HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY
PRESENT

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION NO: 13626 OF 2020

Between:

Rohit Nayani, S/o. Nayani Haranath, Aged about 35 years, Occ. Private Service, R/o. # 124, Flat No-102, Surya Tejas Apartments, Kavuri Hills, Phase-2, Hyderabad-033.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary, Transport Department, Secretariat, Hyderabad
2. The Transport Commissioner, Opp. Eenadu, Raj Bhavan Quarters Colony, Somajiguda, Hyderabad
3. The Regional Transport Authority, Central Zone, Opp. Eenadu, Raj Bhavan Quarters Colony, Somajiguda, Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents in levying the tax of 14% in respect of the two wheeler (T509BBTR0470) Kawasaki Ninja 1000 BSIV Instead of 9% as wholly illegal, arbitrary and contrary to law.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to register the two wheeler T509BBTR0470 Kawasaki Ninja 1000 BSIV by levying the tax @ 9% on the invoice value of Rs.9,98,000/- pending disposal of Writ Petition.

Counsel for the Petitioner: SRI. I.V. RADHAKRISHNA MURTHY

Counsel for the Respondents: GP FOR TRANSPORT

The Court at the stage of admission made the following: ORDER

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

W.P.No.13626 OF 2020

ORDER:

The present Writ Petition is filed questioning the action of the respondents in levying the tax @ 14% in respect of the two wheeler I.E. Kawasaki Ninja 1000 BSIV bearing No.TS09-BB-TR-0470 as against the tax @ 9% as illegal, arbitrary and contrary to law, the present writ petition is filed.

2. Heard the learned counsel for the petitioner and the learned Government Pleader for Transport. With their consent, the Writ Petition is disposed of at the stage of admission.

3. The case of the petitioner is that initially he purchased one two wheeler bearing No.TS09-EK-0195 and sold the same to one Katamreddy Nireeshkumar Reddy on 15.07.2017 and the said sale was intimated to the respondents also. Subsequently, the petitioner has purchased a new two wheeler i.e. Kawasaki Ninja 1000 BSIV on 31.07.2017 for an amount of Rs.9,98,000/- for the petitioner has also paid Rs.89,820/- towards 9% tax on the purchase cost and taken online slot for registration. However, on the date of registration, the registration authorities refused registration and directed the petitioner to pay additional tax of Rs.49,900/- by calculating the tax @ 14% on the purchase cost of Rs.9,98,000/-. It is further stated that on 02.11.2017

and 19.03.2020, the petitioner made a representation to the authorities duly enclosing the relevant documents, however, no orders are passed thereon till date. Hence, left with no other alternative, the present writ petition is filed.

4. The respondent No.3 filed a counter affidavit stating that the petitioner purchased the subject two wheeler vehicle on 31.07.2017 for Rs.9,98,000/- and the same was temporarily registered by the dealer and was allotted temporary registration number TS 09 BB TR 0470 and the same is valid from 31.07.2017 to 29.08.2017. The petitioner purchased the 1st vehicle and paid tax thereon on 04.08.2015, which was permanently registered on 17.12.2015. Thereafter, on 31.07.2017, petitioner purchased the 2nd vehicle paying the tax @ 9% instead of 14% and thereafter on 03.08.2017 the application made for transfer of the 1st vehicle was approved. Thus, at the time of purchase of the 2nd vehicle, the petitioner was holding the 1st vehicle in his name. Therefore, the petitioner is liable to pay the tax @ 14% but not 9% as contended. It is further stated that contrary to the provision or Section 39 of the Motor Vehicles Act, 1988, the petitioner is plying the vehicle since 29.08.2017 and therefore he is liable to pay penalty with difference tax as per amended Motor Vehicle Taxation Act under Act 11 of 2010. It is further stated that three years after the purchase of the 2nd vehicle, the petitioner has

submitted a representation on 19.03.2020 seeking exemption of additional tax, which is not permissible under the Act or the Rules. The petitioner without paying the additional tax demanded by the respondents since the year 2017 has filed the present writ petition after a lapse of more than three years. Therefore, prayed for dismissal of the writ petition.

5. Reply has been filed by the petitioner denying the allegations made in the counter. A specific stand has been taken by the petitioner that he has applied for registration for the first time and got the date as 01.09.2017 and therefore, the question of approaching the R.T.A. before that date does not arise at all. That, as on the date of applying for registration, there was no vehicle in his name and therefore, the respondents cannot state that the vehicle that is sought to be registered is a second vehicle. That, once a temporary registration for two wheeler is given, the person is entitled to ply the vehicle for a period of one month and it was only subsequently when the petitioner approached the authorities on 01.09.2017 for permanent registration, that, the same was not registered on the ground that the registration of the vehicle that is sought to be made is a second one and therefore, he is liable to pay 14%, but as a matter of fact, the first vehicle was sold on 15.07.2017 and registered in the name of the purchaser on 03.08.2017 itself. Even though, the petitioner has also taken a stand that as per Schedule III of

Ordinance No.2 of 2010, dated 02.02.2010 of the government of Andhra Pradesh, Hyderabad, (1) 9% of life tax to be payable on a two wheeler which si priced above 10 lakhs, under Ordinance No.2 of 2010, dated 02.02.2010, and (2) 14% of life tax is levied in case when the owner of the 2 wheeler wants to register his 2nd two wheeler which is priced 10 lakhs above, under Ordinance No.2 of 2010, dated 02.02.2010.

6. But, the same is not applicable to the facts of the present case as the said Ordinance being Ordinance No.5 of 2010 has been repealed by Act 11 of 2010.

7. Heard Sri I.V.Radhakrishna Murthy, learned Counsel for the petitioner, and the learned Government Pleader for Transport appearing for respondents.

8. To appreciate the contentions made by the parties, it is relevant to extract some of the provisions of the Andhra Pradesh Motor Vehicles Taxation Act as well as the Rules as it stood in the original Act

> **3. Levy of tax on motor vehicles:** - (1) The Government may, by notification, from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use, in a public place in the State.
>
> (2) The notification issued under sub-section (1) shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied:
>
> Provided that the rates of tax shall not exceed the maximum specified in column (2) of the First Schedule in respect of the classes of motor vehicles fitted with

pneumatic tyres specified in the corresponding entry in column (1) thereof; and one and a half times the said maximum in respect of such classes of motor vehicles as are fitted with non-pneumatic tyres:

Provided further that in the case of motor cycles (with or without attachment), invalid carriages, motor cars, jeeps and other non-transport vehicles not exceeding 2286 kgs in unladen weight and Omni Buses with a seating capacity of (8) or more in all but not exceeding (10) in all, Motor Cabs except those Motor Cabs that are in use and within the cost of rupees three lakhs and fifty thousand or less and also registered originally in the State, the tax shall be levied at the rates specified in the Third Schedule.

Provided also that in respect of chassis of a motor vehicle passing through this State, from a manufacturer to a dealer under a temporary certificate of registration for a period not exceeding seven days, the rate of tax shall be one-twentieth of the tax payable for quarter.

Provided also that in the case of two to four wheeler motor vehicles coming under non-transport category, not exceeding 2286 kgs., in unladen weight and Omni Buses with seating capacity of (8) eight persons in all but not exceeding (10) ten persons in all owned by institutions, organizations, companies or societies and in case of second and subsequent two to four wheeler motor vehicles coming under non-transport category not exceeding 2286 kgs., in unladen weight and Omni Buses with seating capacity of (8) eight persons in all but not exceeding (10) ten persons in all, owned by an individual, the tax shall be levied at the rates specified in the Sixth Schedule.

Provided also that in respect of motor vehicles operated with Battery / compressed Natural Gas /Solar Energy, no tax shall be levied for a period of five years from the date to be notified.

9. The said section 3(2) of the Act is amended vide Act No.11 of 2010, which reads as follows:

"In the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (hereinafter referred to as the principal Act), in Section 3, in sub-section (2) –

(i) for the second proviso, the following proviso shall be substituted, namely:-

"Provided further that in the case of motor cycles with or without attachment, invalid carriages, the tax shall be levied at the rates specified in the Third Schedule,"

(ii) for the third proviso the following proviso shall be substituted namely:-

"Provided also that in the case of Construction Equipment vehicles including Road Rollers, the rate of tax shall be levied at the rates specified in the Fourth Schedule".

(iii) for the fourth proviso, the following provisos shall be substituted namely:-

"Provided also that in the case of three or four four wheeler motor vehicles including Motor Cars under non-transport category, omni buses upto a seating capacity of (10) ten persons in all, new Motor Cabs and the Motor Cabs of other States that are entering into the rolls of this State by way of change of address or transfer of ownership, the tax shall be levied at the rates specified in the Sixth Schedule:

Provided also that Non-Transport Vehicles meant for carrying persons, owned by Companies/Institutions/ Societies/Organisations upto a seating capacity of (10) ten in all and second or more personalized vehicles upto a seating capacity of (10) ten in all owned by an individual, the tax shall be levied at the rates specified in the Seventh Schedule."

10. A reading of the above makes it abundantly clear that as per the second proviso to Section 3(2) of the Act provides that the tax applicable to motor cycles with or without attachment, invalid carriages, shall be levied at the rates prescribed in the Third Schedule. In the Principal Act, for the Third Schedule the following new Schedule shall be substituted, namely:-

THE THIRD SCHEDULE
(See second Proviso to Sub-section (2) of Section-3)

Sl. No.	Period/Class of Vehicle Carriage	Motor Cycles including Tri cycle, Motor Schooters and Cycles with or without attachment		Invalid
		Vehicles not Exceeding 60 CC	Vehicles exceeding 60CC	
1.	2.	3	4	5
1.	At the time of Registration of New vehicles	9% of the cost	9% of the cost	Rs.901/-

11. But, the learned Government Pleader is relying on the fourth proviso to buttress his contention that the vehicle is liable to be taxed at14%, which reads as under:

> "Provided also that Non-Transport Vehicles meant for carrying persons, owned by Companies/Institutions/ Societies/Organizations up to a seating capacity of (10) ten in all **and second or more** personalized vehicles upto a seating capacity of (10) ten in all owned by an individual, **the tax shall be levied at the rates specified in the Seventh Schedule**."
>
> (Emphasis added)

12. In the Principal Act, after the Sixth Schedule, so amended the following new Schedule shall be added, namely:-

THE SEVENTH SCHEDULE

(See Fifth Proviso to Sub-Section (2) of Section 3)

1.	2.	3.
Sl. No.	Period /Class of vehicle	Non-Transport vehicles meant for carrying persons, owned by Companies/Institutions/ Societies/Organizations upto a seating capacity of (10) ten in all and second or more personalized vehicles upto a seating capacity of (10) ten in all owned by an individual
1.	At the time of registration Of new vehicles	14% of the cost of the vehicle.

13. The bone of contention now boils down to as to what will be applicable date of registration for the purpose of levying the appropriate tax, whether the date of purchase of the second vehicle should be taken as the date of reckoning for the purpose of applying the Seventh Schedule or whether the date of actual registration of the vehicle should be taken as a criteria for levying the applicable Schedule i.e., Third Schedule. In the Schedules which are enumerated in the Act, it is clearly mentioned that *"at the time of registration of new vehicles"*.

14. Admittedly, in this case, the first vehicle of the petitioner was already transferred and registered in the name of the purchaser on 03.08.2017 and by the time, the petitioner approached the R.T.A. authorities i.e., 01.09.2017, the first vehicle was no longer in his name and therefore, the contention of the learned Government Pleader that the

Seventh Schedule is applicable to the facts of the present case is not a valid one. The learned Government Pleader tried to impress upon this Court that the date of purchase i.e., the date on which the temporary licence was generated should be taken as the date of registration of the second vehicle and as on that date, the first vehicle was still in the name of the petitioner, therefore, the petitioner is liable to pay tax @ 14%.

15. The said contention is not a legally valid ground as the Section 4(4) of the Act itself provides that "*notwithstanding anything in Section 3 or sub-section (1), the government may, by notification from time to time, direct that a temporary licence for a period not exceeding thirty days at a time may be issued in respect of a motor vehicle of any class on payment of such tax, and subject to such conditions as may be specified in such notification*".

16. Thus, there is clearly a distinction between the temporary licence and the permanent registration. When the Act/Schedule states "at the time of registration of new vehicles", the same has to be interpreted to mean at the time the vehicle is physically presented before the R.T.A.Office for the purpose of registration. Temporary licence is generated on-line by the Dealer and it is only a licence to drive the vehicle for a period of 30 days from the date of delivery by the dealer, by no stretch of imagination can it be contended that

the date on which the temporary licence is generated by the dealer should be taken as the date of registration.

17. In view of the above made discussion, the writ petition is allowed and the official respondents are directed to register the vehicle in the name of the petitioner by collecting the tax as per the Third Schedule only, subject to the petitioner fulfilling the other formalities.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

SD/-B.SATYAVATHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary, Transport Department, State of Telangana Secretariat, Hyderabad
2. The Transport Commissioner, Opp. Eenadu, Raj Bhavan Quarters Colony, Somajiguda, Hyderabad
3. The Regional Transport Authority, Central Zone, Opp. Eenadu, Raj Bhavan Quarters Colony, Somajiguda, Hyderabad
4. One CC to Sri I.V. Radhakrishna Murthy, Advocate [OPUC]
5. Two CCs to GP for Transport, High Court for the State of Telangana at Hyderabad. [OUT]
6. Two CD Copies

CHR

HIGH COURT

DATED:18/12/2020



ORDER

W.P.No.13626 of 2020

ALLOWING THE WRIT PETITION AT THE STAGE OF ADMISSION WITHOUT COSTS

FEMA

24/12/2020