taxation Act,1976 [for short, 'KMVT Act'], the liability to tax, of a vehicle, is in accordance with Section 3 of the said Act. By Section 3(3) of the Act, it is made clear that, the registered owner of, or any person having possession or control of a motor vehicle shall, for the purposes of this Act, be deemed to use or keep such vehicle for use in the State, except during any period for which no tax is payable on such motor vehicle under Section 5(1).

6. In the instant case, it is not in dispute that, the vehicle that was purchased by the petitioner was kept by the petitioner for use

during the interim period from 12.07.2013 to 27.10.2014. It is also not in dispute that, for the period in question the petitioner had not sought any exemption from payment of tax under Section 5 of the KMVT Act. The right of the petitioner to claim any refund of tax, if paid, pursuant to the provisions of Section 6 of the Act is also not affected in any way. Under the said circumstances, I am of the view that, the claim of the petitioner for exemption from payment of tax for the aforementioned period cannot be legally sustained. The prayers sought for by the petitioner in the instant writ petition cannot be granted. The writ petition is accordingly dismissed.

I make it clear that, if the petitioner pays the tax amount for the period in question, then, it will be open to him to file an application for refund on the grounds stated in the writ petition, for non user of the vehicle, before the appropriate authority under the KMVT Act. Save for this observation with regard to the right of the petitioner to move the authorities for a refund of tax already paid, the writ petition is otherwise dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/07/03