

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.A. No. 163 of 2017 and batch**

**In W.A. No.163 of 2017**

***M/s. Sushree Automotives* ..... *Appellant***

Mr. Samvit Mohanty, Advocate

***-versus-***

***State of Odisha and others* ..... *Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.164 of 2017**

***M/s. Kanchan Murali Auto* ..... *Appellant***

Mr. Samvit Mohanty, Advocate

***-versus-***

***State of Odisha and others* ..... *Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.190 of 2017**

***Mahindra & Mahindra Financial Services Ltd.* ..... *Appellant***

Mr. Jaydeep Pal, Advocate

***-versus-***

***State of Orissa and others* ..... *Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.153 of 2017**

***Jyote Motors* ..... *Appellant***

Mr. S.S. Mohanty, Advocate

***-versus-***

***State of Odisha and others* ..... *Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.180 of 2017**

***Odisha Automobiles Dealers  
Association (OADA)***

.... ***Appellant***

Mr. P.K. Dash, Advocate

*-versus-*

***State of Odisha and another***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.189 of 2017**

***M/s. Urbasi Bajaj***

.... ***Appellant***

Mr. S.S. Mohanty, Advocate

*-versus-*

***State of Odisha and others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.191 of 2017**

***Ashirbad Automobile and another***

.... ***Appellants***

Mr. A.N. Das, Advocate

*-versus-*

***State of Odisha and others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.194 of 2017**

***M/s. Shree Durga Motors***

.... ***Appellant***

Mr. D.K. Sahoo-1, Advocate

*-versus-*

***State of Odisha and others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.195 of 2017**

***M/s. S.K. Motors***

.... ***Appellant***

Mr. Samvit Mohanty, Advocate

*-versus-*

***State of Orissa and others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.196 of 2017**

***Ananta Automobiles Private Ltd.***

.... ***Appellant***

Mr. S.S. Rao, Advocate

*-versus-*

***State of Orissa and another***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.198 of 2017**

***M/s. Narayani Motors Pvt. Ltd., and  
another***

.... ***Appellants***

Mr. Avijit Pal, Advocate

*-versus-*

***State of Transport Authority, Orissa  
and others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.215 of 2017**

***M/s. Chandan Automobiles***

.... ***Appellant***

Mr. S.S. Mohanty, Advocate

*-versus-*

***State of Orissa and others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.223 of 2017**

***M/s. Paradeep Motors***

.... ***Appellant***

Mr. S.S. Mohanty, Advocate

*-versus-*

***State of Orissa and others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.233 of 2017**

***M/s. Varsa Motors***

.... ***Appellant***

Mr. S.S. Mohanty, Advocate

*-versus-*

***State of Orissa and others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.250 of 2017**

***M/s. Sanjibani Motors Pvt. Ltd.***

.... ***Appellant***

Mr. Sidharta Ray, Advocate

*-versus-*

***State of Orissa and others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.251 of 2017**

***M/s. Sanjibani Motors Pvt. Ltd.***

.... ***Appellant***

Mr. Sidharta Ray, Advocate

*-versus-*

***State of Orissa and others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.257 of 2017**

***M/s. Maa Tarini Motors***

.... ***Appellant***

Mr. S.S. Mohanty, Advocate

*-versus-*

***State of Orissa and others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.282 of 2017**

**M/s. Choudhary Automobiles** .... **Appellant**

Mr. S.S. Mohanty, Advocate

*-versus-*

**State of Orissa and others** .... **Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.336 of 2017**

**M/s. Sova Automobiles** .... **Appellant**

Mr. S.S. Mohanty, Advocate

*-versus-*

**State of Orissa and others** .... **Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.382 of 2017**

**M/s. Bharat Automobiles** .... **Appellant**

Mr. S.S. Mohanty, Advocate

*-versus-*

**State of Orissa and others** .... **Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.222 of 2017**

**Sundaram Finance Ltd** .... **Appellant**

Mr. Nalinikanta Dash, Advocate

*-versus-*

**State of Orissa and another** .... **Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.232 of 2017**

**M/s. Bina Motors** .... **Appellant**

Mr. S.S. Mohanty, Advocate

*-versus-*

**State of Orissa and others** .... **Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.236 of 2017**

**M/s. Consortium Automobiles Pvt. Ltd. .... Appellant**

Mr. S.S. Mohanty, Advocate

*-versus-*

**State Transport Authority and others .... Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.237 of 2017**

**M/s. Ayush Automobiles .... Appellant**

Mr. S.S. Mohanty, Advocate

*-versus-*

**State of Orissa and others .... Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.242 of 2017**

**M/s. Shree Gayatri Motors .... Appellant**

Mr. Ramesh Agarwal, Advocate

*-versus-*

**State of Orissa and others .... Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.243 of 2017**

**M/s. Shree Laxmi Enterprises .... Appellant**

Mr. Ramesh Agarwal, Advocate

*-versus-*

**State of Orissa and others .... Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.244 of 2017**

**M/s. R.B. Motors .... Appellant**

Mr. Ramesh Agarwal, Advocate

*-versus-*

**State of Orissa and others .... Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.245 of 2017**  
**M/s. Shree Shyam Motors**

.... **Appellant**

Mr. Ramesh Agarwal, Advocate  
-versus-

**State of Orissa and others**

.... **Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.246 of 2017**  
**M/s. Shree Bimla Motors**

.... **Appellant**

Mr. Ramesh Agarwal, Advocate  
-versus-

**State of Orissa and others**

.... **Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.253 of 2017**  
**OSL Motors Pvt. Ltd.**

.... **Appellant**

Mr. Jaydeep Pal, Advocate  
-versus-

**State Transport Authority, Odisha and  
others**

.... **Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.330 of 2017**  
**M/s. Mishra Auto**

.... **Appellant**

Mr. Jaydeep Pal, Advocate  
-versus-

**State Transport Authority, Odisha and  
others**

.... **Respondents**

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.142 of 2018**

***M/s. Sanjibani Motors***

....

***Appellant***

Mr. S.S. Mohanty, Advocate

*-versus-*

***State of Orissa and others***

....

***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.143 of 2018**

***M/s. Sanjibani Motors***

....

***Appellant***

Mr. S.S. Mohanty, Advocate

*-versus-*

***State of Orissa and others***

....

***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.381 of 2018**

***M/s. International Tractors***

....

***Appellant***

Mr. Deepak Kumar Mohapatra, Advocate

*-versus-*

***State of Orissa and others***

....

***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.188 of 2017**

***M/s. Gugnani Motors***

....

***Appellant***

Mr. S.S. Mohanty, Advocate

*-versus-*

***State of Orissa and others***

....

***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.24 of 2018**

***M/s. Jaiswal Motors***

....

***Appellant***

Mr. S.S. Mohanty, Advocate

*-versus-*

***State of Orissa and others***

....

***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.34 of 2019**

***M/s. Om Automobiles***

.... ***Appellant***

Mr. Avijit Pal, Advocate

***-versus-***

***State Transport Authority, Odisha and  
others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**In W.A. No.197 of 2017**

***Ashirbad Automobile, Bhubaneswar  
and another***

.... ***Appellants***

M/s. A. N. Das and associates, Advocates

***-versus-***

***State of Odisha and others***

.... ***Respondents***

Mr. Pravakar Behera, Standing Counsel

**CORAM:  
THE CHIEF JUSTICE  
JUSTICE M.S. RAMAN**

**JUDGMENT  
21.12.2022**

1. These appeals are directed against a judgment dated 18<sup>th</sup> May 2017 passed by the learned Single Judge in a batch of writ petitions rejecting the challenge made therein to the validity of a circular dated 29<sup>th</sup> March, 2016 issued by the Transport Commissioner-cum-Chairman, State Transport Authority (STA), whereby all the Regional Transport Officer (RTOs) were directed to collect tax from the dealers/manufacturers of motor vehicles on the basis of total number of vehicles possessed and registered during the entire year by the dealer. The learned Single Judge also negatived the challenge to the consequential demand notices issued by the various RTOs.

2. The learned Single Judge in the impugned judgment, which was common to the batch of writ petitions, chose to consider W.P.(C) No.5648 of 2017 by the Odisha Automobiles Dealers Association (OADA) as the lead petition. It was noted by the learned Single Judge, as far as the said petition was concerned, that OADA was a trust, the members of which were engaged in a business of hypothecation, leasing or hire-purchase of motor vehicles. As far as the Petitioners in the remaining writ petitions before the learned Single Judge were concerned, they were themselves dealers in motor vehicles and engaged in the business of selling of motor vehicles. It is not in dispute that all of them answered the description of the expression ‘dealer’ within the meaning of Section 2 (8) of the Motor Vehicles Act, 1988 (MV Act).

***Relevant provisions***

3. As far as the MV Act is concerned, it is an Act made by Parliament and it is therefore a ‘Central Act’. It has been enacted with reference to Entry-35 of List-III of the Schedule-VII of the Constitution which reads as under:

“Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.”

4. In terms of Section 39 of the MV Act, registration of a motor vehicle is compulsory. Section 39 of the MV Act reads as under:

“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.”

5. As far as the proviso to Section 39 of the MV Act is concerned, reference is required to be made to Rule 33 of the Central Motor Vehicles Rules, 1989 (MV Rules) which reads as under:

“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 automobile or automobiles 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 of 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.”

6. Rule 33 of the MV Rules, therefore, exempts “a dealer of automobiles or automobile ancillaries or a test agency in terms of Rules 126” from the necessity of registration, subject to obtaining “a trade certificate from the registering authority”.

7. Rules 34 and 35 of the MV Rules provide the procedure for application, grant or renewal of the trade certificate (TC). The

application has to be made in Form-16 appended to the MV Rules and has to be accompanied with an appropriate fee as specified in Rule 81 of the MV Rules.

8. The purposes for which a motor vehicle with a TC may be used is specified in Rule 41 of the MV Rules which reads as under:

“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 weighing, 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.”

9. It is not in dispute that all of the Appellants herein have applied for or obtained TC. Rule 39 of the MV Rules states that a trade registration mark that has been assigned in respect of each TC granted or renewed under Rule 35 of the MV Rules shall not be used upon more than one vehicle at a time or upon any vehicle other than a vehicle “*bona fide* in possession of the dealer or manufacturer of automobile or automobile ancillaries” in the course of his business or any type of vehicle other than the one for which the TC is issued. Rule 39 (2) requires a TC to be carried on a motor vehicle in a weatherproof circular folder and the trade registration mark is required to be exhibited in a conspicuous place in the vehicle. The contention of the Appellants has been that the same TC can be used in multiple types and multiple vehicles, subject to the condition that it cannot be used simultaneously on two vehicles.

10. The scheme of grant of a TC is a legislative acknowledgement of the fact that there is a time period between the manufacturer delivering to the dealer a certain number of vehicles meant for sale which then a dealer keeps in his possession at a given point in time, and the ultimate sale of such vehicles. When the dealer applies for a TC, he is expected to specify the number of vehicles for which he is applying for a TC. A perusal of the Form-16 appended to the MV

Rules reveals that the dealer is expected to specify in column 5 “number of certificates required” and in column 6 “class of motor vehicles in respect of which certificate is required”. A declaration is appended to such form where the applicant declares that the TC is required by him “for *bona fide* trade purpose”.

11. Form 17 appended to the MV Rules sets out the form of the TC and which sets out the trade number assigned in respect of the certificate. This is the trade registration mark referred to in Rule 39 of the MV Rules.

12. The MV Act is obviously not an Act which levies any taxes on motor vehicles. The taxation statute as far as Odisha is concerned, is the Odisha Motor Vehicles Taxation Act, 1975 (OMVT Act). The OMVT Act is traceable to Entry-57 of List-II of Schedule-VII of the Constitution, which reads as follows:

“Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of Entry-35 of List-III”

13. Section 3 of the OMVT Act states that there shall be levied on every motor vehicle used or kept for use within the State, a tax at the rate specified in Schedule-I and Schedule-III. Section 3-A talks of the levy of an additional tax which is applicable on every public service vehicle and goods carriage “used or kept of use within the State”. Section 4 provides that the tax shall be paid in advance to the Taxing Officer “by the registered owner or person having possession or control of the vehicle.” Section 4-A talks of one-time tax in respect of

every vehicle of the description specified in Schedule I, “which is used personally or kept for personal use”.

14. Section 5 of the OMVT Act specifically deals with a tax that shall be paid in advance at an annual rate “by a manufacturer or dealer in motor vehicles in respect of the vehicles in his possession in the course of his business as such manufacturer or dealer under the authorization of a TC granted under the MV Rules”. Section 5 reads as under:

#### *5. Tax payable by Manufacturers and Dealers*

Notwithstanding the provisions contained in Sections 3, 3-A, 4 or 4-A, a tax at the annual rate specified below shall be paid in advance by a manufacturer or dealer in motor vehicles in respect of the vehicles in his possession in the course of his business as such manufacturer or dealer under the authorization of trade certificate granted under the Motor Vehicles Rules:

| <i>Description of motor vehicle</i>                                                      | <i>Annual rate</i>                                          |
|------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| 1. Motor Cycles-                                                                         |                                                             |
| (a) where the total number of vehicles does not exceed ten                               | Rs.2000.00                                                  |
| (b) where such total number exceeds ten                                                  | Rs.2000.00 Plus<br>Rs.200.00 for each vehicle exceeding ten |
| 2. Motor vehicles other than Motor Cycles weighing not more than 3048 kilograms unladen- |                                                             |
| (a) where the total number of vehicles does not exceed ten                               | Rs.5,000.00                                                 |
| (b) where such total number exceeds ten.                                                 | Rs.5000.00<br>Rs.500.00 for each vehicle exceeding ten      |
| 3. Motor vehicles weighing more than 3048 kilograms unladen—                             |                                                             |

- |     |                                                         |                                                              |
|-----|---------------------------------------------------------|--------------------------------------------------------------|
| (a) | where the total number of vehicles does not exceed ten. | Rs. 10,000.00                                                |
| (b) | where such total number exceeds ten.                    | Rs. 10,000.00<br>Rs. 1000.00 for each vehicle exceeding ten. |

15. It is thus seen that Section 5 is a separate taxing provision. The liability of tax which is to be paid at an annual rate and in advance falls on the manufacturer or dealer in motor vehicles. Such vehicles have to be in possession in the course of business of such manufacturer or dealer “under the authorization of TC”. The tax is therefore specific to vehicles in possession of the manufacturer or dealer by virtue of the TC granted. The taxable event, which attracts tax liability under Section 5, is the possession of vehicles “under the authorization of TC”.

16. Under the 2<sup>nd</sup> proviso to Rule 7 of the Odisha Motor Vehicles Taxation Rules, 1976 (OMVT Rules), dealers or manufacturers paying tax under Section 5 of the OMVT Act are to submit a declaration. The form of such declaration is given in Form-XIV appended to Odisha Motor Vehicles Rules, 1993 (OMV Rules), which reads as under:

**“FORM XIV (See Rule 36(1))**

Furnishing of information in respect of the vehicles sold by manufacturer or dealer

1. Name of the Dealer or Manufacturer (Trade Certificate Holder) with address.
2. Trade Certificate No.
3. Details of Sale (Category-wise)

| Date of Sale | Sale letter No. | Name and address of purchaser | Engine No. | Chassis No. | Trade Regd. Mark allotted | RTO to whom endorsed for Registration |
|--------------|-----------------|-------------------------------|------------|-------------|---------------------------|---------------------------------------|
|--------------|-----------------|-------------------------------|------------|-------------|---------------------------|---------------------------------------|

(1) (2) (3) (4) (5) (6) (7)

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Signature of Trade  
Certificates Holder

Certificate

This is to certify that the maximum number of vehicles covered under the trade certificates has never been exceeded at any point of time

Signature of Trade  
Certificate Holder

17. The case of the Appellants is that the tax in terms of Section 5 of the OMVT Act has to be paid annually in advance for the maximum number of vehicles for which the TC has been issued to be kept in possession by them at any given point in time for the purposes specified in Rule 41 of the MV Rules. Therefore, this tax is in respect of the total number of such vehicles as specified in TC.

18. Rule 36 of the OMV Rules requires the manufacturer or dealer to furnish to the registering authority, information in Forms-XIII and XIV in respect of the vehicles received in stock and sold during every month by the 15<sup>th</sup> of the succeeding month. Form-XIV also contains a declaration that the dealer has not had in his possession vehicles exceeding the total number covered under the TC at any point in time.

***Impugned communication***

19. The problem that arose for the Appellants was the impugned communication dated 29<sup>th</sup> March, 2016, issued by the STA, which reads as under:

"To,  
All Regional Transport Officers,  
Sir,

It is observed that there is huge leakage of M.V revenue at dealer/manufacturer points while collecting tax for vehicle in their possession.

As per the Rule-35 of CMVR-1989 an application for the grant/renewal of trade certificate shall be made in form-16 accompanied by appropriate fees as specified in Rule-81 by the dealer/manufacturer. Separate application shall be made for each class of vehicles as per rule 34 of CMV Rules. On receipt of application from the dealers, the grant/renewal of trade certificate is issued under Rule-35 of CMVR-1989 by the Registering Authority to the dealers/manufacturers.

Accordingly under Rule-36 of OMV Rules 1993(1). The manufacturer/dealer shall furnish to the registering Authority having jurisdiction in the locality with the information in Form XIII & XIV, in respect of the vehicles received in stock & sold by him during every month by 15<sup>th</sup> of the succeeding month.

(2) The manufacturer/dealer should furnish the copy of the certificate in form-21 prescribed under rule-47 of CMV Rule-1989 to the registering authority & the concerned region when the vehicle is intended to be registered.

All the dealers or manufacturers are bound to submit monthly returns in form-XIII & XIV under rule-36 of OMV-1993. A certificate in form-XIV are being furnished to the registering authority that the maximum nos. of vehicles covered under the trade certificate has never been exceeded at any point of time. This needs to be obtained from each dealer/manufacturer scrupulously.

Section-5 of OMVT act 1975-entails that- Notwithstanding the provisions contained in <sup>1</sup>[Section 3,3-A,4,4-A or 4-B], a tax at the annual rate specified below shall be paid in advance by a manufacture of dealer in Motor vehicles in respect of the vehicles in his possession in the course of his business as such manufacture or dealer under the authorization of trade certificate granted under the Motor Vehicles Rules.

While reviewing the mv revenue collection of different RTOs, it is found that the tax are being collected in advance from the dealers for the nos. of vehicles mentioned in their trade certificate which is not in conformity with the total no of registration of vehicles made by the dealers. You are therefore directed to collect the tax from the dealers/manufacturers on the basis of total no. of vehicles possessed & registered during the entire year by the dealer.

Further, you are instructed to be more vigilant at dealer points through regular checking & conducting raids to collect the tax for the vehicles possessed by the dealers.

Transport Commissioner,  
Odisha.”

20. It is obvious from a reading of the above communication that the trigger point was the detection by the STA that the number of vehicles mentioned in the TC of the dealers “is not in conformity with the total number of registration of vehicles made by the dealers.” Therefore, directions were issued to the RTOs to collect tax from the dealers/manufacturers on the basis of the total number of vehicles “possessed and registered” during the entire year by the dealer. In other words, tax was to be collected under Section 5, OMVT Act was not confined to vehicles possessed under the authorization of the TC granted.

***Grounds of challenge before the Single Judge***

21. The above communication was challenged on several grounds before the learned Single Judge. One ground was that the said tax was beyond the scope of Section 5 of the OMVT Act and secondly that it could not be by means of a mere communication from the STA that there was no authority with the STA to issue such a communication regarding collection of tax. The Appellants contended that TC holders or dealers were not required to keep in possession vehicles in excess of what is stated in the TC. As far as the tax payable at the time of registration is concerned, Sections 3, 4-A and 4-B of the OMVT Act are relevant. Therefore, irrespective of the number of vehicles sold by the dealer in a year, tax under Section 5 of the OMVT Act was only to be demanded in respect of vehicles possessed under the TC. It was

also pointed out that the assumption that the dealer had kept vehicles in his possession beyond that specified in the TC was not preceded by any enquiry and there was no show-cause notice issued to such dealer before raising the demand.

22. The above submissions were countered by the Respondent-STA by contending that even if at a given point of time the dealer does not possess vehicles in excess of those covered by the TC but if at the end of the year it was found that the dealer had sold vehicles beyond the number indicated in the TC, then also it will be liable to pay the TC tax in respect of each vehicle since he had possessed “such number of vehicles which had been sold by him”. The contention of the STA was that when a vehicle was sold, a sale certificate is issued in Form-XXI and a registration made in Form-XX. The sale certificate is to be granted by the manufacturer or the dealer in Form XXI. Therefore, it was contended that if at a given point in time it is found that a dealer has kept vehicles in excess of that covered by the TC then the tax in the TC fee and TC tax have both to be paid in respect of each vehicle sold.

***Impugned order of the learned Single Judge***

23. The learned Single Judge on an analysis of the relevant provisions of the MV Act, OMVT Act, MV Rules, OMV Rules and the OMVT Rules, came to the following conclusions:

(i) Section 5 of the OMVT Act is a charging Section in respect of a TC holder whereunder the dealer is liable to pay tax in respect of vehicles in his possession in the course of his business under the authorization of the TC granted under the MV Rules.

(ii) Admittedly, the dealers who had been paying tax as per the TC issued against the maximum number of vehicles possessed at a given point of time and the same has also been paid in advance.

(iii) Section 5 was unambiguous that the tax thereunder shall be paid in advance by the dealer in respect of vehicles “in course of his business” under the authorization of TC. Possession of a vehicle by the dealer in the course of his business and sale thereof and consequential registration “are intrinsically connected to each other”.

(iv) The expression “vehicle in possession in the course of his business” has wide implication. “Therefore, once the vehicle is in possession in course of the business of a dealer under the authorization of trade certificate, at the end of twelve months, if it is ascertained that the dealer was in possession of vehicles in excess of the number indicated in the trade certificate for which no advance tax has been collected, in that case, the dealer is liable to pay the tax in consonance with the circular issued by the opposite parties. Needless to say that under a trade certificate, the dealer is obliged to retain the number of vehicles mentioned therein and not beyond that at a given point of time, but that *ipso facto* cannot disentitle him to pay tax in respect of the vehicles in his possession in course of business. In other words, if the dealer possesses vehicles in course of his business, he is liable to pay the tax in consonance with the circular issued by the authority concerned.”

(v) Since no vehicle could be sold for the purpose of registration without the dealer being in possession of such vehicle, if at the end of

twelve months it was found that the dealer had possession of vehicles even not exceeding the number of vehicles in possession at a given point of time as per the TC issued, then he is liable to pay the tax “at the end of twelve months, if it is found that the dealer having remained in possession of number of vehicles even not exceeding the number of vehicles in possession at a given point of time as per the trade certificate issued, then he is liable to pay the tax as demanded by the authority concerned because such vehicles were in possession in course of his business.”

24. It was therefore concluded that the STA had not committed any illegality in issuing the said communication dated 29<sup>th</sup> March, 2016. Reference was made to Rule 177 of the OMV Rules and it was concluded that the Commissioner was well within his competence for issuing such instruction, which was only to give effect to Section 5 of the OMVT Act.

***Proceedings and pleadings in these appeals***

25. In many of these appeals while issuing notice, this Court passed an interim order to the effect that the Appellants would be liable to comply with the impugned communication dated 29<sup>th</sup> March, 2016 “prospectively from the date of the impugned judgment of the learned Single Judge, but no recovery of arrear dues shall be made from the Appellants till the disposal of the writ appeals”.

26. In the course of hearing of these appeals, this Court in W.A. No.245 of 2017 passed the following order on 18<sup>th</sup> October, 2022:

“1. The Court would like the State to file an affidavit indicating clearly whether pursuant to the impugned

letter/instruction dated 29<sup>th</sup> March, 2016 of the Transport Commissioner what is being charged per vehicle sold is the additional fee in terms of Section 5 of the Orissa Motor Vehicles Taxation Act, 1975 (OMVT Act). The Court would also like an affidavit to be filed on behalf of the Appellant whether the additional incidents of Trade Certificate Tax (TC Tax) in terms of Section 5 of the OMVT Act and Trade Certificate Fees (TC fees) in terms of Rule 81 of the Central Motor Vehicle Rules, 1989 has been passed on to the customer and has in fact been paid by the customer. Both sets of affidavits be filed with advance copies served on the other side before the next date.

2. List on 5<sup>th</sup> December, 2022.

3. The interim order passed earlier shall continue till then."

27. Pursuant thereto, an affidavit dated 3<sup>rd</sup> December 2022 has been filed by the STA in W.A. No.223 of 2017 *inter alia* stating as under:

"3. That pursuant to the impugned instruction dated 29.03.2016 issued by the Transport Commissioner, no extra tax at the annual rate has been collected from the vehicles under the possession of the manufactures or dealers of motor vehicles in course of business by the Taxing Officer-cum-RTOs in Odisha except the tax prescribed under Section 5 of the OMVT Act, 1975."

28. It is further pointed out that under Section 5 of the OMVT Act, the following amounts are charged per vehicle:

| Sl.No. | Description of motor vehicle                                                         | Tax per vehicle |
|--------|--------------------------------------------------------------------------------------|-----------------|
| 1      | Motor Cycle                                                                          | Rs.200/-        |
| 2      | Motor vehicle other than motor cycles weighing not more than 3048 kilograms unladen. | Rs.500/-        |
| 3      | Motor vehicle other than motor                                                       | Rs.1000/-       |

|  |                                                      |  |
|--|------------------------------------------------------|--|
|  | cycles weighing more than<br>3048 kilograms unladen. |  |
|--|------------------------------------------------------|--|

29. A separate affidavit dated 2<sup>nd</sup> December 2022 has been filed on behalf of the dealers in W.A. No.180 of 2017 stating as under:

“3. That it is humbly submitted that not all dealers have passed on the additional incidence of Trade Certificate Tax (TC Tax) in terms of Section 5 of the OMVT Act and Trade Certificate Fees (TC Fees) in terms of Rule 81 of the Central Motor Vehicles Rules, 1989, to the customers. Some dealers may have passed on the additional incidence to the customers whereas others have paid it from their own resources.”

30. The said affidavit refers to an instruction dated 12<sup>th</sup> January 2022 issued by the STA to all the RTOs asking them to ensure that the dealers will clearly display on the notice board the details of the payment to be made by the purchaser for each category of vehicle and that no extra payment requires to be made other than that mentioned therein.

31. On behalf of the Appellants, this Court has heard the submissions of Mr. Samvit Mohanty, Mr. Jaydeep Pal, Mr. S.S. Mohanty, Mr. P.K. Dash, Mr. A.N. Das, Mr. D.K. Sahoo-1, Mr. S.S. Rao, Mr. Avijit Pal, Advocate, Mr. Sidharta Ray, Mr. Nalinikanta Dash, Mr. Ramesh Agarwal and Mr. Deepak Kumar Mohapatra, learned counsels for the respective Appellants and on behalf of the STA, this Court has heard the submissions of Mr. Pravakar Behera, learned Standing Counsel.

### ***Submissions on behalf of the Appellants***

32. The arguments on behalf of the Appellants could be summarized as under:

(i) The STA misconstrued the statutory provision and ignored the well-established and long-standing practice under which the tax under Section 5 of the OMVT Act was levied only in respect of the total number of vehicles as mentioned in the TC. Under the authority of the TC, the dealer was entitled to keep a certain number of vehicles in his possession. If the dealer was to pay tax under Section 5 for all the vehicles that came into his possession annually during the course of his business, then the qualifying expression “under the authorization of trade certificate” occurring in Section 5 would lose all significance. It would become irrelevant whether the dealer maintains the maximum number of vehicles authorized under the TC or not at any given point in time since anyway every vehicle sold by him had to suffer tax. Such an interpretation would render Section 5 of the OMVT Act totally redundant.

(ii) Section 5 of the OMVT Act had to be strictly construed since it was a charging section in a taxation statute. The Commissioner could not have changed the taxable event from vehicles in possession under a TC to all vehicles “possessed and registered during the entire year”. This in any event could not be done by mere instruction by the Commissioner.

(iii) The field of taxation for motor vehicles in respect of TC was already occupied by the MV Act, which was a Central Act and there was no further scope for any further taxation by the State in respect of TC. Further, the MV Rules being notified later than the OMVT Act

could prevail. Therefore, Section 5 of the OMVT Act was *ultra vires* the Constitution and beyond the legislative competence of the State. Reliance was placed on the judgment in ***Deep Chand v. The State of Uttar Pradesh AIR 1959 SC 648***, which has subsequently been followed in a large number of judgments of the Supreme Court.

***Submissions on behalf of the STA***

33. Mr. Pravakar Behera, learned Standing Counsel for the STA submitted that once a vehicle is in possession in the course of business of a dealer under the authorization of a TC issued under the MV Rules and at the end of twelve months, it was ascertained that the dealer was in possession of vehicles in excess of the number indicated in the TC for which no advance tax had been collected, the dealer was liable to pay tax in consonance with the circular dated 29<sup>th</sup> March, 2016. If a dealer possessed any vehicle in the course of his business, he has to pay tax in terms of the circular dated 29<sup>th</sup> March, 2016.

34. As regards legislative competence of the State to collect tax from manufacturers/dealers in respect of vehicles possessed under a TC, the complete answer according to Mr. Behera was provided in respect of an identical provision under the Bihar Motor Vehicles Taxation Act (BMVT Act) by the Patna High Court in ***M/s. Tata Engineering and Locomotive Company Limited v. State of Bihar, AIR 1999 Pat 62***, which was affirmed by the Supreme Court of India with the dismissal of the Special Leave Petitions filed against the said judgment. A subsequent challenge by manufacturers of motor vehicles to demands raised against them under Section 6 of the BMVT Act was again negated by the Jharkhand High Court, Ranchi Bench in ***TELCO Limited v. State of Jharkhand (2003) 1 JLJR 601*** and ***R.K.***

***Automobile v. State of Bihar AIR 2004 Jhar 426.*** The appeals filed against both the judgments were dismissed by the Supreme Court of India in ***Tata Motor Limited v. State of Jharkhand (2020) 15 SCC 438.*** In the said judgment, the Supreme Court reaffirmed the correctness of the judgment of the Patna High Court in ***M/s. Tata Engineering and Locomotive Company Limited (supra).*** It was held that the mere fact that a manufacturer/dealer did not obtain a TC would not absolve such manufacturer or dealer the liability to pay tax under Section 6 of the BMVT Act in respect of vehicle in his possession in the course of his business.

35. As regards the demand notices, Mr. Behera submitted that those were issued by the RTO indicating the number of vehicles for which the dealer had obtained TC and the number of vehicles the dealer possessed and sold. Accordingly in respect of the balance number of vehicles, the demand notice for payment of tax under Section 5 of the OMVT Act was issued. Inasmuch as the dealer had to also apply for a TC for such excess vehicles and pay an application fee i.e., the TC fee that was also sought to be collected under Rule 34 read with Rule 81 of the MV Rules. In any event the challenge to the imposition of the TC fees under Rule 81 of the MV Rules was never raised in the writ petitions before the learned Single Judge.

### ***Analysis and reasons***

36. At the outset, it requires to be noticed that as far as the challenge to the constitutional validity of Section 5 of the OMVT Act is concerned, it is no longer *res integra*. The constitutional validity of an identical provision, viz., Section 6 of the BMVT Act was upheld by the Patna High Court in ***M/s. Tata Engineering and Locomotive***

***Company Limited v. State of Bihar*** (*supra*) which was affirmed by the Supreme Court by the dismissal of Special Leave Petitions challenging the said decision. The said decision was reaffirmed by the Supreme Court in ***Tata Motor Limited v. State of Jharkhand*** (*supra*) in 2020. In particular, the following paragraphs of the latter judgment of the Supreme Court made the position abundantly clear:

“20. We may point out that before the High Court, the appellants had challenged the vires of Section 6 on the ground that the State Legislature lacks competence to make a provision of this nature. It was pointed out that Section 6 levies the tax on a manufacturer or a dealer of motor vehicles merely on “possession” thereof by such a manufacturer or a dealer. It was argued that the Bihar Act was enacted by the State Legislature under Entry 57 of List II (State List) of VII Schedule to the Constitution of India, which entry does not empower the State Legislature to impose tax on vehicle merely on possession. This entry reads as under:

“57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tram-cars subject to the provisions of Entry 35 of List III.”

21. The High Court, however, rejected this contention with the reason that under this entry, taxes on vehicles which are suitable for use on roads can be imposed and it was undisputed case of the parties that the vehicles manufactured by the appellants are suitable for use on roads. Therefore, the provision which stipulates the manufacturer or a dealer of a motor vehicle, in respect of the motor vehicle in his possession in the course of business as such a manufacturer or dealer shall pay tax, is within the legislative competence of Entry 57. This contention has been raised before us as well. However, we do not agree with the appellants as the reasoning given by the High Court is the correct

analysis of Schedule VII List II Entry 57 to the Constitution.”

37. Therefore the challenge raised by the Appellants to the constitutional validity of Section 5 of the OMVT Act and the corresponding Rules under the OMVT Rules is hereby rejected. Therefore, as far as the present case is concerned, the Court is required only to examine the constitutional validity of the instructions issued by the STA by its communication dated 29<sup>th</sup> March, 2016 requiring the RTOs to collect from each dealer tax under Section 5 of the OMVT Act “on the basis of total number of vehicles possessed and registered during the entire year by the dealer”. It is this communication that has been upheld by the learned Single Judge in the impugned judgment which is under challenge in these appeals.

38. In the written submission filed on behalf of the STA, reliance is placed both on the decisions of the Patna High Court in *M/s Tata Engineering and Locomotive Company Limited v. State of Bihar* (*supra*) (rendered in 1999) and the judgment of the Supreme Court of India in *Tata Motor Limited v. State of Jharkhand* (*supra*) (rendered in 2020) to contend that there is an obligation under Section 5 of the OMVT Act on all the dealers to pay the tax as stipulated thereunder. These two decisions, however, did not address the question of interpretation of Section 6 of the BMVT Act, which is identically worded as Section 5 of the OMVT Act. In other words, in the said two decisions, the question was not whether for the purposes of payment of tax thereunder by the dealer, the number of vehicles “possessed and registered” during the entire year by the dealer, could form the basis, notwithstanding that the provision itself states that it is in respect of

“vehicles in his possession in the course of his business” as dealer, “under the authorization of trade certificate granted under the Motor Vehicles Rules”.

39. At this stage, it requires to be noticed that in a taxing statute, there is a ‘charging section’ which indicates what the “taxable event” is. It is a settled position in law as explained in several decisions of the Supreme Court of India including *Khyerbari Tea Co. v. State of Assam AIR 1964 SC 925*; *M.P. Cement Manufacturer’s Association v. State of M.P. (2004) 2 SCC 249* and *Gujarat Ambuja Cements v. Union of India AIR 2005 SC 3020* that it is the charging section in a taxing statute that indicates the nature of the tax imposed. In the “Principles of Statutory Interpretation” (13<sup>th</sup> Edition, 2012) by Justice G.P. Singh, it has *inter alia* been stated (at page 823) as under:

“The nature of the tax imposed by a statute has to be determined by examining the pith and substance of the statute and by paying more attention to the charging section than to the basis or machinery adopted for assessment and collection of tax for the nature of tax is different from the measure of tax.”

40. In the same commentary, it is unambiguously stated that (at page 826) “a taxing statute is to be strictly construed.” It is further stated (at pages 827-828) as under:

“In fiscal legislation a transaction cannot be taxed on any doctrine of “the substance of the matter” as distinguished from its legal signification, for a subject is not liable to tax on supposed “spirit of the law” or “by inference or by analogy.”

41. It has further been observed (at p. 829) by quoting the decision in *Ormond Investment Co. v. Betts (1928) AC 143* as under:

“The proper course in construing revenue Acts is to give a fair and reasonable construction to their language without leaning to one side or the other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable construction of the words is not permissible. Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity. It has also been said that if taxing provision is “so wanting in clarity that no meaning is reasonably clear, the courts will be unable to regard it as of any effect.”

42. As further explained in same commentary by Justice G.P. Singh (at page 855) is as under:

“It must also be borne in mind that the rule of strict construction in the sense explained above applies primarily to charging provisions in a taxing statute and has no application to a provision not creating a charge but laying down machinery for its calculation or procedure for its collection, and such machinery provisions have to be construed by the ordinary rule of construction.”

43. Bearing the above principles on mind, if one approaches the charging section in the present taxing statute viz., the OMVT Act, then it is plain that Section 5 of the OMVT Act is one of the charging Sections as regards holders of TCs. It must be noticed that there are other charging Sections of the OMVT Act, namely, Sections 3,3-A, 4 and 4-A dealing with different kinds of taxes for each of which there is a ‘taxable event’. For e.g., in ***Goodyear India Ltd. v. State of Haryana AIR 1990 SC 781***, the Supreme Court observed that: “It is well-settled that what is the taxable event or what necessitates taxation in an appropriate Statute, must be found out by construing the provisions. The essential task is to find out what is the taxable

event.” In the present case, we are only concerned with the scope and ambit of one charging Section viz., Section 5 of the OMVT Act. The ‘taxable event’ in relation to the said charging section has to be ascertained.

44. Section 5 of the OMVT Act can be construed both as a ‘charging section’ since it specifies the taxable event, viz., the possessing of vehicles under a TC as well as the machinery Section which provides the means of assessing and calculating the tax which is payable. Section 5 of the OMVT Act states that what the annual rate of the TC tax would be for the total number of vehicles possessed under the authorization of the TC. For e.g., for motor vehicles other than the motor cycles where the total number of vehicles does not exceed ten, it is Rs.2000/- and a further Rs.200/- for each vehicle in excess of ten. The expression “under the authorization of trade certificate” has to be read together with the preceding expression “vehicles in his possession in the course of his business”.

45. Therefore, while reading a charging Section like Section 5 of the OMVT Act, applying the rules of strict construction, care has to be taken to ensure that the scope of liability is not enhanced by misinterpreting the charging section itself.

46. The learned Single Judge accepted the plea of the STA that Section 5 of the OMVT Act enables collection of tax thereunder on every vehicle which is “possessed and registered during entire year by the dealer”. In order to determine what these total number of vehicles “possessed and registered during the entire year” might be, the

impugned communication instructed the RTO to find out the total number of vehicles “received in stock and sold” by such dealer. The yardstick applied was the “registration of vehicles made by the dealers”.

47. An important shift that has occurred by virtue of the letter dated 29<sup>th</sup> March, 2016 is that the basis of levying the TC tax, viz., the ‘taxable event’, has itself been altered. While the provision talks of tax being levied in respect of the vehicles possessed by the dealer “under the TC” held by such dealer, the impugned instruction changes it to the tax having to be paid, not limited to the vehicles under the possession of the dealer under the TC, but in respect of every vehicle that has been sold through the dealer or, as the words in the instructions state the total number of vehicles “possessed and registered during entire year by the dealer”.

48. There is force in the contention of the Appellants that this shift in the very basis on which the TC tax is levied cannot be brought about by a mere instruction issued by the Commissioner STA, but only by an amendment and that too to the main charging Section itself. This is because in view of the settled legal position, which has been adverted to hereinbefore, there has to be certainty as far as the taxation statutes are concerned. The words have to clearly show ‘an intention to lay the burden’ and ‘equitable construction of the words’ is not permissible. In a taxing statute, the words have to be taken exactly as they appear. In the present case, there is no ambiguity insofar as Section 5 of the OMVT Act is concerned, that the TC tax has been collected in respect of vehicles possessed by the dealer “under the authorization of the TC”. The TC specifies the number of vehicles that can be possessed

thereunder. Where the number of vehicles exceeds the said number, then for every such excess vehicle an additional fee is chargeable. For instance, “for every ten or less number of vehicles in excess of ten” the additional fee chargeable is mentioned.

49. The impugned instruction dated 29<sup>th</sup> March, 2016 proceeds on the presumption that every vehicle registration obtained by the dealer as a result of the vehicle being sold through him has been ‘possessed’ under the TC. As a result, the necessity of ascertaining if at any given point in time the number of vehicles possessed by the dealer under the TC is in excess of what is mentioned in the TC, is dispensed with. As a result of this changed interpretation, the very purpose of a TC appears to have been rendered redundant. Whether the dealer possesses under the TC the number of vehicles mentioned therein or in excess of that number, the impugned instruction brings about a ‘deeming fiction’ that every vehicle sold through the dealer for which he has obtained registration, should be presumed to have been held by him under the TC. This is not the purpose for which Section 5 of the OMVT Act was enacted.

50. The learned Single Judge while focusing on the expression “in respect of vehicles in his possession in the course of his business” omitted the important words following this expression viz., “under the authorization of trade certificate granted under the Motor Vehicle Rules”. This disjointed reading of Section 5 of the OMVT Act has resulted in the learned Single Judge accepting the interpretation placed by the STA, which in the opinion of this Court is erroneous.

51. The impugned instruction appears to have been triggered by what the Commissioner perceived to be an under-collection of motor vehicle revenue. If that was the perceived problem, then the solution was not to issue an instruction, but perhaps to amend the statute. The Commissioner appears to have adopted a shortcut and by exercising the powers under Rule 177 of the OMV Rules simply issued an 'instruction' which then became binding on all the RTOs.

52. The learned Single Judge appears to have relied on Rule 177 of the OMV Rules itself to uphold the validity of instruction. What was perhaps not noticed was that Rule 177 is merely an enabling provision as far as the binding effect of instructions issued by the Transport Commissioner to the RTOs is concerned. It does not empower the Transport Commissioner to change the very basis of a charging section i.e. Section 5 of the OMVT Act.

53. There is merit also in the contention of the dealers that if the interpretation placed by the Transport Commissioner on Section 5 of the OMVT Act, as accepted by the learned Single Judge, were to be affirmed, then the requirement under Rule 7 of the OMVT Rules, 1976 of the dealers having to give a declaration regarding the number of vehicles possessed under the TC would become entirely redundant. Likewise, the declaration in Form-XIV of the OMV Rules 1993 which also contains a similar declaration would become redundant. The learned Single Judge does not appear to have, while upholding the circular dated 29<sup>th</sup> March, 2016, discussed either Rule 7 of the OMVT Rules 1976 or Form-XIV of the OMV Rules, 1993.

54. The concept of a TC is that it can be used on several vehicles of the same make and model which are possessed by the dealer under the TC limited to the purposes specified in Rule 41 of the MV Rules. Since the purposes for which the vehicles are used is clearly specified in Rule 41 of the MV Rules, there can be no apprehension of misuse by the dealer of such vehicles for purposes other than Rule 41 of the MV Rules. It will have to be found as a fact that there has been such misuse for which there would have to be an enquiry of some sort preceded by a notice to the concerned dealer.

55. The other significant feature of Section 5 of the OMVT Act is that the tax therein is to be paid at an 'annual rate' and 'in advance'. If, as stated in the impugned instruction, the tax under Section 5 of the OMVT Act has to be paid on the number of vehicles sold for which the registration is obtained by the dealer, it will not be possible for the dealer to anticipate in 'advance' how many such vehicles will be sold much less pay such tax 'in advance' at an 'annual rate'. These words, 'in advance', and 'annual rate' are elements of Section 5 which gives it the characteristic of a machinery provision since they define the basis on which the tax will be collected. The impugned instruction even changes this nature of Section 5 of the OMVT Act by changing the very basis on which the tax will be collected. On this score also the impugned instruction issued is without the authority of law and far in excess of the powers and jurisdiction of the Commissioner. Such kind of a change can possibly be brought about, particularly in a taxing statute, only by amending the law itself and not otherwise. It is even doubtful if such a change can be brought by merely amending the OMVT Rules as that would change or expand as the case may be the 'taxable event' as well as the 'machinery provision' of the taxing

statute which again would be impermissible in law. The amendment would have to be to the statute itself.

56. For all of the aforementioned reasons, this Court is unable to subscribe to the view of the learned Single Judge that the interpretation placed on Section 5 of the OMVT Act through the impugned instruction is correct and in consonance with the legislative intent behind Section 5 of the OMVT Act and the scope and ambit of that provision. In other words, this Court is of the considered view that the instruction dated 29<sup>th</sup> March, 2016 is *ultra vires* Section 5 of the OMVT Act and therefore cannot be sustained in law. Accordingly, this Court quashes the impugned instruction dated 29<sup>th</sup> March, 2016.

57. The next issue to be considered is the validity of the demand notices issued by STA to each of the Appellants on the basis of the impugned instructions dated 29<sup>th</sup> March, 2016. The said demand notices were not preceded by a show cause notice and an inquiry as to whether in fact a dealer has possessed vehicles in excess of number stated in the TC for which no TC tax has been paid. There cannot be any presumption as regards this and an opportunity has to be given to the dealer to show cause as to why the excess TC tax should have been collected since the number of vehicles found in his possession under the TC was contrary to the declarations given by him in Form-XIV appended to the 1993 OMV Rules. Since in any event no such enquiry preceded the issuance of impugned demand notices, they are bad in law on that score as well. Since the demand notices have themselves been held to be bad in law, the TC fees obviously cannot be collected. The TC fees can be collected strictly only in terms of Rule 81 of the MV Rules and only in respect of the vehicles which the

dealer has in his possession under the TC. Accordingly, all the impugned demand notices issued to the respective Appellants both for TC tax and TC fees in respect of vehicles 'possessed and registered' in excess of the vehicles covered by the TC issued, are hereby quashed.

58. The next issue to be addressed is the refund of the excess TC tax and TC fees collected by the STA on the strength of the interim order passed by this Court in these appeals in terms of which a stay was granted only vis-à-vis the arrears of TC tax and TC fees prior to the impugned notification dated 29<sup>th</sup> March, 2016. In other words, by the interim order passed in these appeals by this Court, the STA was permitted to give prospective effect to the impugned instruction dated 29<sup>th</sup> March, 2016 as a result of which in the period following the said interim order the dealers have been paying the excess TC tax and TC fees. The question of refund of this excess amount to the dealer would arise only where that burden has not been passed on by the dealer to the customer. It is for this reason, this Court had in its order dated 18<sup>th</sup> October, 2022, called for an affidavit from the dealers. The affidavit filed by the dealers is not categorical in this regard. It merely states that "some dealers may have passed on the additional incidence to the customers whereas the others have paid it from their own resources". In view of this vague statement, it is not possible for this Court to direct refund of excess TC tax and TC fees collected by virtue of the impugned instruction issued by the STA to the RTOs. However, what is clear is that the collection hereafter of TC tax and TC fees on the basis of the impugned instructions dated 29<sup>th</sup> March, 2016 will have to cease forthwith.

59. To summarize the conclusions in this judgment;

(i) Section 5 of the OMVT Act is a charging Section and in a taxing statute, it has to be strictly construed.

(ii) The challenge to the constitutional validity of Section 5 of the OMVT Act is rejected.

(iii) The taxable event under Section 5 of the OMVT Act is the possession of vehicles by the dealer under the TC certificate issued under the MV Rules.

(iv) Section 5 is both the charging Section as well as the ‘machinery provision’. It indicates that TC tax will become payable in respect of the vehicles possessed by the dealer under the TC certificate and also specifies what is the tax payable if the number of vehicles found in possession under the TC certificate exceeds that number. It also clearly specifies that the tax is to be collected at an annual rate and in advance.

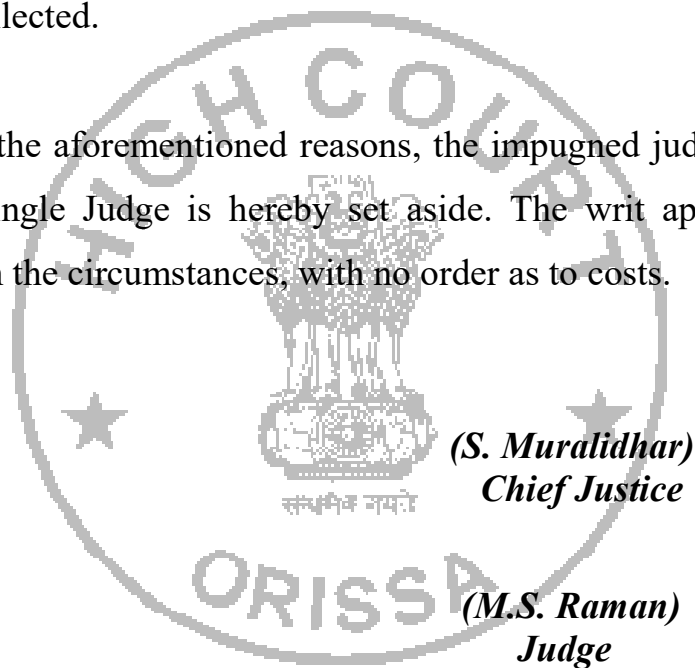
(v) The impugned instruction dated 29<sup>th</sup> March, 2016 changes the very basis of the above ‘taxable event’ as well as the portion of Section 5 of the OMVT Act in so far as it is also a “machinery provision”.

(vi) The change sought to be brought out under the impugned instruction dated 29<sup>th</sup> March, 2016 cannot be brought about by merely issuing an instruction under Rule 177 of the OMV Rules, but only by amending the statute itself.

(vii) The impugned instruction dated 29<sup>th</sup> March, 2016 is therefore *ultra vires* the OMVT Act and is hereby quashed. The effect of this is that collection of TC tax and TC fees will not be hereafter be made in terms of the impugned instruction, but only strictly in accordance with Section 5 of the OMVT Act read with Rule 81 of the MV Rules.

(viii) Since there is ambiguity whether the dealers have passed on the additional incidence of its TC tax and the TC fees to the customers, no refund is required to be made to the Appellants of such excess TC tax and TC fee collected.

60. For all of the aforementioned reasons, the impugned judgment of the learned Single Judge is hereby set aside. The writ appeals are allowed but, in the circumstances, with no order as to costs.



S.K. Guin/P.A.