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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 08.05.2017

+ **W.P.(C) 3791/2017**

SANDEEP SINDHWANI AND ORS.

..... Petitioners

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

+ **W.P.(C) 3719/2017**

M/S SABHARWAL AUTOMOBILES,
PARTNERSHIP CONCERN

..... Petitioner

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners

:

Mr. Dhruv Mehta Senior Advocate with Mr Parmod Kumar Sharma and Mr Prashant Bajaj in W.P.(C) Nos.3791/2017 & 3719/2017.

For the Respondents

:

Mr Anuj Aggarwal and Ms Deboshree Mukherjee for R-1 & 2 in W.P.(C) Nos.3791/2017
Mr Rahul Sharma and Mr C.K.Bhatt for R-1 & 2 in W.P.(C) No.3719/2017.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
08.05.2017

SANJEEV SACHDEVA, J. (ORAL)

W.P.(C) 3791/2017 & CM No.16680/2017(stay)
W.P.(C) 3719/2017 & CM No.16362/2017(stay)

1. The petitioners, by the present petitions, seek quashing of Minutes of Meeting dated 31.03.2017 and communication dated 03.04.2017 issued by respondent No.3, i.e. Environment Pollution (Prevention & Control) Authority (hereinafter referred to as 'EPCA').
2. The petitioners are dealers in two wheeler vehicles. The petitioners contend to be dealers, who are not registered for carrying on online registration facility of two-wheeler vehicles. The petitioners have to submit all documents physically with the Registering Authority for the purposes of registration of vehicles.
3. The issue pertains to the sale and registration of B-III compliant two-wheelers. It is submitted that as on 01.04.2017, only vehicles which are B-IV compliant are permitted to be sold. The petitioners contend that they have made transactions of sale prior to close of 31.03.2017, however, since they do not have the facility of online registration, they were required to register the vehicles physically in terms of the Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1989, and submit the vehicle documents within a period of one

week of the sale having been completed.

4. It is submitted that by order dated 29.03.2017 in IA No.487/2017 in W.P.(C) No.13029/1985 titled **M.C.Mehta versus Union of India & Others**, the Supreme Court of India *inter alia* directed as under:-

(a) *On and from 01st April, 2017, such vehicles that are not BS-IV compliant shall not be sold in India by any manufacturer or dealer, that is to say that such vehicles whether two wheeler, three wheeler, four wheeler or commercial vehicles will not be sold in India by any manufacturer or dealer on and from 01st April, 2017.*

(b) *All the vehicle registering authorities under the Motor Vehicles Act, 1988 are prohibited for registering such vehicles on and from 01st April, 2017 that do not meet BS-IV emission standards, except on proof that such a vehicle has already been sold on or before 31st March, 2017.*

5. It is further submitted that this order dated 29.03.2017 has been clarified by the Supreme Court by judgment dated 13.04.2017 as under:-

“35. It appeared to us that if someone was to make a bona fide purchase of a BS-III compliant vehicle on or immediately before 31st March, 2017 it might not be possible for that individual to have the vehicle registered before the cut-off date. Therefore, we felt it reasonable to permit the registration of BS-III compliant vehicles purchased on proof on or before 31st March, 2017 from 01st April, 2017 and have ordered accordingly.”

6. Learned counsel for the petitioners contends that all vehicles,

subject-matter of the present petitions are BS-III compliant and were sold on or before 31.03.2017. Learned counsel submits that the said vehicles satisfy the conditions laid down by the Supreme Court by its order dated 29.03.2017.

7. It is further contended that the petitioners possess the requisite proof of the sale having been completed on 31.03.2017 inasmuch as in all cases, the online purchase of insurance policy was done prior to close of 31.03.2017. It is submitted that the transactions with regard to sale were completed prior to 31.03.2017.

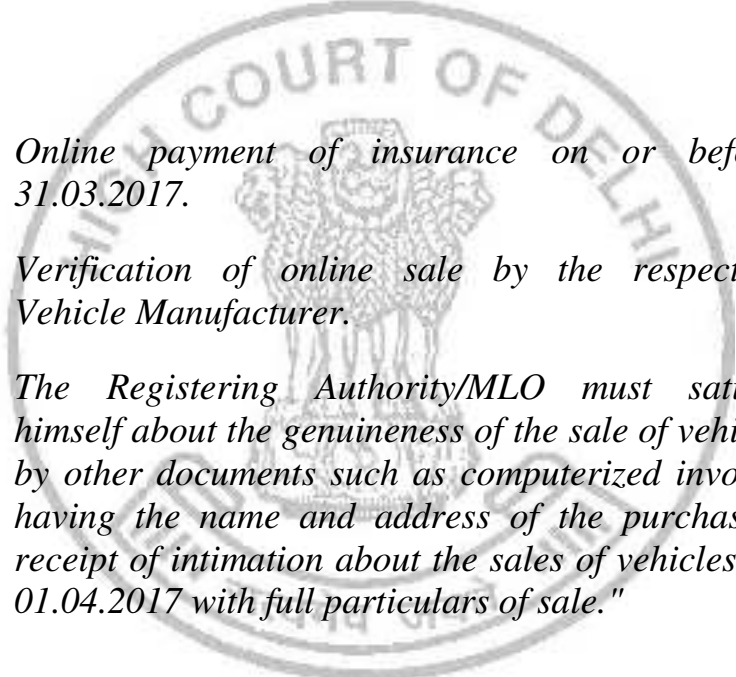
8. Learned counsel for the petitioners submit that all transactions of the sale having been completed prior to 31.03.2017 along with all the requisite details, *inter alia*, the name, address of the purchaser along with the engine number, chassis number and identity proof details were submitted with the Transport Authority by 01st April, 2017.

9. Learned counsel for the petitioners submits that in all cases, the online insurance policy has been issued prior to close of 31.03.2017 in the name of the respective purchaser.

10. Learned counsel for the petitioners submits that despite the petitioners having sold the vehicles prior to close of 31.03.2017 and submitting the requisite details with the respondents, the respondents are refusing to register the vehicles.

11. Learned counsel appearing for the Transport Department, Government of NCT of Delhi has produced a letter dated 04.05.2017. Copy of the letter is taken on record.

12. In terms of the letter dated 04.05.2017, the Registering Authority had forwarded a communication to EPCA proposing conditions for examining the genuineness of sale by the concerned Registering Authorities/MLOs. The conditions proposed were as under:-

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- "1. Online payment of insurance on or before 31.03.2017.*
 - 2. Verification of online sale by the respective Vehicle Manufacturer.*
 - 3. The Registering Authority/MLO must satisfy himself about the genuineness of the sale of vehicle by other documents such as computerized invoice having the name and address of the purchaser, receipt of intimation about the sales of vehicles by 01.04.2017 with full particulars of sale."*

13. On 04.05.2017, learned counsel appearing for the EPCA was directed to take instructions. Learned counsel appearing for the EPCA has filed an affidavit in the Court today. The affidavit is taken on record.

14. In terms of the affidavit, EPCA has drawn a distinction between "self- registering dealers" who have the facility of submitting online

details and registering the vehicles and the "non self-registering dealers" like the petitioners who do not have the facility of online registration.

15. Insofar as non self-registering dealers are concerned, EPCA has, in its affidavit, stated that firstly, a proof would be required to be submitted by the dealer that he is not a self-registering dealer, i.e. does not have the online registering facility. This aspect would then have to be verified by the Registering Authority and only where it is found that the dealer is not a self registering dealer, the Registering Authority would take steps to verify the date of sale.

16. EPCA has further stated that in case of non self-registering dealer, the proof of payment of insurance could be considered which would require that the payment has been made online on or before 31.03.2017.

17. In cases where online payment has not been made on or before 31.03.2017, in terms of the affidavit of EPCA, the onus and responsibility of verifying the proof that a vehicle offered for registration was already sold on 31.03.2017 is upon registering authority/MLO. This verification must be done based on proof of sale generated from a statutory or regulatory authority and not based on the invoice. This requirement has been stipulated by the EPCA on the apprehension that an invoice could be backdated.

18. Learned counsel for the petitioners submit that there are other

cases where sales may have taken place prior to close of 31.03.2017 but the registering dealers could not submit the requisite details about the sales of vehicles by 01.04.2017 with full particulars of sale. Learned counsel further contends that they dispute the authority of EPCA to lay down any conditions over and above the conditions laid down by the Supreme Court. However, learned counsel very candidly conceded that the petitioners satisfy the conditions that are being proposed by EPCA.

19. Learned counsel for the petitioners further contend that in terms of the Rules, the vehicles have to be produced for physical inspection within one week of sale and since the respondents were not accepting the documents for registration, they pray that the petitioners be now granted one week time to produce the vehicles for physical inspection.

20. The Supreme Court, by its order dated 29.03.2017 in **M.C.Mehta** (*supra*), has permitted registration of vehicles that are sold on or before 31.03.2017. In my view, the Transport Department would be within its power to lay down stipulations and conditions for verifying the factum of a transaction of sale having been completed on or before 31.03.2017. Further, since the petitioners claim to be compliant with the conditions being proposed by the Transport Department as well as by the EPCA, in its affidavit filed in the Court today, the contention that the EPCA would not be the competent authority to lay down the conditions, in my view, is not required to be gone into in these petitions and the said issues are left open.

21. The Writ Petitions are accordingly allowed in the following terms:

- (i) The Registering Authority would permit registration of vehicles in terms of order dated 29.03.2017 of the Supreme Court of India in **M.C.Mehta** (*supra*) as clarified in para 35 of the judgment dated 13.04.2017.
- (ii) A proof would be required to be submitted by the dealer that he is a non self-registering dealer, i.e. does not have the online registering facility. This aspect would then be verified by the Registering Authority and only where it is found that the dealer is non registering dealer, the Registering Authority would take steps to verify the factum of the sale having been completed on or before 31.03.2017.
- (iii) The dealer is required to submit all the requisite details as also the proof of the sale having been completed on or before 31.03.2017.
- (iv) While considering that the sale has been completed prior to 31.03.2017, the Registering Authority would, *inter alia*, take into account the proof of online premium payment having been made on or before 31.03.2017 and/or issuance of an online insurance policy on or before 31.03.2017, in the name of the purchaser.
- (v) In case online payment has not been made and/or online insurance policy has not been issued on or before 31.03.2017, the onus and responsibility of verifying the proof, for the vehicle offered for registration that it was sold on or before 31.03.2017 would lie with the Registering Authority/MLO. The verification may be done based on proof of sale generated from a statutory or regulatory authority and not based on a mere invoice generated by the dealer.

- (vi) The concerned Registering Authority would have to examine each individual sale transaction to ascertain whether the said transaction is in compliance with the directions of the Supreme Court and only in case the Registering Authority is satisfied that the transaction was completed on or before 31.03.2017, the registration would be permitted.
- (vii) Since the respondent Registering Authorities were not accepting the vehicles for physical verification, the time for production of vehicles for physical verification is extended till 15.05.2017.

22. It is clarified that as since the petitioners, in the present petitions, are non self-registering dealers, this Court has not examined the matter from the perspective of a self-registering dealer.

23. It is further clarified that this court has not examined or expressed any opinion on the documents filed or the details submitted by the petitioners with regard to the sale transactions. It would be for the Registering Authority to satisfy itself about the genuineness of the transactions alleged in these petitions also.

24. The Writ petition is accordingly disposed of.

25. *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

May 08, 2017

'Sd'