IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

Writ Petition No. 6686 of 2017

District : Osmanabad

Pratibha Motors, Through its Sole
Proprietor Saurabh s/o. Deepak Ajmera,
Age : 33 years,
Occupation : Business,
R/o. Plot No. 4/9, Rajeev Gandhi Nagar,
Osmanabad, Dist. Osmanabad. .. Petitioner.

versus

1. The State of Maharashtra,
   Through Ministry of Transport,
   Mantralaya, Mumbai.

2. The Deputy Transport Commissioner,
   State of Maharashtra,
   Mumbai.

3. The Registration Authority,
   The Deputy Regional Transport
   Office, Osmanabad. .. Respondents.

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Mr. Shaikh Mazhar A. Jahagirdar, Advocate, for the petitioner.
Mrs. A.V. Gondhalekar, Additional Government Pleader & Mr. Y.G. Gujarathi, Assistant Government Pleader, for respondents

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 4th AUGUST, 2017

ORAL JUDGMENT :

1. The petitioner questions propriety, legality and validity of orders dated, 20th April, 2017 passed by Registering authority, Deputy Regional Transport Office, Osmanabad- Respondent No.3

herein, in proceedings bearing no. Registration / Dy.RTO / Osmanabad /2017/ outward no. 513 and 17th May, 2017 passed by Deputy Transport Commissioner (Amal.-1) cum Appellate Officer, Maharashtra State, Mumbai-Respondent No.2 herein, in proceedings bearing no. Pa.Aa./Ma.Ra./Ka.1/Appeal 07/2017 outward No. 7696 and order dated 01st June, 2017 in proceedings bearing no. 736/ registration/TC/Dy.RTO/Osmanabad/17 passed by Respondent No.3.

2. In order to facilitate appreciation of the matter in proper perspective, it will be worthwhile to refer to the background involved.

3. The petitioner is a proprietary concern carrying on and engaged in business of dealing in two-wheeler vehicles and is authorized dealer of two wheelers manufactured by M/s. Hero Motocorp Ltd. from 2007. As required under the Motor Vehicles Act, 1988 [hereinafter, "M.V. Act"] according to proviso to section 39, pursuant to rule 35 of the Central Motor Vehicles Rules, 1989 [hereinafter, "CMV Rules"], the petitioner had been issued trade certificates bearing no. TS/MH/25/2007/43/OSD and TS/MH/ 25/2007/48/OSD.

4. Trade certificates referred to above were being duly renewed from year to year as required under the rules, upto 01-11-2016.

5. Around aforesaid period, father of the proprietor was noticed to have been suffering from a serious ailment viz., cancer and the proprietor was required to treat his father at various places viz; Pune, Mumbai, Hyderabad, etc. Renewal of trade certificates on 01-11-2016 had not been applied for. Upon realization of the miss in getting renewed the trade certificates, on 24-03-2017, the Road Transport office (RTO) at Osmanabad had been moved seeking renewal of aforesaid trade certificates and various amounts including extra charges under challans had been paid and deposited with the RTO, Osmanabad. Collection and payment of amounts under various heads have been duly acknowledged by issuing receipts by RTO.

6. Notice dated 03-04-2017 was issued to petitioner under the signature of Deputy Regional Transport Officer, Osmanabad - respondent No.3, directing to show cause as to why renewal of trade certificates for the period from 01-11-2016 to 24-03-2017 be not refused for having issued forms no.21 selling vehicles in absence of trade certificates and in the process contravening prescription under rule 42 and as such, directing the petitioner to submit record in respect of sale of vehicles during said period and to remain present on 05-04-2017 and as to why registration of vehicles so sold be not cancelled/recalled, referring to section 55 of Motor Vehicles Act.

7. Simultaneously, the notice purports to direct motor vehicle inspector to visit the dealer's premises and to inspect record of form 19 and to report on the same with a further direction under item 2 to motor vehicle inspector and assistant motor vehicle inspector to stop registering vehicles of the dealer till further orders.

8. On 03-04-2017 a letter had been given by petitioner communicating that about 1270 vehicles had been registered and in respect of the same, willingness to pay compounding fees at Rs. 300/- per vehicle was shown and a cheque of Rs. 3,81,000/- bearing no. 023008 dated 03-04-2017 drawn on Bank of Maharashtra, Osmanabad Branch had been issued. Time of two days had been sought for giving details of vehicles.

9. Proceedings as recorded on 06-04-2017, under item no.1, refer to that for registering vehicles during the period 01-11-2016 to 24-03-2017, the petitioner has given a letter showing his willingness to pay penalty and to give allowance of two days for the same. Petitioner had issued cheques for payment and had two days time to give detailed list with a request to compound *vis-a-vis* payment and also refer to proviso to section 39 of the MV Act and rule 33 of the CMV Rules, alleging contravention of the same and yet issuing form no.21.

10. In response filed by petitioner on 06-04-2017, it had been referred to, *inter alia*, that application for renewal has been submitted on 23-04-2017 along with requisite payments under challans issued and receipts acknowledging amounts paid depict that the trade certificates were renewed for the period from 01-11-2016 to 31-10-2017. It had been referred to that the dealer had been registered with the RTO for trade certificates, albeit renewal of trade certificates was applied late and pursuant to the relevant notifications and rules, fee as prescribed had been paid and collected. It had been requested that, for issuing form no.21 during the period for registration of two wheelers, cancellation of registration of vehicles pursuant to rule 55 of the M.V. Act be refrained from for the reasons as have been referred to, among others, that the dealer premises inspection charges for each of the vehicles had been paid and have been collected by RTO, material particulars of each vehicle have been given and were verified by the RTO. It has been referred to that, particulars of vehicles sold have been submitted. Vehicles had been inspected and certificate therefor had been given. It has been in particular submitted that all the vehicles were registered by RTO and were granted registration certificate and there had been no delivery of vehicle without registration. The vehicles had been duly registered accordingly during the period under consideration.

Dealer's father had been suffering from cancer and for his treatment, he was taken from Osmanabad to far off places like Pune, Mumbai, etc. Requisite documents in respect of the same had been attached along with the reply. It was submitted that section 55 would not be applicable which has application in different circumstances.

It has further been intimated that there had been no *malafides* nor any misrepresentation or intention to commit fraud. Forms no.21 contain all correct and material particulars. The trade certificates could not be renewed due to unavoidable circumstances and the petitioner has borne all requisite fees, taxes and interest for the delayed renewal. It was reiterated that the trade certificates could not be renewed in time due to health problems of his father resulting into frequent non-availability of dealer. Entire financial requirements were paid and it was as such requested to condone lapse occurring under the circumstances beyond control of the petitioner.

11. Upon aforesaid, in the proceedings under the caption '*observation*', it has been stated that it cannot be accepted that on payment of the renewal fees and taxes, trade certificates are renewed from 01-11-2016. It is an erroneous assumption, as pursuant to rule 35 of CMV Rules, a period of 30 days is given for the same for satisfaction of the concerned authority. It was observed that it has

been incorrectly claimed that the vehicles have been delivered by following rule 42 of CMV Rules and there is office record depicting that it is not in accordance with rule 42 and for giving a detailed list, time had been sought up to 17-04-2017. Additionally, it has been stated that there is record available in the RTO showing that there is no substance in the claim of the dealer about none of the vehicles having travelled beyond its premises and thus he is not required to maintain register pursuant to rule 43. The matter, as such, had been adjourned to 17-04-2017 for giving the list of other than 1270 vehicles about which compounding fees has been paid and the matter also was adjourned for hearing on renewal of trade certificates.

12. On 17-04-2017, the proceedings were recorded referring to under item No.1 that the cheque issued towards compounding fees of Rs. 3,81,000/- bearing no. 023008 had been dishonoured by the bank for the reason that signature did not match and in the circumstances, the petitioner is liable for legal action therefor. Under item no.2, it has been referred to that a list of 1652 vehicles has been given, however, RTO record shows that 1970 vehicles had been dealt with by the petitioner during the period from 01-11-2016 to 24-03-2017 and thus the information supplied had been erroneous and the dealer had avoided to give correct information. Under item

no. 3, sub-item 1, it has been referred to that while form no.21 is a computerized item, the date of sale is hand written and does not match with computer generated invoice. Under sub item no.02, it has been referred to that copies of computer generated sale invoices have not been submitted and hand written copies are submitted and there is difference in the price shown in computer generated sale invoices and hand written sale invoices. There is discrepancy in tax payment. Under item no.4, it is referred to that out of 1970 vehicles, about 180 vehicles were registered at Lohara camp indicating that the petitioner had dealt with vehicles outside permitted area without record.

13. It was observed to the effect that list of vehicles submitted on 17-04-2017 is not complete and is erroneous. According to RTO record, vehicles have been delivered without registration contravening CMV rule 42 and no register pursuant to rule 43, as would be obligatory, has been provided and that the officer finds substance in the observations at items no.01 to 04 referred to above. It has further been referred to in the proceedings that the petitioner is liable to pay compounding fees in respect of 1970 vehicles for contravening provisions of section 39 and as such, for the same, period is extended up to 19-04-2017 up to 02 'O' clock and the matter was posted for hearing on renewal of trade certificates.

14. On 18-04-2017, petitioner had requested, with reference to the notings dated 17-04-2017, which were received on 18-04-2017, since it had been observed that there had been breach of provisions of Section 39, the petitioner is eligible for payment of compounding fees, to give the amount in respect of the same along with the requisite provisions in order to enable him to take action pursuant to the same.

15. On 20-04-2017, submissions had been filed in the proceedings. In the same, the petitioner had refuted charges levelled against him and had complained of biased approach on behalf of RTO in matter under consideration and requested to renew trade certificates. Various other events were referred to, submitting that amount of Rs. 3,81,000/- had been paid in order to overcome the situation arising out of direction not to register vehicles being dealt with by the petitioner and had referred to that, it is not known as to why the bank has considered there is difference in signature and had dishonoured the cheque. While list of 1970 vehicles had been submitted, the RTO office purported to allege that about 2052 vehicles had been dealt with by the petitioner. On cross verification by dealer it had been revealed that the dealer had dealt with 1970 vehicles. It purports to refer to explanations with regard to

imputations about discrepancy in respect of prices of vehicles and Lohara camp deliveries being under auspices of RTO etc.

16. Respondent no.03 passed an order on 20-04-2017 refusing renewal of trade certificates, for the petitioner had contravened provisions of the M.V. Act and CMV Rules and had misused the trade certificates and directed to refund 50% of the amount paid on 24-03-2017. The order refers to that while the compounding fees had been paid under cheque for dealing with vehicles for the period from 01-11-2016 to 24-03-2017 without trade certificates, the same had been dishonoured for the reason that the signature did not match. The petitioner had submitted a list of 1652 vehicles, however, office record shows that he had dealt with about 1970 vehicles and the list did not match and as such, the petitioner had given wrong information and concealed the same. The date of sale in computer generated invoice and that in hand written invoice do not match. Hand written sale invoices had been submitted instead of computer generated sale invoices and there is difference in prices of vehicles in the two invoices and thus, it shows there has been tax evasion. 180 vehicles out of 1970 have been registered from Lohara camp, which is not authorized and it is shown that the vehicles have been dealt with in the premises of the dealer.

17. It is observed that the list submitted by dealer on 17-04-2017 is not complete and is wrong and conceals true facts. According to the records available in the office, vehicles have been dealt with without registration contravening rule 42 and the dealer had not provided for register pursuant to rule 43. There appears to be substance in items no.01 to 03 recorded and that there has been breach of provisions of section 39 and rule 33 in dealing with vehicles during the period from 01-11-2016 to 24-03-2017 and, as such, the order as aforesaid came to be passed.

18. The petitioner, pursuant to provisions of rule 44 had been before respondent No.02 in appeal.

19. The appellate authority has referred to in impugned order under caption 'observations' allegations by RTO, Osmanabad viz; under clause 1, item A therein it has been during relevant period i.e. 01-11-2016 to 24-03-2017, about 1970 vehicles have been registered without there being trade certificate. Under item 'B', proper information had not been provided suppressing about 1970 vehicles had been registered by submitting a list of 1652 vehicles and item 'C' thereunder refers to, while form no.21 being computerized document, on the same date of sale has been recorded by hand

causing evasion of payment of revenue. The appellate authority under clauses 2 and 3 has considered that from aforesaid three items 'A', 'B' and 'C', only 'A' is relevant to the appeal, as 'B', relates to section 200 for plying of vehicles without registration and recovery of compounding fees or launching of prosecution and is outside the scope of its jurisdiction and 'C' relates to the vehicle tax, its assessment or recovery and the same is the province of the tax act and for action according to law.

20. The appellate authority has referred to rule 35 of CMV rules and observed under the same, renewal of trade certificate can be refused after giving opportunity to the party concerned. It has further been observed in the order that there are no specific and clear rules with regard to renewal of trade certificate. However, issuing authority has power to take into account user of the trade certificate being in accordance with rules or otherwise and to decide about the same. Appellate authority considered that since it has emerged that the appellant had sold vehicles after period of trade certificate had expired and thus, so far as past business is concerned, the appellant has contravened the rules and sold the vehicles, as such, the order passed by respondent no. 3 had been proper. The appellate authority dismissed the appeal under its order dated 17-05-2017.

21. Present writ petition initially had challenged aforesaid orders dated 17-05-2017 of respondent No.2 and dated 20-04-2017 of respondent No.3.

22. It appears that after appellate authority had passed order dismissing the appeal, the commissioner of transport has communicated to respondent no.03 that the petitioner is ready to deposit compounding fees at the rate of Rs. 1000/- per vehicle and thereupon renewal be considered. Accordingly, it appears that respondent no.03 had accepted compounding fees of Rs. 19,70,000/- and had issued a trade certificate for the period from 01-06-2017 to 31-05-2018 on 01-06-2017.

23. It further appears that on the very day, respondent no. 3 had issued communication and passed order suspending trade certificates issued on 01-06-2017 making reference to that M/s. Fortune Integrated Assets Finance, Mumbai, had complained of selling vehicles without registration and that vehicles are still not registered showing contravention of rules 42 and 43 of CMV rules. It has been alleged that under CMV rules, 1989, there is no provision of sub-dealership and yet the petitioner had sold vehicles from Lohara, Kallamb, Terkheda and Tuljapur, contravening rules 42 and 43 and that those vehicles have not yet been registered. A flying squad had

detained four vehicles which indicate that there has been contravention of rules 42 and 43. Since 24-03-2017 about 484 vehicles have been referred for registration. However, the petitioner had not paid required motor vehicle tax and compounding fees therefor. That means, vehicles have been delivered by the petitioner without registration. Letter of the petitioner dated 05-04-2017 refers to 786 vehicles and only papers of 484 vehicles for registration have been submitted and while inspecting the vehicles in the premises, there were only 96 vehicles, meaning that, rest of the vehicles having delivered without registration. Verification of aforesaid letter and the explanation do not appear to be satisfactory. As such, the petitioner is indulging into repetitive contraventions and has not been complying with the rules and as such, in exercise of powers under rule 44, an order has been passed suspending licence from 01-06-2017 to 30-08-2017 and had directed that original trade certificate be deposited with law-suit department of RTO office at Osmanabad.

24. After the aforesaid orders were passed the writ petition has been amended bringing in the subsequent events and also posing challenge to suspension order passed on 01-06-2017. Respondents have filed sur-rejoinder to rejoinder of petitioner and also affidavit to proposed amendments.

25. Petitioner in the meanwhile had withdrawn appeal filed against order of suspension of licence, in view of amendment challenging said order.

26. Learned counsel for petitioner Mr. Shaikh Mazhar A. Jahagirdar submits that, petitioner has been doing business from a long time. He submits that, petitioner had been duly possessing trade certificates and duly getting renewal from time to time and problem had occurred during the period from 01-11-2016 to 24-03-2017. An aberration in getting renewal of trade certificate has occurred under very extraordinary and critical circumstances as the father of petitioner had been suffering cancer and was being treated at various places. During this period, petitioner had been obsessed with health condition of his father. Renewal of trade certificates, had escaped his attention. He submits, all the vehicles which are sold during this period had been duly registered pursuant to the relevant provisions of the MV Act and CMV Rules. Learned counsel points out that, while the reason of sufferance of serious ailment by father had been honestly placed forth, it has received no consideration and/or appreciation at all. The orders hitherto depict there is absolute non application of mind to true reason underlying the slip in seeking renewal of trade certificates in October – November, 2016. He adverts to various documents which indicate the ailments suffered by

father and him being treated at various places outside Osmanabad. Learned counsel further submits that, these documents are very much part of the record before the authorities hitherto- respondents No.2 and 3.

27. Mr. Shaikh Mazhar Jahagirdar, learned counsel for the petitioner, submits that the trade certificates could not be renewed during 01-11-2016 to 24-03-2017 as the proprietor had been bogged and tied down under the circumstances referred to above and there had been no deliberate intention to skip renewal immediately and it is a further submission that no advantage at all has been gained by the petitioner by not renewing the trade certificates.

28. He submits that, the payment towards renewal fees and other charges had been duly made. Respondent no. 3's office had accepted all the due amounts towards the taxes, other charges including renewal charges of trade certificates for the period 01-11-2016 to 31-10-2017.

29. However, petitioner has received show cause notice as referred to hereinbefore, seeking explanation as to why renewal of trade certificates be not refused for contravening provisions of Rule

42 of the Central Motor Vehicles Rules, 1989 by selling vehicles without trade certificates and as to why the registration of the vehicles be not cancelled pursuant to Section 55 of Motor Vehicles Act.

30. He submits that, interestingly a point be noted, simultaneous with issuing show cause notice dated 03-04-2017, the subordinate officers were directed under the very notice not to inspect the vehicles for registration. Learned counsel wonders as to whether the officer who had issued such order, had power to issue such direction.

31. He submits that there is no nexus between trade certificate and sale and registration of vehicles and for trading in vehicles trade certificate would not be necessary. Trade certificate, according to learned counsel, is required for the purposes as are referred to under the M.V. Act and CMV rules, particularly section 39 and rule 41. He submits that there was no ill intention nor deliberate or otherwise in not seeking renewal of trade certificates in time.

32. Mr. Jahagirdar submits, pursuant to the notice, petitioner presented himself. Explanation was sought in respect of the allegations about registering vehicles by issuing forms No.21 without trade certificates and why their registration should not be recalled. Petitioner had been asked to submit details of the vehicles sold during

the said period. Petitioner had submitted lists of 1970 vehicles accordingly. Explanation and relevant details were furnished in response. However, recorded minutes of dates depict rather than aforesaid, the proceedings were being obfuscated to matters which were outside the show cause notice and to alleged considerations outside the scope of show cause notice which were not relevant nor allegations were substantiated. In the meanwhile, petitioner, in order to get over the situation created by instructions to subordinate staff by respondent no. 3, not to inspect and register vehicles, while it had been given to understand payment of compounding charges would resolve the problem absolutely, had resiled and communicated his willingness under the circumstances to compound the situation by payment.

33. It has been contended on behalf of petitioner that receipts dated 24-03-2017 are indication of renewal of trade certificates. He submits, during proceedings it had been referred to that petitioner had paid renewal fees and tax on 24-03-2017 and trade certificates accordingly had been renewed with retrospective effect.

34. He submits that while respondent No.3 had been adjourning the matter considering that the lapse in obtaining renewal of trade certificates, or for that matter selling vehicles in the absence

of trade certificates alleging contravention of Rule 42, had been compoundable and as such had given time to deposit compounding fees. In such a case, according to learned counsel proceedings pending before respondent No.3 ought to terminate on that.

35. He submits that, MV Act and CMV Rules provide for inspection and registration of vehicle at dealers premises subject to payment of charges therefor. By way of example he submits that, respondents office charges additional Rs.50/- (Rs. Fifty only) per vehicle for inspection at dealers premises. He submits that, the dealer sells the vehicle to purchaser, while entering in to transaction with the purchaser, he issues the sales invoice, thereupon said vehicle is inspected and thereafter tax amount and registration fees are charged to the purchaser, and the same is collected by dealer for their office. Upon submission of papers thereof, documents are verified and thereafter, the registration mark is given. He submits that, in respect of the sales of two wheelers during the period referred to above all this procedure had been duly followed and the purchasers were given registration marks after getting satisfied that the requisite procedure for registration has been followed. He further contends that, so far as registration is concerned that is the responsibility of the owner and dealers role is only to facilitate registration of vehicle with office of respondents.

36. Learned counsel submits, whereas during the course of hearing of this writ petition, what is tried to be shown is a receipt of vehicle sold in November, 2014 to have been registered in 2016 based on signature of officer in the record kept in his custody. He submits that upon sale of the vehicles, taxes and registration charges are paid at the time of delivery of the vehicle for registration to the office of respondents which is duly depicted by the receipts coming along with the documents tendered across. Receipts do indicate that the payment for registration charges and taxes had been made on the very next date of the sale of the vehicle. Subsequent part of registration is not in the control of the petitioner. He had delivered the vehicle for registration and the vehicle was allowed to be moved by the owner of the vehicle concerned for which petitioner hardly can be blamed. It is submitted that, rest of the imputations cannot attributed to petitioners for the registration getting delayed due to act of owner or may be the certain other matters not concerning petitioner. According to petitioner, one thing clearly emerges that the vehicles had been delivered for registration to respondent. Over and above aforesaid, he purports to point out scoring of certain dates in aforesaid documents. He submits the the role as referred to in Supreme Court decision relied on, on behalf of respondents, in the case of *Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala Versus*

M/s. K.T.C. Automobiles reported in *CDJ 2016 SC 080*, is performed by petitioner and documents do show the same.

37. He submits, even in the decision relied on by respondents of the Hon'ble Supreme Court, the judgment has referred to that role of dealer is upto placing the vehicle for registration.

38. He submits that, during the course of proceedings, it appears that certain information had been solicited by office of RTO, Osmanabad and one of the financers who is no longer with the dealer had chanced upon opportunity of making allegations against petitioner in respect of the certain vehicles allegedly delivered in 2014 without registration. He submits that, letter from it is a got up letter and stands a manufactured one to subserve premeditated purpose. He submits that, the documents do not show vehicles which have been dealt with during concerned period have not been registered. It is obvious that respondent No.3 entertains grudge against petitioner.

39. He submits, the documents annexed along with the reply indicate that computer invoices contain engine number, chassis number and the owners name and the date of sale and prices and handwritten invoices coming along of even date do show the same engine number, chassis number along with price and the taxes in

respect of the same. There is no substance in the contention that there has been evasion of tax by petitioner, discrepancy as alleged had been explained in the submission and circumstances would be further explained and accounted for, had opportunity come his way.

40. Learned counsel further submits that the allegations in respect of the submission of list by petitioner is not in consonance with happening of events. Initially in hurry petitioner had submitted lists of 1270 vehicles, however, during proceeding, he had submitted lists of 1970 vehicles. Learned counsel submits that 1652 is a figure coming from respondent and petitioner had not given said figure.

41. Further learned counsel for petitioner adverts to that registration is done only after delivery of vehicle for registration and not before. The documents speak for themselves that there cannot be any intention to breach of Rule 42 in respect of the vehicle registration.

42. It is submitted that during concerned period, vehicles which were sold, were duly registered by RTO , Osmanabad, according to relevant rules and prevailing procedure and their registration had not been refused for want of renewal of trade certificates, as the certificates are not necessary for sale and registration of vehicles.

43. Learned counsel for petitioner submits that it is not an allegation of respondents that dealer had plied vehicle in breach of Rule 41 of The Central Motor Vehicles Rules which are shown to have been delivered at Lohara camp. It is submitted on behalf of the petitioner that the office of the respondents conducts camps to provide service to the tax payers at their close proximity. Survey of areas surrounding Lohara had taken place and thereafter Lohara is selected for camp. Tax is paid at Osmanabad in dealer's premises. On appointed day as such the vehicles had been taken to Lohara camp for delivery to the customers of surrounding area in the presence of the authority. It is contended that the camp at Lohara was being conducted under the auspices of the regional transport office. According to learned counsel for petitioners on instructions that the vehicles were taken to Lohara after all the formalities had been completed in the premises of dealer and the vehicles were not plied on the road at all, they were taken by a tempoload together in one vehicle as a facility to the owners of respective vehicles. He submits, the camp cannot be termed as unauthorized or illegal one. This has been referred to in the response/submissions yet, there is no reference to the explanation in impugned orders. He further contends that this was not the scope of show cause notices at all.

44. It is submitted, the dealer had sought opportunity to not only examine but also to cross examine the persons concerned.

45. In respect of suspension order dated 01-06-2017, it has been submitted by petitioner that the same is in violation of mandatory rule 44 of CMV rules as no notice whatsoever had been given to petitioner in respect of allegations made under the order nor any opportunity had been afforded to explain and no hearing had been granted to petitioner. It is further submitted that petitioner had not been made aware about vehicles sold having not been registered as alleged to have been complained by M/s Fortune Integrated Assets Finance, Mumbai. In respect of the allegation of sub-dealers having been appointed by petitioner, it is submitted that there is no sub-dealership and there have been only sales representatives. Four vehicles which are detained, in respect of the same all formalities and compliances as required under the rules and the supreme court judgment had been duly completed. The matter thereafter had been resting with the owner and the RTO to carry out the act of registration over which the petitioner seldom has any control. In respect of allegation about non payment of motor vehicle tax and compounding fees of 484 vehicles sold after 24-03-2017, it has been submitted that all the formalities for registration had been completed by the petitioner, however, registration of said vehicles had been kept

pending at the end of respondents – authorities. In respect of allegation that documents in respect of only 484 vehicles had been submitted and letter dated 05-04-2017 refers to 786 vehicles and 96 vehicles having found in the premises of the dealer, it has been submitted that all the due formalities for registration had been completed at the dealer's end and matter had been resting with respondents for registration which had been kept pending. In any case, it is submitted, all relevant aspects could have been brought forth and explained yet, opportunity had not been given and straight-away order of suspension had been passed immediately after renewing the trade certificates. It is being submitted that both the actions are contemporaneous rather simultaneous which vividly speaks of grudge being entertained by respondent no. 3 against the petitioner.

46. Learned counsel for petitioner submits, it is being alleged by respondents under suspension order that there have been some dealings in breach of rules and there have been certain allegations against dealer about erstwhile sale transactions of 2014 and respondents also purported to argue that dealings have exhibited breach in respect of said vehicles and further that the dealer has appointed sub-dealer who had dealt with the vehicles and further that vehicles have been detained for want of registration.

47. He submits that while vehicle sold to Mr. Ganesh Bhagwan Padwal had been delivered, it had been delivered for registration. However, it transpired later, that the owner of the vehicle faltered in getting registration of the vehicle. Upon realization of the same affidavit is filed and the owner as well has filed affidavit showing willingness to condone lapse. Though all requisite formalities were complied with while delivering vehicle for registration, subsequently it appears the owner had not, however, carried out his responsibility. Yet, the petitioner showed willingness to have its' condonation. He submits, as a matter of fact its' compounding is already accepted.

48. Learned counsel for petitioners on instructions states that, there is no sub-dealer, the vehicles have been sold for and on behalf of and by petitioner only. Sale invoices and other documents indicate sales have been made by the petitioner. There are no sub-dealers but they are representatives of petitioner and they do business on behalf of the petitioner. Their affidavits refer to and also reflect that the affidavits are given by the sales representative and not sub-dealers as tried to be appreciated.

49. So far as the detention of four vehicles is concerned, petitioner's counsel on instructions states their sales have been subsequent to 25-03-2017 and only two vehicles have been

registered and two other, in fact, were delivered after compliance of all documentation for registration to the office of respondents with the owner. According to instructions of learned counsel, it appears that subsequently two vehicles were not registered or rather refused registration, according to the instructions given by respondent.

50. He submits, had things been looked at objectively, it would have emerged that non obtaining of trade certificates during concerned period had been under genuine circumstances. There is no complaint about vehicle delivery without registration for the concerned period. He submits that, it has been only generally referred that there is record with the office, however, the record which is submitted before this court and even during the course of the hearing respondents had not been able to show any vehicle can be said to be delivered during 1-11-2016 to 23-04-2017 without following due procedure of registration.

51. He submits that the dealer had issued communications of his willingness to compound the matter by paying compounding fees since respondent no. 3 had been ordered not to register vehicles sold by the petitioner and even the request had been accepted. In the circumstances, renewal could not have been refused, however, for the reasons which are best known to respondent No.3, the same had

been refused. For the allegations in the show cause notice renewal of trade certificate cannot be refused.

52. He submits that the proceedings have had been conducted with predetermination to pass an adverse order against petitioner. Genuine reason, causing default in obtaining renewal of trade certificates during the relevant period has not been referred to at all. The records which have been submitted show genuine and real cause for detaining renewal of trade certificates. None of the orders make reference to the same.

53. He submits that the appellate authority has approached the appeal very cursorily and has passed a very perfunctory order and has not functioned as appellate authority.

54. Learned counsel Mr. Jahagirdar on a different plane on legal aspect submits that going by scheme of the provisions of Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989, it would emerge that a trade certificate is not a necessity for trading in two wheelers. He refers to various provisions of Motor Vehicles Act, particularly Sections 39, 41, 172, 177, 192, 200. He contends that the object underlying Section 39 is to prohibit plying of vehicle on public roads without registration by an owner, whereas a concession/

exemption has been given under proviso thereunder to a dealer of vehicles, wherein for certain purposes a vehicle can be driven by or on behalf of dealer subject to the condition of obtaining a trade certificate. The purposes for which the trade certificate is required, occur under Rule 41. He submits, exemption from registration of vehicles for plying is made available to a dealer under proviso to section 39 of the MV Act by applying for the same, which is subject to conditions prescribed. The other aspects have no bearing and should not affect the entitlement of the dealer to the certificate. Alleged revenue loss is not relevant to the aforesaid and that would not form ground for refusal to renew trade certificates and the allegation does not hold water.

55. Learned counsel for petitioner has further submitted that the petitioner has been a dealer, a bonafide dealer of Hero Motor vehicles limited. He submits bonafide dealer means, he is a direct dealer of a manufacturer. The bonafides are to be checked with reference to the same and not anything else. Learned counsel for petitioner submits that the petitioner has been a bonafide dealer from a long time. Interlude caused in renewal of trade certificates is due to circumstances beyond his control. He submits that it is not case that he has gained any benefit in not getting trade certificate renewed during the concerned period. Vehicle registration has taken place

during this period with the documents as required as per rules and procedure under the MV Act and the MV rules. No breach of the same can be imputed to petitioner. Even going by the allegations and imputations, within the confines of the MV Act and the MV rules, they are not sustainable and are in the absence of any basis. The bonafides of the dealers would have to be adjudged in the context of law and facts and not at all with reference to imputations and allegations made during the proceedings about which there had been no opportunity let to the petitioner.

56. Learned counsel for petitioner during the course of submissions has referred to a decision of Division Bench of this court in the case of *The Additional Commissioner of Sales Tax VATIII, Mumbai Vs. Sehgal Autoriders Pvt. Ltd., dated 11-07-2011*, particularly putting stress on paragraphs No.14 and 15 which observe, thus,

> ***"14. The rules which have been framed under the Motor Vehicles Act constitutes subordinate legislation and have to be read in a manner consistent with the provisions of the legislation under which they have been made. Under the Act, the obligation to obtain a registration certificate is that plainly of the owner.*** *Registration under the Motor Vehicles Act, 1988 is not an event which takes place prior to the acquisition or transfer of ownership. Section 39 imposes a bar on a person driving any motor vehicle and upon an owner from causing or permitting the vehicle to be driven in any public place or any other place, unless the vehicle has been registered.* ***Sections 39 and 40 postulate that it is the obligation of an owner of a vehicle to obtain registration from a***

registering authority. *Registration under Section 41 (3) is granted by the registering authority to the owner of the vehicle. The obligation to register is that of an owner. An application for registration has to be submitted by the owner or on behalf of an owner. When a dealer submits an application, he is hence acting on behalf of the owner of the vehicle. The registration certificate is issued in the name of the owner. "*

15. *The contention of the revenue, however, is that delivery cannot be granted to the owner by the holder of a trade certificate under rule 42 unless the motor vehicle has been registered.* ***Rule 42 however does not-as it cannot-override the obligation which Section 39 imposes on the owner of obtaining registration. Moreover rule 42 cannot be construed in isolation from the other provisions which have been made in Chapter III of the Central Motor Vehicles Rules, 1989.*** *Rule 41, for instance, specifies the purposes for which the holder of a trade certificate may use a vehicle in a public place. Among the purposes is for proceeding to and from any place for the registration of the vehicle. Similarly, under clause (d) of rule 41, the holder of a trade certificate may use a vehicle in a public place for proceeding to or returning from the premises of the dealer or of the purchaser for the purpose of delivery.* ***Rule 42 provides that no holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent. It is evident that an application for registration is required to be made in accordance with rule 47****. Rule 47, as a matter of fact, stipulates that an application for registration has to be made within a period of seven days from the date of taking delivery of the vehicle. The application has to be accompanied by a sale certificate.* ***The statutory form for the sale certificate stipulates that delivery has been handed over to the purchaser.*** *The Tribunal, in the present case, has found, as a matter of fact, that upon receipt of the price of the goods, the Respondent issues a gate pass in the name of the purchaser and issues a sale certificate in the prescribed form showing delivery of the motorcycle.*

> *The sale is complete and transfer of property in the motor cycle takes place to the purchaser coupled with the delivery thereof.* ***The obligation to obtain registration is that of the purchaser***. *When a dealer facilitates the obtaining of a registration certificate, he acts for and on behalf of the purchaser, because the obligation under the law to obtain a registration certificate is cast upon the owner of the vehicle.* ***The application for the issuance of a registration certificate and the grant of a registration certificate are both post sale events.*** *The charges that are levied by the appellant and recovered as handling charges are in respect of a service rendered to the purchaser upon the completion of the sale of the motorcycle. Handling charges cannot be regarded as forming part of "the valuable consideration paid or payable to a dealer for any sale made." The handling charges cannot be regarded as "any sum charged for anything done by the seller in respect of the goods at the time of or before deliver thereof".*

57. Learned counsel for petitioner also refers to a decision in the case of *Commissioner of Central Excise, Bangalore Versus Brindavan Beverages (P) Ltd. And Others*, reported in *(2007) 5 Supreme Court Cases 388*, which is a case in respect of excise to contend that the notice issued had been vague and vitiates the entire proceedings.

58. He further refers to *Satwati Deswal Versus State of Harayana and Others*, reported in *(2010) 1 Supreme Court Cases 126*, to urge that the High Court in the given *scenario* should not insist upon alternate remedy in respect of suspension since.

59. Further, it is contended that respondent no. 3 has tried to reach out to the manufacturer by issuing letters with a view to disturb the business and dealership of the petitioner which act sufficiently throws light on intention of respondent no. 3 and is out of grudge against petitioner.

60. Learned counsel for the petitioner has submitted that not only the documents annexed at Exhibit R – 4 are in respect of the sale of vehicles after 24-03-2017 but from the same it cannot be said that any revenue loss is caused to the government nor would the documents demonstrate any revenue loss being incurred by the State. According to him, the allegations are omnibus and untenable and without letting opportunity to the petitioner nor any action pursuant to the relevant enactment has been taken or is being pursued. According to him, this consideration is absolutely not relevant for renewal of trade certificate. The documents annexed with respect to the taxes paid and payable taxes indicate that the demand notices in respect of alleged short payment of tax are generated after the order has been passed refusing renewal of trade certificate and the petitioner was given only demand notice about the taxes.

61. It is contended on behalf of the petitioner that while the vehicles sold upto 31-03-2017, entire procedural requirements and

the payments of taxes had been duly complied with, however, their registration had been kept pending at the end of respondent no. 3. It is further being submitted that all the procedural requirements as are referred to under the judgment relied on by respondents in *Commissioner of Commercial Taxes, Thiruananthapuram vs. M/s K.T.C. Automobiles* (supra) had been duly followed and complied with by the petitioner and non registration of said vehicles is a matter resting with owner and respondent no. 3 and the petitioner can hardly be imputed anything in respect of the same. Learned counsel further purports to submit that since registration had been detained, petitioner had been constrained under the circumstances to write to respondent no.3, expressing his willingness to compound alleged offences. It is further being submitted that as the things would emerge it would hardly be said that any violation of section 39 or for that matter rule 42, had ever taken place incurring punishment pursuant to section 192 of the MV Act. However, in order to avoid disturbance to running business, petitioner had shown willingness to compound alleged offence but, respondent no. 3 had been entertaining a grudge against the petitioner.

62. Respondents have filed their affidavit in reply. Allegation of respondent no. 3 is that the petitioner – dealer had kept in possession and sold vehicles without trade certificates from

01-01-2016 to 24-03-2017 and the same is in contravention of provisions under in section 39 of the MV Act. It is alleged that only some vehicles were produced for registration and as such notice under section 55 (5) calling upon explanation was issued to dealer. It is contended that the respondents are empowered to conduct inspection of records maintained by the petitioner in order to ascertain whether the petitioner is a bonafide dealer. The reasons placed forth for non renewal of trade certificate during this period are not justifiable. It is submitted, section 39 of the MV Act and rules 35, 40, 41 and 42 of the MV rules make it clear that it is incumbent on a dealer to have trade certificate under rule 35. It is further referred to that section 39 enjoins that no person shall drive any motor vehicle and the dealer shall not permit or cause the motor vehicle to be driven on public road without registration. It is further submitted that a trade certificate *virtually* enables the holder thereof to use the vehicle in public place only for the purposes enumerated under rule 41. It is submitted that section 39 and rules 41 and 42 prevent the holder of trade certificate from delivering a vehicle to purchaser without registration either temporary or permanent and as such delivery without registration would result in violation of provisions of section 39 inevitably inviting consequences and punishments pursuant to section 192 of the MV Act which may also result in cancellation of registration under rule 44 of the MV rules. The petitioner has kept in possession and sold about 2153 vehicles without trade certificates and has not stopped his business activities and thus is putting the purchasers in precarious situation.

63. The affidavit in reply further refers to letter dated 30-04-2017 and to letter dated 03-04-2017 from the petitioner wherein, petitioner has shown willingness to compound offence and had issued cheque therefor. It is further contended that the registration under law means registration mark assigned to vehicle by registering authority. Taking note in register of sale of vehicles does not mean that vehicle is registered with registering authority and paid leviable charges and necessary fee. It is referred to that the procedure in case of registration of 1270 vehicles had not been complied with, and appears to be a position admitted by dealer.

64. It is submitted that offence punishable under section 192 can be compounded pursuant to section 200 of the MV Act. It is further referred that the deponent's office had accepted compounding fees and granted time to petitioner to make payment, however, cheque issued by petitioner had been dishonoured and as such an action had been initiated in respect of the same against the petitioner pursuant to the provisions of Section 138 of the Negotiable

Instruments Act and further a demand notice for payment of compounding fee @ Rs.1000/- per vehicle aggregating to Rs.19,70,000/- had been given on 19-04-2017. The petitioner had submitted list only of 1652 vehicles which, on verification, did not match with the office record of the respondents and statements of the officers in support of the same have been relied on.

65. It is submitted in the reply that against the order of respondent no. 3 refusing renewal of trade certificate, petitioner had approached appellate authority – respondent no. 2 which had dismissed the appeal, confirming the order of respondent no. 3. It is alleged that proper information about vehicles dealt with during aforesaid period had not been given and only incomplete information was given and vehicles were delivered by petitioner without registration which were plying on the road. Some of the vehicles were detected by the checking officer and were detained in accordance with provisions of the Bombay Motor Vehicles Taxes Act, 1958.

66. In the reply, it has been alleged that the petitioner collected amount of taxes, registration fees and cost of the vehicles in advance from the purchasers. Two different types of invoices are issued by dealer which show different costs of vehicles sold. In order to remit less one time tax, manual purchase invoices are given to

purchasers causing government revenue loss. In the process, the government amount is misappropriated. As such, it is submitted, demand notices dated 12-05-2017 and 30-05-2017 were issued to the petitioner. It has further been alleged that petitioner had taken vehicle for registration in a tempo at Lohara camp though there is no such provision to carry the vehicles out of dealer's premises.

67. The reply refers to that Transport Commissioner, Maharashtra State had received a complaint from M/s Fortune Integrated Assets Finance, Mumbai with regard to sale of two vehicles on 02-09-2014 and 28-11-2014 which were said to have not been registered. It has further been referred to that although petitioner has collected amount of fees and registration charges, the petitioner has failed to register the vehicles and deposit the government revenue. It was alleged that rule 42 had been violated by the petitioner. It has been claimed that this is common scenario which can be seen among all the dealers in the State of Maharashtra and such business dealings constitute hazard to road safety and have been festering offences like, theft, robbery, decoity and it is likely that such deliveries are likely to be used in grave criminal, anti-social and anti-State activities.

68. It has been referred to in the affidavit in reply that pursuant to order by respondent no. 2 dated 31-05-2017, respondent no. 3 has renewed trade certificate for a period of twelve months from 01-06-2017 to 31-05-2018 and further to that the petitioner has deposited an amount of Rs. 19,70,000/- as per said directions of respondent no. 2, however, though petitioner has paid the amount of compounding fees, the entire amount of tax along with registration fees has not been remitted by petitioner to the government, although collected from the purchasers. The affidavit in reply purports to refer to that upto 31-03-2017 about 786 vehicles sold by petitioner were pending for registration as can be seen from the letter dated 05-04-2017 from the petitioner.

69. The petitioner has filed his rejoinder. Rejoinder denies the claim of the respondents that the petitioner had suppressed any material facts. Such an allegation, according to petitioner, is misconceived. It is submitted, while rule 41 contemplates a vehicle should not be used in public place by a holder of trade certificates except for the purposes set out therein and since it is an admitted position that petitioner has delivered vehicles only upon registration there is no question of violation of section 39 and incurring consequences for the same under section 192. It is submitted that

alleged contraventions are said to have been committed in the absence of trade certificates, however, in the facts and circumstances, there is no occasion to invoke rule 44 for suspension or cancellation of trade certificate. It is categorically submitted that trade certificate is not a *sine-qua-non* for selling vehicles.

70. With respect to letter dated 03-04-2017, it has been submitted that the letter had been issued since respondent no. 3 had refused to register vehicles and insisted upon to deposit fine and the amount had accordingly been deposited under protest. According to the petitioner, registration of the vehicles is complete in law on payment of registration fees and taxes by the purchaser or his agent. It had been denied in the rejoinder that the petitioner had submitted list of 1652 vehicles on 06-04-2017 to the respondents and contended that in any case, respondent had given time for submitting list till 17-04-2017. In the circumstances, said allegation has no bearing. The correctness and veracity of the statement annexed as Exhibit R-3 to the affidavit in reply has been denied by the petitioner. The petitioner maintains that list of 1970 vehicles had been submitted to the respondents and had denied that the vehicles were delivered to the purchasers without registration which were being plied on road without registration marks. It is submitted that no details have been given with respect to revenue loss/short

payment of taxes or vehicles allegedly seized and detained. It has been referred to that the allegations are baseless about revenue loss and misappropriation of government money stating in paragraph no. 13 of the rejoinder thus;

> " ***13.*** *I say and submit that the contents of para 15 are false and malicious without any piece of evidence. The vehicles are registered only after assessing the tax by the respondent. The registration form requires purchase invoice of the manufacturer or dealer. With every application of registration the petitioner used to give purchase invoice of manufacturer wherein basic manufacturing cost and excise duty is mentioned. Sales tax payable in the State of Maharashtra is available on retail invoice. The petitioner for the sake of convenience to the assessing authorities prepares invoice for calculation purposes wherein these three amounts are mentioned and accordingly the tax is to be assessed. It is noteworthy that none of these three amount mentioned above can be undervalued since it is on record with the application of registration and invoice submitted by the petitioner. The respondent no. 3 has made baseless allegations of loss of Government Revenue and Misappropriation of Government Money. The Demand Notices annexed at Exh. R-5 were already complied by the petitioner by paying the taxes at regular intervals that is too before issuance of these notices but the respondent no. 3 has not issued the receipts of the some challans, reasons being the challans were paid by the sales representatives of the petitioner. The copies of challan upto date are available with the petitioner and he is ready to make available those as and when required. The copy of registration form submitted to the respondent is annexed herewith and marked as* ***Exhibit – F*** *for kind perusal.* "

71. It has been claimed that the petitioner had been unaware of complaint by M/s Fortune Finance about sale of two vehicles on 02-09-2014 and 28-11-2014, further submitting that so far as allegation of the respondents that those vehicles were not registered is concerned, it would not be attributable to petitioner, for taxes and registration fees were paid at the relevant time and the inspection of those vehicles was done by the respondents – authorities at the same time. So far as giving registration number to the vehicles is concerned, according to petitioner, it is for the respondents to do the same. Copies of the documents concerned were relied on in this respect. It has been stated in this respect in paragraph no. 15 of the rejoinder thus;

> *" **15.** I say and submit that the contents of para 17 that the complaint from M/s Fortune Finance was received by the respondent no. 2 regarding selling of two vehicles from 02.09.2014 and 28.11.2014 is not within the knowledge of petitioner, As far as the contention that those are not registered till today is false statement made by the respondent no. 3. I say that the taxes and fees were paid at the relevant time and the inspection of those vehicles was also done by the respondent authorities at the same time. As far as giving registration number is concern it is upto the respondent no. 3 that whether he has given number or not within seven days from date of application. The copy of tax receipt and registration fees paid for the said vehicles are attached herewith and marked as **Exhibit – G**. "*

72. The petitioner has denied deliveries of vehicles to be without registration and charges in this respect, contending that no details of the vehicles which were allegedly found to be without registration are being given

73. In rejoinder, it has been submitted that 786 vehicles were pending for registration as on 31-03-2017 and in that context, applications requesting for registration were submitted and taxes therefor had been paid but, the process of issuing registration numbers had not been done by respondent no. 3. Respondent no. 3 had insisted upon to deposit a sum of Rs.4,84,000/- as compounding fees for vehicles registered between the period 24-03-2017 to 10-04-2017. The petitioner, under the circumstances, had been rendered forlorn and was crumbling.

74. It is submitted that even the amount of Rs.19,70,000/- had been paid subject to decision in the writ petition although petitioner is not liable to pay any compounding fees.

75. Petitioner has contended that recourse adopted by respondent no. 3 is arbitrary and discriminatory. Respondent no. 3 has renewed trade certificates of other dealers with retrospective

effect where the delay had been caused and those dealers were not charged with compounding fees for alleged contraventions and in some cases compounded contraventions on less vehicles sold during the period of non renewal of trade certificates. Even the dealer premises inspection fees for the same was not charged to such dealers. In the case of petitioner, the entire proceedings had been prosecuted malafide. Respondent no. 3 is a public authority and is expected to act impartially. Respondent no. 3 had also indulged into giving publications in newspapers thereby dissuading purchasers from purchasing vehicles from the petitioner and had also sent emails to the board of directors of the company about penal consequences with a view to evoke an action against petitioner. In respect of aforesaid, certain documents, including trade certificate issued to True Motors on 22-01-2016 have been relied on by petitioner which are annexed as Exhibit – H to rejoinder.

76. In his sur-rejoinder dated 11-07-2017 (styled as affidavit in reply by respondent no. 3 to rejoinder by petitioner), respondent no. 3 has stated that trade certificate of the petitioner had been renewed for twelve months from 01-06-2017 to 31-05-2018 only on the ground that the petitioner has shown willingness to pay compounding fees of Rs.19,70,000/- as contained in section 200 of MV Act for 1970 motorcycles, according to application by petitioner-

dealer to the transport commissioner dated 30-05-2017. Exemption for a dealer from obligation under main provision of section 39 is subject to condition prescribed under rule 33 that dealer obtains valid trade certificate. Since the trade certificate of the petitioner expired on 31-10-2016, petitioner had not been any longer a bonafide dealer and had not been authorized to keep vehicles in possession in contravention of section 39 of the MV Act.

77. Respondent no. 3 purports to justify suspension of renewed trade certificate on the very day, for, the transport commissioner, Mumbai had received serious complaint from M/s Fortune Integrated Assets Finance, Mumbai, regarding sale of two vehicles on 02-09-2014 and 28-11-2014 which were not registered till the date of sur-rejoinder-. It had been alleged in the same that the vehicles delivered by the petitioner and financed by complainant M/s Fortune Integrated Assets Finance had not been registered and thus there is contravention of rules 42 and 43 and an action was directed to be initiated against petitioner pursuant to rule 44 and to seize and detain unregistered vehicles. It has been alleged that the petitioner had appointed five sub dealers to sell vehicles and affidavits to that effect were given by them and further that one of them, namely, Suraj Auto Services, Terkheda, Taluka Vashi, Dist. Osmanabad, had submitted in writing that 384 motorcycles were received by it from

the petitioner out of which 371 vehicles were sold and 13 had been returned to the petitioner without registration. It is alleged with reference to the same that there had been contravention of rule 42 of the CMV rules and decision of the Kerala high court in the case of *Yamaha Sub Dealers Association of Kerala vs. State of Kerala and others, reported in AIR 2016 Kerala 203* was referred to. It has further been alleged that flying squad of the RTO had seized and detained four vehicles been sold by the petitioner which were unregistered. It has been referred to that the petitioner had filed affidavit, stating that on 11-04-2017 a vehicle had been sold to one Ganesh Bhagwan Padwal and that the same had been delivered without registration and further it has been referred to that the same had been seized and detained by the flying squad.

78. The sur-rejoinder also refers to notice of demand in respect of one time tax along with interest and compounding fee at the rate of Rs.1000/- per vehicle in respect of 484 vehicles. Circular dated 30-03-2017 prohibits sale of non BS-IV compliant vehicles from 01-04-2017 excluding the non-compliant vehicles which had been sold on or before 31-03-2017, and dealers were instructed to provide information regarding number of vehicles sold and registered as of 31-03-2017 in respect of BS-III compliant vehicles. The petitioner on 05-04-2017 had submitted a letter stating therein that

786 motorcycles had been pending for registration as on 31-03-2017. But, documents only in respect of 748 vehicles were submitted for registration. Report dated 29-04-2017 by Assistant Regional Transport Officer shows that as many as 96 motorcycles were found in possession of the petitioner without registration which is in contravention of section 39 of the MV Act and rule 33 of CMV rules and said 96 vehicles were seized and detained. The sur-rejoinder further refers to that about 206 motorcycles had been sold but not registered and thus, the action of suspending the trade certificate is justified contending it to be not arbitrary or illegal. It is contended that it is incumbent to apply for renewal of trade certificate before expiry of the trade certificate. In the sur-rejoinder, respondent no. 3 refutes the claim of the petitioner about delivery of vehicles only after registration, alleging that huge number of vehicles were sold without registration. According to sur-rejoinder, under letter dated 03-04-2017 the petitioner has referred to that approximately 1270 vehicles were registered. The position emerges that the petitioner had not been certain and proper statistical information regarding exact number of vehicles had been suppressed. It is contended that although petitioner has referred to that it is the duty of respondent no. 3 to register the vehicle within seven days of the application, yet the fact remains that the petitioner has not complied with rule 47. It

has been contended that it is not mandatory that the authorized officer would always compound the offence.

79. Paragraph no. 13 of the sur-rejoinder alleges petitioner about deficient payment of tax as contained in paragraph number 15 of the affidavit in reply to writ petition, further referring to that this court in a public interest litigation bearing no. 197 of 2010 concerning other dealers had found substance in the contention that while two sets of invoices are issued by car dealer, one given to the customer and the other to the transport authorities, it is a matter needing enquiry and had directed the transport commissioner to enquire into all aspects and consider evolution of mechanism.

80. The sur-rejoinder further states that the petitioner had no right to transport vehicles in a van to premises of the department for the purpose of registration and a trade certificate cannot be used by any other person who is not authorized by the registering authority. It is claimed in the same that the petitioner cannot claim ignorance about sale of two vehicles on 02-09-2014 and 28-11-2014 referred to in the complaint by M/s Fortune Integrated Assets Finance, Mumbai. It has been alleged that the petitioner has not remitted one time tax of all vehicles and is still making payment of the same. The sur-rejoinder refutes the charge of the petitioner about respondents

adopting different courses and actions in respect of other holders of trade certificates and states that other trade certificates are being dealt with in accordance with provisions of law. It is being alleged that it is the tendency of the petitioner to pay one time tax after demand notice is served and petitioner has been depositing payment of one time tax by way of e-payment but, is not submitting requisite documents as required under rule 47 of the CMV rules.

81. Reply filed on 19-07-2017 by respondents to proposed amendments refers to that the contentions in the proposed amendments related to the facts about which the petitioner had been aware before filing writ petition save about development which took place on 01-06-2017. The claim of the petitioner of willingness to deposit Rs.19,70,000/- had been with a view to give security had been denied, stating that the petitioner under communications dated 03-04-2017 and 30-03-2017 had in terms shown willingness to pay the fine. It is alleged that the petitioner is trying to alter the stand on payment, from that of compounding fees to security deposit. It is denied that the notice had been intentionally made back dated and had been sent belatedly without mentioning correct figure of compounding fees. It has been stated that the transport commissioner had given directions to accept compounding fees in respect of 1970 vehicles as also for renewal of trade certificate. The

action of issuing suspension order dated 01-06-2017 is sought to be justified referring to that quasi-judicial authority has taken cognizance of all earlier acts, letters received from different offices and factual aspects. The petitioner had not registered 613 two wheeler vehicles in spite of the fact that petitioner had delivered the vehicles to respective owners. Rules regarding delivery of vehicles without registration are strict and thus the order of suspension cannot be termed as bad in law and does not suffer any infirmity on account of principles of natural justice. The record had been placed before the authority from time to time and the documents submitted by the dealer depict that the petitioner had been aware of that it was duty bound to maintain a register under rule 43 and issue sale certificate and get registered from the registering authority. Opportunity, according to the respondents, means opportunity to place the documentary evidence before the competent authority and since the petitioner had been continuously sending applications one after the other, it can be said that the petitioner had been aware of the facts and about consequences of not following the provisions of law. The suspension order is passed for contravention of rules 42 and 43. Since the petitioner had already given submissions and those were taken into account by registering authority and petitioner had been given liberty to pay compounding fees in respect of 913 vehicles, the contention of breach of rule 44 particularly having regard to that it had been prior to the period 20-04-2017 stands substantiated. It was denied that the order has been passed on assumptions and presumptions. The reply purports to refer to the affidavits of sub-dealers (sales representatives) appointed by the petitioner to claim that the petitioner has accepted the position that it had appointed sales representatives at various places who had been marketing the vehicles. But, the same is not correct as petitioner has indulged into activities prohibited by law. As the petitioner's premises are situated at a distance of three kilometers from the office of respondent no. 3 whereas the deliveries of vehicles had been held at Lohara, Kallam, Terkheda and Tuljapur which are the places at far distance and the petitioner had no right to take vehicles to those places in contravention of MV Act and the CMV rules as so called sales representatives were already working from other localities. Thus, the petitioner had delivered the vehicles at aforesaid places in contravention of rules 42 and 43. The claim of the petitioner that it is not responsible for non registration of vehicles after delivery to customer is incorrect having regard to obligations cast under rule 42. It is claimed that from 786 BS – III compliant vehicles referred to in the letter dated 05-04-2017, the petitioner had submitted documents in respect of 484 BS-III compliant vehicles and thus had failed to submit documents in respect of 302 BS-III compliant vehicles and hence, the premises of the petitioner were inspected and report was made on 29-04-2017 reflecting upon that 96 vehicles were found in petitioner's premises and as such 206 vehicles were delivered without following due procedure of law.

82. The claim of the petitioner about the authorities working hand in gloves in order to obstruct running of business of the petitioner is contended to be unfounded. It has been further claimed that since the petitioner had already availed of alternate remedy, writ petition as well as amendments may not be allowed. The petitioner is coming to the court in equity. It is the duty of the petitioner, therefore, to come with clean hands and not to keep back anything especially the fact of not maintaining register under rule 43 and about delivery of vehicles without completion of formalities, giving two different invoices, appointing sales representative, accepting monies in advance but not remitting the same to the government immediately. It is alleged that about 1200 vehicles delivered by petitioner were moving in India without valid registration exposing road safety hazard including unethical user of vehicles. The claim of the petitioner about loss being caused to it for seizure of vehicles and the same being bad in law is refuted. The action of seizure is justified, stating that the respondents have power under the rules and

have power also to inspect the premises of the petitioner and detain the vehicles. It is urged that the petition be not entertained and the amendments be not allowed. It is also claimed that since the matter is pending before quasi-judicial authority, writ petition is not maintainable and amendments are thus not permissible and be not allowed.

83. Mrs. Gondhalekar, learned Additional Government Pleader and Mr. Y. G. Gujarathi, learned Assistant Government Pleader have vehemently submitted that, petitioner has committed various breaches and contraventions of rules and provisions of law. During the course of proceedings pursuant to show cause notice quite of a few things have surfaced and accordingly were being considered. It cannot be said that the proceedings got obfuscated to certain other matters rather than the ones shown in the show cause notice. They submit that, respondents have received complaints about delivery of vehicles by petitioner without registration. Learned counsel adverts to Rule 42 of the Central Motor Vehicles Rules, 1989 whereunder, a dealer is prohibited from delivering a vehicle without registration. Further records with respondents, may show that on a few occasions the dealer has indulged into delivery of vehicles without registration. For said purpose they purport to rely on and tender across the bar a sale certificate issued by petitioner dated 17-11-2014 and also

purport to refer to a form No.20, wherein the insurance date shown is of 13-12-2016.

84. They submit, it would be pertinent to refer to that proceedings note that petitioner had been willing to pay compounding fees for the vehicles dealt with during the period and had sought time of two days and had given a letter on 03-04-2017 about registration of 1270 vehicles and had issued a cheque of Rs.3,81,000/- and had sought time to give detailed list and had further recorded that petitioner had contended that the certificate had been renewed on 24-03-2017. It had been observed that the assumption of petitioner about trade certificates have been renewed is not correct and since Rule 35 refers to 30 days for renewal license, there is no substance in such assumption. It had further been observed that, petitioner has been incorrectly claiming that no vehicle had been delivered in contravention of Rule 42 and in this respect there are documents indicating the same in the office and further that the register pursuant to Rules 43 is not maintained. Learned counsel submit that it has been recorded that the cheque was dishonoured for non matching of signatures and petitioner submitted list of 1652 vehicles whereas as per the record of respondents the same is 1970 vehicles. Petitioner had dealt with and registered 1970 vehicles. It has been observed in the minutes that while the form No.21 is a computerized document,

however, the delivery date has been recorded under handwriting and instead of submitting computerized documents handwritten documents, are submitted. There is discrepancy in the prices in handwritten and computerized documents, resulting into short payment of tax. Out of 1970 vehicles 180 vehicles were delivered at Lohara which is outside the permitted area of petitioner. It was as such observed that the vehicles list submitted of 17-04-2017 had been incomplete, erroneous and suppressed proper information. According to the office records vehicles have been delivered contravening Rule 42 without registration and there is no register pursuant to Rule 43. As, as many as, 1970 vehicles had been dealt with in contravention of Section 39, petitioner is liable to pay compounding fees and the compounding fees was directed to be paid by 19-04-2017 and decision on renewal of trade certificates had been deferred.

85. Learned Additional / Assistant Government Pleader submit that, the petitioner had sold huge number of vehicles without registration which has been discovered by the respondents.

86. Learned counsel for respondents submit that, as per Section 39 of the Motor Vehicles Act, 1988 vehicle should not be driven on road without registration. Exemption from registration of

vehicle is available to dealer for certain purposes pursuant to proviso on certain conditions upon obtaining trade certificate. Trade certificate has specific purpose as referred to in Rule 41. Learned counsel argue, since rule 33 contains word 'possess', it implies that trade certificate is necessary for a dealer to keep the vehicles.

87. Learned counsel for respondents refer to Section 55 of the Motor Vehicles Act, 1988 and put heavy emphasis on sub-rule (5) therein. According to them the the case falls under sub-section (5) of 55 for the registration of vehicles sold by petitioner during the period had taken place on the basis of documents which were discrepant and misleading in material particulars, such as computer invoice price and the price in the handwritten invoice, in such a case exposing the registered vehicle to an action pursuant to Section 55 and thus notice was given to the dealer for de-registration or cancellation of registration of vehicles.

88. They further contend that while the reason which has been given by petitioner that his father being suffering from cancer, yet it can be noticed that petitioner has dealt with as many as 1970 vehicles during the period and the business had been carried on. In the circumstances the reason being put forth about illness of his father loses its significance.

89. They further contend that it is within the powers and authority of the issuing officer of trade certificate to refuse or to grant the same upon satisfaction that applicant is a bonafide dealer or not and in order to examine the same respondent officer had been acting within his powers directing petitioner to produce material for inspection. They refer to a decision of Kerala High Court, in the case of *Yamaha Sub-Dealers Association of Kerala v/s State of Kerala.*

90. According to learned counsel for respondents cumulative effect of Section 39, Rules 33, 35, 40 and 42 makes it incumbent on the petitioner to have a trade certificate under Rule 35. According to them delivery of vehicle to purchaser without registration will expose a dealer to consequences and punishments under Section 192 of the Motor Vehicles Act, 1988 which may also embrace cancellation of trade certificate as prescribed under Rule 44.

91. Learned counsel for respondents relied on a decision of Supreme Court in the case of *Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala Versus M/s. K.T.C. Automobiles*, reported in *CDJ 2016 SC 080*, and particularly have referred to paragraphs No.14 and 15 thereunder reading thus,

***"14.** But this legal proposition does not take the appellant far. It must be carefully seen as to when the properties, particularly possession of a motor vehicle passes or can pass legally to the purchaser, authorizing him to apply for registration. Only after obtaining valid registration under the Motor Vehicles Act, the purchaser gets entitled to use the vehicle in public places. Under the scheme of Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989 the dealer cannot permit the purchaser to use the motor vehicle and thus enjoy its possession unless and until a temporary or permanent registration is obtained by him. Only thereafter, the vehicle can safely be said to be no more under possession of the dealer. Clearly, mere mentioning of engine number and chassis number of a motor vehicle in the invoice of sale does not entitle the intending purchaser to appropriate all the goods, i.e. the motor vehicle till its possession is or can be lawfully handed over to him by the dealer without violating the statutory provisions governing motor vehicles. **Such transfer of possession can take place only when the vehicle reaches the place where the registering authority will be obliged to inspect for the purpose of finding out whether it is a roadworthy and register-able motor vehicle and whether its identification marks tally with those given in the sale invoice and the application for registration**. The possession can lawfully be handed over to the purchaser at this juncture because law requires the purchaser as an "owner" to make an application for registration but at the same time the law also prohibits use of the motor vehicle by the owner until it is duly registered by the Registering Authority. Hence, in order to satisfy the requirement of law noticed above, the dealer can deliver possession and owner can take possession and present the vehicle for registration only when it reaches the office of Registering Authority. **With the handing over of the possession of a specific motor vehicle just prior to registration, the dealer completes the agreement of sale rendering it a perfected sale.** The purchaser as an "owner" under the Motor Vehicles Act is thereafter* *obliged to obtain certificate of registration which alone entitles him to enjoy the possession of the vehicle in practical terms by enjoying the right to use the vehicle at public places, after meeting the other statutory obligations of insurance etc. Hence, technically though the registration of a motor vehicle is a post-sale event, the event of sale is closely linked in time with the event of registration. Neither the manufacturer nor the dealer of a motor vehicle can permit the intended purchaser having an agreement of sale to use the motor vehicle even for taking it to the registration office in view of the statutory provisions already noticed. Hence lawful possession with the right of use is permissible to be given to the intended owner only after reaching the vehicle to the office of Registering Authority. Thus seen, in practical terms though sale precedes the event of registration, in normal circumstances and as the law stands, it is co-terminus with registration of a new motor vehicle. "*

92. Learned counsel for respondents contends that as such, the orders passed hitherto are justified and do deserve to be sustained.

93. It would be proper to refer to that section 39 speaks of prohibition on driving vehicles by owner or at his behest over public place or any other place without registration. Section 39 under proviso, makes a way for exemption to dealer from registration of vehicles on certain conditions. Provisions of sections 39, 40, 41 along with relevant rules to quite a large extent show that registration of vehicles is an obligation on the owner of the vehicle and is not a restriction on dealer or condition for sale of vehicle.

94. Section 39 of MV Act reads thus :

> *" **Section 39 - Necessity for registration. - No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered** in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.*
>
> ***Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government. "***

95. From aforesaid provision, it is apparent that a person or owner or at his behest other persons are not supposed to drive any vehicle in public place or any other place without registration of vehicle. Further, proviso to section 39 purports to exempt a dealer from the rigour of having registration of the vehicle he is dealing with subject to conditions.

96. Rule 33 of the CMV rules is thus;

> *" **33. Condition for exemption from registration.-** For the purpose of the proviso to section 39, a motor vehicle in the possession of a [dealer or manufacturer of automobiles or automobile ancillaries or a test agency specified in rule 126] shall be exempted from the necessity of registration subject to the condition that he obtains a trade certificate from the registering authority having jurisdiction in the area in which the [dealer or manufacturer or automobiles or automobile ancillaries or a test agency specified in rule 126] has his place of business in accordance with the provisions of this Chapter " ,*

97. Rule 41 reads thus;

> " ***Rule 41. - Purposes for which motor vehicle with trade certificate may be used.—*** *The holder of a trade certificate shall not use any vehicle in a public place under that certificate for any purpose other than the following :-*
>
> ***(a)*** *for test, by or on behalf of the holder of a trade certificate during the course of, or after completion of, construction or repair; or*
>
> ***(b)*** *for proceeding to or returning from a weigh bridge for or after weighment, or to and from any place for its registration; or*
>
> ***(c)*** *for a reasonable trial or demonstration by or for the benefit of a prospective purchaser and for proceeding to or returning from the place where such person intends to keep it; or*
>
> ***(d)*** *for proceeding to or returning from the premises of the dealer or of the purchaser or of any other dealer for the purpose of delivery; or*
>
> ***(e)*** *for proceeding to or returning from a workshop with the objective of fitting a body to the vehicle or painting or for repairs; or*
>
> ***(f)*** *for proceeding to and returning from airport, railway station, wharf for or after being transported; or*
>
> ***(g)*** *for proceeding to or returning from an exhibition of motor vehicles or any place at which the vehicle is to be or has been offered for sale; or*
>
> ***(h)*** *for removing the vehicle after it has been taken possession of by or on behalf of the financier due to any default on the part of the other party under the provisions of an agreement of hire- purchase, lease or hypothecation. "*

98. Aforesaid provisions show that for the purpose of having exemption pursuant to the proviso to section 39, a dealer would be required to have a trade certificate. Trade certificate would be required by a dealer for driving a vehicle without registration for the purposes enumerated under rule 41. It thus appears, in case a dealer

wants to take and/or drive a vehicle he is dealing with in a public place, he would be required to have a trade certificate.

99. Whereas Section 192 of MV Act provides for punishment for offence for contravention of provisions of Section 39.

Section 192 reads thus;

> *" **192. Using vehicles without registration.**- **(1)** Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 39 shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees for a second or subsequent offence with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both. "*
>
> *Provided that the Court may, for reasons to be recorded, impose a lesser punishment.*
>
> ***(2)** Nothing in this section shall apply to the user of a motor vehicles in an emergency for the conveyance of persons suffering from sickness or injuries or for the transport of food or materials to relieve stress or of medical supplies for a like purpose;*
>
> *Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.*
>
> ***(3)** The Court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the Court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made."*

100. Section 200 provides for composition of offences including that punishable under section 192 and states that it can be compounded. Section 200 reads thus;

> *" **200. Composition of certain offences. -** Any offence whether committed before or after the commencement of this Act punishable under section 177, section 178, section 179, section 180, section 181, section 182, sub-section (1) or sub-section (2) of Section 183, section 184, section 186 [section 189, sub-section (2) of section 190], section 191, section 192, section 194, section 196, or section 198, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf."*

101. Object of section 39 is to prohibit a person from driving a vehicle on public place or any other place without registration. Rule 33 purports to put a condition to have trade certificate to avail of exemption from registration of vehicle for a dealer. Rule 33 is a piece of subordinate legislation on the analogy of the case as considered in *The Additional Commissioner of Sales Tax VAT III, Mumbai vs. Sehgal Autoriders Pvt. Ltd. Dated 11-07-2011* (supra). Rule 33 will have to be read in the context of section 39. Rule 33, in the context of main provision of section 39 would, to quite a large extent, show that trade certificate would be required by dealer for a vehicle to drive in the public places for the purposes of rule 41. Rule 40, too, is an indication of the same referring to use of trade certificate. Proviso to section 39 would have to be considered in the context of main provision and rule 33 would not be isolated from it. In the present case, the petitioner had been allowed facility of having inspection of vehicles in his premises eluding the necessity of taking vehicle for registration to the RTO office. Aforesaid apart, if it is not to be driven, a proviso or rule

which is a supplementary to section 39 would not be able to overwhelm the basic intent under section 39.

102. Section 39 and rule 33 do not prohibit selling vehicle by dealer for want of trade certificate. Further, MV Act or MV rules do not contemplate that dealing with vehicles in absence of trade certificate to be an offence.

103. Rule 42 reads thus ;

> " *42.* ***Delivery of vehicle subject to registration.*** *No holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent.* "

104. For breach of contravention of Rule 42 there is no particular punishment or penalty provided under the MV Act or CMV Rules nor do those make it an offence.

105. Section 177 is a general provision for punishment, reading thus,

> " ***177. General provision for punishment of offences.*** *- Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence, but punishable for the first offence, with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees.* "

It shows that for contravention of any rule, regulation or notification if no penalty is provided for the same, it is punishable with fine. In the circumstances, even if it is argued that there is breach of rule 42 yet, in such case, it appears that for such breach, a person can be visited with a penalty of fine.

106. In the present matter, allegation in the show cause notice has been that during the period from 01-11-2016 to 24-03-2017 while the trade certificates were not in force, the dealer has registered the vehicles issuing form no. 21 and according to section 55 of the MV Act, registration of such vehicles delivered during this period is liable to be cancelled and show cause as to why the trade certificates be not cancelled for contravention of rule 42 of the CMV rules, for issuing form no. 21 during the period from 01-11-2016 to 24-03-2017 while the trade certificates were not in force and to furnish the records of sale of vehicles during said period.

107. Said show cause notice as well directs motor vehicle inspector to visit the dealer's premises and inspect form no. 19 and make report, along with further directions to the motor vehicle inspector and assistant motor vehicle inspector not to inspect the vehicles of the dealer for registration till further orders.

108. According to learned counsel for petitioner, the list as has been submitted, however, does not depict, there has been any sale and delivery without registration. It is submitted on the basis of the

documents which have been placed on record respondents have not been able to show that any of the vehicles dealt with during this period can be said to have been delivered in breach of rule 42. While explanation had been sought, as to whether, documents annexed with the reply to writ petition depict vehicles to have been sold without registration and also to give the list of vehicles which had been sold without registration during 01-11-2016 to 23-04-2016, there is no definitive response coming to the same from the learned counsel for the respondents except the allegation that lot of vehicles have been dealt with by the petitioner without registration and further that the office is in possession of record indicating the same.

109. Respondent no. 3 has referred to that the vehicles sold by dealers during aforesaid period had not been registered, particularly referring to that about 1970 vehicles had been dealt with during this period. Though it has been claimed by respondents that the concerned office possesses record indicating that said vehicles sold had not been registered, as referred to above, the respondents have not been able to show that the vehicles so sold during said period have not been registered.

110. However, during the course of writ petition copies of affidavits of 28-06-2017 of petitioner and owner of vehicle are

annexed wherein it appears that a vehicle sold on 11-04-2017 had not been registered and the dealer as well as owner have shown willingness to compound said aberration and it has also been contended that the requirements according to supreme court judgment have been complied with in respect of vehicles sold on 11-04-2017. It is contended that rule 42 as considered by decision in the case of the *Additional Commissioner of Sales tax VAT III, Mumbai vs. Sehgal Autoriders Pvt. Ltd.* Dated 11-07-2011 is a piece of subordinate legislation. It is asserted by the petitioner that all the requirements and formalities about registration of vehicles have been complied with in respect of vehicles sold during the concerned period, as contemplated in decision in the case of *Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala Versus M/s. K.T.C. Automobiles* reported in *CDJ 2016 SC 80.*

111. Requirement of having a trade certificate for a dealer is to avail of exemption from otherwise compulsion to have registration to drive vehicle on road, including for the purposes enumerated under rule 41. The provisions of the MV Act from sections 39 to 41 and rules 32 to 44 indicate that a registration is a concern basically and primarily of the vehicle owner and aberration in the same, in the circumstances, may not be absolutely and solely imputable to a dealer with reference to rule 42. Here, it is contended by petitioner that all

formalities and requirements have been duly complied with as per the relevant rules and then the vehicles were delivered to the owners for registration as contemplated under the decision of the supreme court in the case of *Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala Versus M/s. K.T.C. Automobiles* reported in *CDJ 2016 SC 80.* In the show cause notice there is no allegation or for that matter in the proceedings, it has not been shown that any vehicle sold during concerned period has been driven without registration solely imputable to the dealer.

112. Impugned orders do not reflect upon the same at all. The allegations made against the petitioners are made without giving notice to owner and without fixing responsibility in the alleged aberration of the registration. The petitioner has further asserted that all the vehicles sold during the concerned period were inspected in the dealer's premises and have been duly registered.

113. In view of aforesaid, in the present facts and circumstances of the case, it has been claimed by petitioner all the requisite formalities upto delivery of vehicles for registration as referred to in the supreme court judgment have been completed by petitioner and almost all the vehicles sold during concerned period have been registered. During the course of writ petition acceptance of

aberration in respect of one vehicle registration is purported to be placed forth to which explanation during course of submissions is advanced that at all requisites for registration have been complied with as observed in supreme court's judgment. It does not appear that the allegations in respect of issuing form no. 21 and delivering vehicles in breach of rule 42 would be legitimately available to the respondents, for, for the period concerned, as observed above, respondents have not been able to demonstrate that there has been breach of rule 42 or a deliberate one at at that.

114. While it is alleged that 1970 vehicles were dealt with during the concerned period, but the petitioner could give details in respect of only 1652 vehicles which allegation is denied by petitioner. However, it emerges, there is no dispute over that about 1970 vehicles had been dealt with during concerned period.

115. It has been alleged that delivery of vehicles at Lohara camp would be in breach of all the rules yet, as referred to by the appellate authority, there does not appear to be any rule, much less conclusive one, which would render such delivery to be in breach of the rules when compliances and the rules have taken place. On the contrary, it appears to be the case of the petitioner that the vehicles were taken by tempo to Lohara to facilitate the customers'

convenience. All the requisites for registration of vehicles had already been done before hand in dealer's premises. It is not the case that vehicles which were taken delivery of and had been reached to the customers at Lohara had not been registered or for that matter those had not been inspected. These aspects, as submitted, do not find place in impugned orders.

116. Two decisions, one relied on by petitioner in the case of *The Additional Commissioner of Sale Tax VAT III, MumbaI vs. Sehgal Autoriders Pvt. Ltd.,* dated 11-07-2011 and other on behalf of respondents in the case of *Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala vs. M/s K.T.C. Automobiles,* reported in *CDJ 2016 SC 80* may have bearing in respect of sale of vehicles of which are alleged to be sold without registration with reference to documents during course of hearing were relied on.

117. While according to provisions owner is materially concerned with registration, no notice to owners who are likely to be affected appears to have been given. It is not a case that the vehicles had been registered without reference to documents. Form 21 or for that matter form 20, do not appear, require a trade certificate is to be referred to. The order further refers to that there has been failure to give details of registrations in form 19 pursuant to rule 43. Dealer had

been allowed facility of inspection of vehicles for registration in dealer's premises. One will have to take into account that the petitioner-dealer has been dealing with in two-wheelers since 2007 with trade certificates with their renewal from time to time.

118. It may have to be noted that during the course of proceedings before respondent no. 3 certain matters did not find part of the proceedings, viz; the report dated 29-04-2017 alleging possession of 96 vehicles in contravention of provisions of section 39 and rule 33 for absence of trade certificates. It is being said and submitted that said report pertains to transactions of vehicles post 24-03-2017 of which registration had been sought, however, the same had been kept pending. It also emerges that it is in sur-rejoinder, reference has been made to report of 29-04-2017 by some officer - about possession of 96 vehicles by petitioner in breach of section 39 and rule 33. Demand notices on 12-05-2017 and 31-05-2017 for payment of certain amounts were issued. Vehicles have been allegedly found plying without registration and some affidavits of persons who are claimed to be sub dealers have been filed. This was not the case of respondent no. 3 while order had been passed refusing renewal of trade certificate on 20-04-2017 nor it was his such case before the appellate authority. Those documents are being

relied on to justify the orders passed on 20-04-2017, 17-05-2017 as also 01-06-2017.

119. During the course of writ petition, reliance was placed on the papers tendered across, regarding sale of a vehicle in November, 2014, purporting to allege that, that was still not registered and in the circumstances, it had been alleged that there has been contravention of rule 42. In this respect it is contended on behalf of petitioner, it may have to be referred to that no notice in respect of the allegations had been given to petitioner. It appears that neither there was any notice to the dealer nor during the hearings before the authorities the same were relied on nor does there appear to be any opportunity let to the dealer. That apart, two decisions relied on may, to quite a large extent, have bearing in aforesaid respect.

120. It may further be pertinent to refer to that respondent no. 3 had considered that breach of section 39 was compoundable with payment. The orders are sought to be justified on a communication by M/s Fortune Integrated Finance, Mumbai which are of the time past concerned period and relating to 2014 and not the concerned period. Along with replies certain inter communication among the authorities has been sought to be referred to. It is not that in 2014, there had been no trade certificate. They were not concerning

proceedings before the authorities. Besides, such allegations during hearing of the writ petition are of transactions of 2014 collected upon correspondence after 23-04-2017.

121. During the course of proceedings, it has been alleged that the dealer had been causing revenue loss since there is discrepancy in the price in the computerized sale invoices and the ones submitted to the office of the respondents. The petitioner has in submissions during the proceedings before respondent no. 3 had given explanation to the same and further referred to that had opportunity to explain been let, it could have been further explained. This does not find place in order of respondent no. 3 nor respondent no. 2. No opportunity appears to have been offered to explain the same. It had further been submitted that rejoinder makes reference to the same and had proper opportunity been let, it would have been explained. Appellate authority appears to have considered the same would not have relevance in the proceedings and MV Act and CMV Rules appear to operate in separate sphere and the tax concerns would seldom impinge upon as a consideration in the proceedings, without letting opportunity to the person under relevant enactment.

122. While the affidavit in reply purports to refer to that there has been revenue loss, the dealings of petitioner causing revenue loss

and in support of the same photocopies of documents are annexed at Exhibit R-4 to the reply, those appear to be of the period after 24-03-2017. The respondents have not shown as to how revenue loss can be said to have been incurred under the same and contents of affidavit are deficient in respect of the same. For that, there does not appear to be any opportunity being afforded on this count.

123. So far as allegation that no requisite register pursuant to rule 43 is maintained is concerned, it may have to be referred to that inspection and registration in the dealer's premises had been allowed for the vehicles of dealer under permission granted on 23-06-2015 which had been issued pursuant to a circular. It is not the case, as submitted on behalf of the petitioner, that pursuant to said circular vehicles were not inspected in dealer's premises and registered. In the circumstances, it is submitted by petitioner, register pursuant to rule 43 would have little relevance. Further, there had been no notice to the petitioner in respect of alleged breach of rule 43. It appears that in such circumstances, proper and adequate opportunity could have been let by giving notice to the petitioner. Further, it is not the case that delivery of vehicles at Lohara camp was without inspection and registration. As a matter of fact, dealer has explained that the camps are being held under auspices of and often at the behest of respondents as a facility for purchasers.

124. It may have to be referred to that in the impugned order of respondent no. 3, it has been observed that the list supplied by the petitioner is not complete and is erroneous and conceals truth and that the vehicles have been delivered in contravention of rule 42 and the register under rule 43 has not been maintained and that there is discrepancy in computerized sale invoices and the handwritten sale invoices in respect of prices of the vehicles. Respondent no. 3 appears to have cursorily recorded that he has found substance in items no. 1 to 4 appearing in the order. The appellate authority, however, has observed that so far as tax is concerned, the same is outside purview of MV Act and MV rules and has further found MV rules in respect of issuing trade certificates to be not certain and clear. It appears so far as allegation of revenue loss is concerned, there appears no notice given to the petitioner. Further, in the proceedings as have been recorded under the caption ''observations'' respondent no. 3 has observed that the list submitted by the petitioner is incomplete and erroneous and vehicles have been delivered in contravention of rule 42 and register not having been maintained pursuant to rule 43 and that items 1 to 4 as recorded on 17-04-2017 carry substance. The first paragraph of the observations in the impugned order dated 20-04-2017 is almost similar and same with the differences in reference to rule 43 and section 39. Even items

1 to 4 in the order are almost similar as has been recorded in the order and the ones on 17-04-2017.

125. The appellate authority appears to have cursorily gone ahead while dismissing the appeal. It's order does not refer to material in respect of the concerned period. It does not depict as to how it can be said that the vehicles were delivered in breach of rule 42 and for that matter whether for dealing with vehicles a trade certificate is a necessity. It's order does not depict application of mind to the contentions and submissions on behalf of the petitioner nor to the material placed on record. It's observations about the dealer having dealt with vehicles during the concerned period in breach of law, do not reflect upon basis therefor. Observations are without reference to any material or provisions of law. Such observations are untenable.

126. The appellate authority, however, has found that the rules appear to be rather not specific and are uncertain. In such a case, it ought to have been considered, particularly having regard to the contentions on behalf of the petitioner about the reasons for not approaching for renewal of trade certificates during the concerned period, renewal could not have been detained. The appellate authority although has observed as aforesaid, has faltered in

reflecting upon as to whether the order passed by respondent no. 3 is sustainable on that count.

127. The appellate authority, while it has observed that the matters of compounding, dishonour of cheque and about tax are outside the concerned appeal and would not form subject matter under rules, in the circumstances, the same could not have been considered by respondent no.3, as such, on the basis of that, his order dated 20-04-2017 had been unsustainable. Imputations outside show cause notice made during the course of proceedings could not be taken into account without letting opportunity to the petitioner. Thus, the appellate order as well is unsustainable on facts and in law.

128. It does not appear that the order dated 20-04-2017 or for that matter of the appellate authority dated 17-05-2017 show that the authorities have applied mind to the case of petitioner as contained in the written submissions of the dealer dated 6-4-2017 or for that matter 19-04-2017. Further, both the orders do not depict that they had ever considered the reasons given in non-obtaining trade certificate during the concerned period. Overall, the matter had been cursorily dealt with without proper application of mind and without taking into account the case pleaded and the written

submissions appearing on record. No particulars in respect of alleged breaches of rule 42 or section 39 have been brought forth.

129. There had been a direction to the officer subordinate to respondent no. 3 not to register the vehicles along with show cause notice. During the concerned period registration of vehicles was not being refused for want of trade certificate, whereas the same was directed to be refused while issuing show cause notice.

The dealer has submitted that it had been thought appropriate to get over the situation as is stated had been given to understand to him by agreeing to pay the compounding charges.

130. It has more than once come on record that respondent no. 3 had been directing the petitioner to pay compounding fee for alleged breaches. The petitioner, as vehicles being sold from 24-03-2017 were being not registered, had requested respondent no. 3 to register the vehicles and further even in show cause notice since the subordinate officers were directed not to register the vehicles, the petitioner had been showing willingness to compound alleged offence.

131. Respondent no. 2 had directed respondent no. 3 to consider renewal of trade certificates since the petitioner had been paying compounding fee for the vehicles sold during the concerned

period as it would be in fitness of things. Respondent no. 3, however, renewed trade certificates for the period from the date of payment of compounding charges and not as applied for by petitioner exceeding the instructions of higher authority. That does not appear to be in tune with the proceedings which had been taken up for renewal of trade certificate.

132. It will have to be considered that compounding fees has been paid for the breach allegedly committed while dealing with the vehicles during the concerned period for want of trade certificates and yet, the trade certificate had not been renewed for the said period but had been purportedly renewed for subsequent period.

133. In the given case, while the petitioner has deposited substantially large sum towards compounding of alleged offence and while respondent no. 3 has specifically referred to in sur-rejoinder to the rejoinder of the petitioner that upon directions of respondent no. 2 compounding fee at the rate of Rs.1000/- per vehicle for 1970 vehicles had been accepted for renewal of trade certificate sought, it does not appear that it was appropriate not to renew trade certificate as applied for, while compounding fee had been paid for sale of vehicles in concerned period for alleged breach. In view of aforesaid,

it would be expedient to renew the trade certificates of the petitioner as requested by petitioner.

134. It may have to be considered in the matter, the Commissioner of Transport had written to respondent no. 3 to consider renewal of trade certificate on payment of charges @ Rs. 1000/- per vehicle and while the entire amount had been deposited, it was expected that the trade certificates would be renewed for the period as requested by the dealer. There had been renewal of trade certificate but the same had been for the period from 01-06-2017 to 31-05-2018. On the very same day, i.e. 01-06-2017 overlooking the rigor of rule 44 of the CMV Rules which ordains a hearing before imposition of suspension order, the trade certificate had been suspended without calling upon the petitioner for hearing.

135. The dealer claims that a breach has occurred during the concerned period due to health sufferance being detected and he had been running helter-skelter treating him and it had escaped his attention to have renewal of trade certificates. This particular reason has not been stated to be incorrect, however, it is being contended that it is not of significance since the dealer had been dealing with the vehicles. It is not that petitioner had been dealing with vehicles

looking after the business with hands on involvement in each transaction.

136. The Petitioner is in the business of sale of two-wheelers and was having trade certificates issued by the road transport authorities, a breach in continuation of the same during the period 01-11-2016 to 20-03-2017 is for the reasons given by dealer which have gone un-controverted but considered to be not justifiable. Breach is alleged to have been committed. While the allegations were resisted, reasons for resistance do not appear to have been considered by the two authorities at all and same is not depicted in any of the orders passed. During the proceedings various other allegations were being made which appear to have been relied on, without giving proper notice.

137. Suspension order refers to and makes certain imputations against the dealer which pertain to some transactions in 2014 and further on the basis of some documents which have come up after orders dated 20-04-2017 and 17-05-2017 had been passed by respondents no. 3 and 2 respectively. Said documents were being relied on making imputations. The complaint of M/s Fortune Integrated Assets Limited, Mumbai, is also referred to. It further appears that in respect of allegations as are appearing about four

vehicles being detained finding to having been moving in contravention of rules 42 and 43 and about non payment of motor vehicle tax and compounding fees of 486 vehicles sold after 20-04-2017 and about delivery of vehicles from 786 vehicles without registration sold as per letter dated 05-04-2017, alleging repetitive contravention, there does not appear to be any opportunity given to the petitioner. It is submitted by respondent no. 3 that the petitioner had been made aware of these allegations and yet, it appears that the petitioner had not been given any opportunity to explain and meet the allegations. Rule 44 speaks of giving opportunity of being heard to the holder of a trade certificate before suspending or cancelling trade. Certificate. Thus opportunity, as the position would emerge, does not appear to have been afforded to the petitioner and as such, suspension order apart from being not in consonance with the rules, also otherwise appears to be in breach of noble principles of natural justice.

138. Various allegations were made against dealer during course of proceedings and even during the writ petition and with reference to the same, without giving proper opportunity, an action is being taken by respondent no. 3 by suspension of trade certificate. Said order is in stark breach of rule 44. Justification given for such an action, as appearing in the sur-rejoinder / affidavit in reply to the amendments

sought in writ petition, does not meet with requirement of giving opportunity to the dealer. Such a suspension is unsustainable and is uncalled for as it appears to have been caused hastily with alacrity.

139. Show cause notice, as referred to above, has been in respect of selling vehicles, issuing form no. 21 and those getting registered in the absence of trade certificates being in force. As far as that is concerned, the petitioner has asserted that all the vehicles sold have been registered and no contravention of rule 42 as such has taken place. Motor Vehicle Inspector does not say that vehicles during concerned period had been delivered without registration. As referred to earlier, in this respect, from the documents produced, it appears that respondents have not been able to show that vehicles sold during said relevant period, could be said to have been sold without registration. In the circumstances, the very basis with reference to which show cause notice had been issued appears to have been rendered fragile and a friable foundation of vehicles dealt with during the concerned period.

140. The orders impugned do not depict application of mind to the facts and the law. Both the orders fall far too short to reflect upon explanations given by the dealer in respect of the aspects about which cause was asked to be shown under notice dated 03-04-2017. In the

circumstances, the orders are rendered without adherence to the spirit underlying principles of natural justice. No proper fact finding has been gone into. Matters have been cursorily dealt with. Respondent no. 3 has dealt with the proceedings in haphazard manner without letting proper opportunity to the dealer in respect of the matters which purportedly have weighed with respondent no.3. While the show cause notice had been alleging contravention of rule 42, for issuance of form no. 21 in the absence of renewal of trade certificates, it does not appear sale and registration of vehicles could be detained and would be rendered unauthorized or illegal under the provisions of the MV Act or rules thereunder for want of trade certificates. Over and above respondent no. 3 had issued along with show cause notice, an order to his subordinates not to inspect and register vehicles of the dealers, appears to be a hasty action. Actions of respondent no. 3 in the proceedings, appear to be rather over reaching. The suspension order appears to be an indication of the same, passed without letting opportunity as required under the rule. Further, the suspension has been ordered with reference to dealing with the vehicles in respect of the period past the concerned period as also the concerned period and some events subsequent to the concerned period. The action of respondent no.3 is unsustainable, for, the same is hastily taken and appears to be over-reaching the authority and in contravention of the rules.

141. The petitioner has submitted that respondent no. 3 entertains a grudge against the petitioner. It appears that respondent no. 3 has gone about proceedings against dealer haphazardly. The same is emerging quite often in the matter. Learned counsel for petitioner has referred to that a proceeding issuing notice for cancellation of trade certificate has been taken up. Looking at the scenario and since it is claimed that the dealer has lost confidence and faith in respondent no. 3 and is claimed to entertain grudge against petitioner, it is expedient and in the interest of justice that in respect of further proceedings, respondent no. 3 keeps himself away and shall hand over the same to the authority higher than him.

ORDER

1. Orders dated 20-04-2017 passed by respondent No. 3 and 01-06-2017 passed by Deputy Regional Transport Officer, Osmanabad stand quashed and set aside.

2. Respondent No.2 is directed to grant renewal of license as requested by petitioner for a period of one year from 01-11-2016. Suspension order dated 01-06-2017 stands quashed and set aside being in stark breach of rule 44 of the Central Motor Vehicles Rules, 1989.

3. It would be expedient that respondent No. 3 keeps away from pending proceedings against the petitioner. Respondents No. 1 and 2 to see that the proceedings are handed over to an officer higher in rank than respondent No. 3, who shall look into the matter objectively.

(SUNIL P. DESHMUKH)
JUDGE