IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5656 of 2021(O&M)
Date of Decision-07.04.2022

M/s Tulsi ... Petitioner

Versus

Union of India and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Rajat Khanna, Advocate and
Mr. Ashutosh, Advocate
for the petitioner.

Mr. Dheeraj Jain, Sr. Panel Counsel with
Mr. Sahil Garg, Advocate
for respondent No.1.

Mr. Tarun Vir Singh Lehal, Addl., A.G., Punjab.

***

RAJ MOHAN SINGH, J.

[1]. Petitioner is a dealer/sole proprietor of two wheelers being the Motor Vehicles Governed by the Central Motor Vehicles Act, 1989 and has preferred this writ petition for the issuance of an appropriate writ, order or direction, especially in the nature of mandamus, directing the respondent-State to issue certificate of registration in terms of Form 23-A for the vehicles purchased by the petitioner.

[2]. The issue involved in the present writ petition squarely falls within the ambit of different orders passed by the Hon'ble Apex Court in Writ Petition (C) No.13029 of 1985

titled 'M.C. Mehta Vs. Union of India and others'. Respondent No.1 is Union of India and has been obligated to implement the Central Motor Vehicles Act, 1988 and Rules framed thereunder being the Central Motor Vehicles Rules, 1989 (hereinafter called as The Rules). Respondent No.2 is the State of Punjab. Both the respondents are amenable to writ jurisdiction of this Court. Respondents No.3 and 4 are the functionaries of respondent No.2. Respondent No.2 is under obligation to register the motor vehicles under the aforesaid Act and Rules in accordance with law, therefore, functionaries of respondent No.2 are also amenable to writ jurisdiction of this Court.

[3]. Perusal of order dated 13.04.2017 passed by the Hon'ble Apex Court in Writ Petition (C) No.13029 of 1985 would show that the Hon'ble Court was pleased to direct that on or from 01.04.2017, vehicles i.e. two wheelers, three wheelers, four wheelers and commercial vehicles etc, which are not BS-IV compliant shall not be sold by any manufacturer or dealer or motor vehicles company and had further prohibited registration of non-BS-IV motor vehicles from 01.04.2017. However, such non-BS-IV vehicles, which were sold on or before 31.03.2017 were allowed to be registered after 01.04.2017, keeping in view the fact that the registration of non-BS-IV motor vehicles would take time. The registration

of already sold vehicles upto the cut-off date was allowed after the cut-off date, so that such vehicles can be plied on the road and they do not become useless after the purchase. The provisions qua the 'Emission of smoke, vapour etc from motor vehicles' have been mentioned in Rule 115 of the Rules. Respondent No.1 vide GSR 178 (E) dated 20.02.2018 inserted sub-Rule (21) in Rule 115 in the Central Motor Vehicles Rules, 1989 w.e.f. 20.02.2018. The aforesaid sub Rule provided that no motor vehicles conforming to Emission Standard Bharat Stage-IV (BS-IV) manufactured before 01.04.2020 shall be registered in India after 30.06.2020, provided that new vehicles of M and N categories conforming to Emission Standard Bharat Stage-IV manufactured before 01.04.2020 and sold in the form of drive away chassis shall not be registered after 30.09.2020.

[4]. Bare perusal of the aforesaid sub Rule inserted in Rule 115 would show that it was thought appropriate that 2 to 4 months would be required for registration of vehicles manufactured upto 31.03.2020 and therefore, time for registration was given upto 30.06.2020.

[5]. The matter came up for consideration before the Hon'ble Apex Court on 24.10.2018 and it was observed that sub Rule 21 of Rule 115 shall be interpreted and understood to mean that no vehicle conforming to Emission Standard

Bharat Stage-IV shall be sold or registered w.e.f. 01.04.2020. Order dated 24.10.2018 was modified vide order dated 27.03.2020 and the Hon'ble Apex Court was pleased to allow registration of 1,05,000 two wheelers, 2250 passengers cars, 2000 commercial vehicles which were sold upto 30.04.2020, but not registered. The applicants therein were directed to furnish details of purchases on affidavits and also the details of registration. The Court also directed that beyond 10% of unsold stock vehicles except with the dealers of Delhi and NCR region are permitted to be sold to make good the days which were available for sale before lockdown in the country. The details of such vehicles were to be given and vehicles were to be registered thereafter.

[6]. Petitioner seeks registration of motor vehicles which conforming to Emission Standard Bharat Stage-IV. The said vehicles have been purchased by the petitioner in its name vide different invoices on or before 31.03.2020, the details of which have been annexed as Annexure P-16 collectively. Petitioner has also given tabulated information in the form of Annexure P-18, which conforming to Emission Standard Bharat Stage-IV. The aforesaid details were uploaded on E-Vahan Portal on or before 31.03.2020. The Vehicles have also been insured on or before 31.03.2020, the details of which are collectively annexed as Annexure P-15

with the writ petition. Petitioner also paid GST amounting to Rs.8,87,088/- for the vehicles purchased by it on or before 31.03.2020. Petitioner has also deposited total fee of Rs.4,11,995/- for registration of aforesaid vehicles with respondent No.3 on or before 31.03.2020 and has also been issued registration numbers online on or before 31.03.2020.

[7]. Hon'ble Apex Court vide order dated 27.03.2020 had granted 10 days window to the dealers to do sales of the lifting of the lockdown operating in the concerned cities and not beyond it, that too, on an affidavit number of vehicles sold shall be stated by the applicant/Federation of Automobile Dealers Association and only those vehicles shall be permitted to be registered about which affidavit is filed.

[8]. Hon'ble Apex Court vide order dated 08.07.2020 recalled its order dated 27.03.2020 to a limited extent that allowing the vehicles to be sold after 10 days after the lockdown was over. The Hon'ble Apex Court vide the aforesaid order for the purpose of ascertaining question of registration of vehicles sold upto 31.03.2020, directed the Additional Solicitor General of India to make verification of the data i.e. vehicles which were uploaded and not uploaded on E-Vahan Portal to the extent that how many of these actually put on E-Vahan Portal of the Government. The data from other States of which data was not uploaded on E-Vahan was

also to be ascertained and to be filed before the Court in order to enable the Court to see whether these transactions during lockdown are genuine transactions or back-dated. The Court also observed that question of registration will be considered thereafter. With this background, order dated 27.03.2020 was recalled to the extent aforesaid i.e. in respect of sale of vehicles after lockdown period.

[9]. Thereafter, the Hon'ble Apex Court vide order dated 13.08.2020 disallowed 'inter se dealers' i.e. sales between two dealers, especially which were done during the extended period of 10 days. For ready reference, order dated 13.08.2020 is reproduced hereasunder:-

> *“Heard learned counsel for the parties at length.*
>
> *Considered the rival arguments. The lockdown was imposed from 25.03.2020. The sales data has been furnished for the lockdown period by FADA and Non-FADA Members for the period with effect from 15.03.2020. There are unusually a large number of transactions, which had taken place during the lockdown period inter se dealers, which cannot be recognized for the purpose of actual sales and registration. We disallow the registration on the basis of such kind of transactions inter se dealers. As they are not sales to the customers and registration of these kinds of vehicles cannot be allowed, there is a ploy to misuse of the order and such vehicles cannot be permitted to be sold in market now. They are not genuine transactions of the sale to the*

customers. Hence, no registration of such kind of vehicles shall be made, which were sold inter se dealers during the lockdown period.

Apart from that, there are large number of vehicles, sales of which were not uploaded on E-Vaahan Portal. Since, sales were not uploaded, as required, the transactions cannot be recognized as genuine sales. The order passed by this Court on 24.10.2018 is clear that sale and registration of BS-IV vehicles shall not be allowed after 31.03.2020. We cannot allow the registration of such vehicles, sales of which were not uploaded on E-Vaahan Portal of the Central Government or the portal of the concerned State Government.

There are still stated to be a large number of sales which have been made and uploaded on the E-Vaahan Portal, even temporary registrations were made. Their registration during the lockdown period could not be made. Hence, we allow registration of such vehicles only which could not be registered during lockdown in the month of March, 2020 and for no other reasons. However, the position of Delhi and NCR is different. We clarify our order dated 27.03.2020 to the effect that no registration of BS-IV vehicles is to be made in Delhi and NCR as people are suffering from severe air pollution and the order passed by this Court in 2018 was clear. No vehicle of BS-IV in Delhi and NCR to be registered.

We order that in the Delhi and NCR, no registration of the vehicles of BS-IV is to be made after 31.03.2020.

This order is for the rest of the country and only due to lockdown, not to be used for any other *purpose/reason and for registration of other vehicles of which registration was not done for any other reason.*

Xxxxxxxx"

[10]. Evidently, in the later part of the order, the Hon'ble Apex Court was pleased to allow the registration of vehicles whose sales were uploaded on E-Vahan Portal on or before 31.03.2020. Order dated 27.03.2020 was clarified to the effect that no registration of BS-IV vehicles is to be made in Delhi and NCR as people are suffering from severe air pollution. No registration of vehicles of BS-IV is to be made after 31.03.2020 in Delhi and NCR region. For the rest of the country and only due to lockdown, the provision was made.

[11]. Hon'ble Apex Court vide order dated 18.09.2020 once again reiterated that the vehicles purchased upto 31.03.2020, which are BS-IV compliant and have been uploaded on E-Vahan Portal on or before the cut-off date and if the same had been purchased on or before 31.03.2020 and such vehicles are necessary for the Municipal Corporation to carry essential public utility services, should be registered subject to scrutiny to be done by the Environment Pollution Control Authority (EPCA). CNG vehicles were allowed to be registered. For BS-IV complaint vehicles, the aforesaid provision was made, thereby reiterating that the vehicles which have been purchased on or before 31.03.2020 and are

BS-IV compliant and have been uploaded on E-Vahan Portal are to be registered.

[12]. Federation of Automobile Dealers Association (FADA) had filed an application bearing IA No.101822 of 2020. In the aforesaid application, details of vehicles in terms of date of sale, date of uploading of documents, date of generation of registration number, name of customer, date and mode of transaction etc were given. Para No.26 of the said application reads as under:-

> *"26. It is submitted that, for the NCT of Delhi there are:-*
>
> *a. 551 Two Wheelers which were sold, and formalities completed including the Permanent Registration numbers being generated on or before 31.03.2020.*
>
> *b. 21 Three Wheelers which were sold, and formalities and completed including the Permanent Registration numbers being generated on or before 31.03.2020.*
>
> *c.162 Passenger vehicles, which were sold, and formalities and completed including the Permanent Registration numbers being generated on or before 31.03.2020.*
>
> *d. 208 Commercial vehicles, which were sold, and formalities and completed including the Permanent Registration numbers being generated on or before 31.03.2020."*

The details of the aforesaid vehicles in terms of parameters were collectively attached as Annexure A-16 with the application.

[13]. Bare perusal of Annexure A-16 attached to IA No.101822 of 2020 filed before the Hon'ble Apex Court would show the list includes details of such vehicles which have been self-purchased by the dealers in their own names on or before 31.03.2020. In the aforesaid application, similar prayer was made by the Federation of Automobile Dealers Association i.e. for the issuance of certificate of registration in terms of Form 23-A for the vehicles sold and registered by the registered dealers for the vehicles which have been uploaded on E-Vahan Portal on or before 31.03.2020.

[14]. In the aforesaid application, the Hon'ble Apex Court vide order dated 29.10.2020 was pleased to issue notice for 24.11.2020. Thereafter, vide order dated 02.11.2020, Hon'ble Apex Court granted liberty to the applicants to withdraw the pending applications to file fresh applications before the relevant High Courts. It was observed that the High Courts may consider the genuineness of the purchase. IA No.101822 of 2020 was taken up on 24.11.2020 and following order was passed:-

“IA No.101822/2020

The Federation of Automobile Dealers Association has come up with this application seeking a direction to the Transport Department of the Government of the National Capital Territory of Delhi to issue certificates of Registration in terms of Form 23A for vehicles sold and registered by the self-registering dealers in Delhi and for vehicles which have been uploaded on E-Vahan Portal on or before 31.03.2020.

According to Mr. Ranjit Kumar, learned Senior Counsel appearing for the petitioner, the vehicles sold and registered by the self-registering dealers in Delhi before 31.03.2020 were already granted permanent registration numbers before 31.03.2020. The details have also been uploaded in E-Vahan Portal of the Government. What is now pending is only the issue of the certificates of registration.

Ms. Aishwarya Bhati, learned Additional Solicitor General appearing for the Government states that there is no objection for the grant of certificates of registration of these vehicles. Therefore, this application is allowed."

[15]. Perusal of the aforesaid order would show that IA No.101822 of 2020 was allowed. The Hon'ble Apex Court has allowed the registration of vehicles including the vehicles, which have been self-purchased by the dealers in its own name on or before 31.03.2020. Additional Solicitor General appearing on behalf of the Union of India has stated before the Hon'ble Apex Court that there is no objection for the grant of certificates of registration of these vehicles.

[16]. Thereafter, the Transport Department, Government of NCT of Delhi filed an application bearing IA No.138633 of 2021, seeking clarification of aforesaid order dated 24.11.2020 as to whether the vehicles sold between 27.03.2020 to 31.03.2020 should be registered. The Hon'ble Apex Court vide order dated 30.11.2021, has clarified the order dated 24.11.2020 passed in IA No.101822 of 2020 and has directed that all the vehicles sold between 27.03.2020 to 31.03.2020 be registered, provided that transactions have been uploaded on E-Vahan Portal on or before 31.03.2020, which includes the vehicles self-purchased by the dealers in their own name. The relevant part of the order dated 30.11.2021 passed in IA No.138633 of 2021 (clarification of order dated 24.11.2020) is reproduced hereasunder:-

> ***"IA No.138633/2021 (APPLN. FOR CLARIFICATION OF ORDER DT.24.11.2020)***
>
> *The transport Department, Govt. of NCT of Delhi has filed this application seeking clarification of order dated 24.11.2020 as to whether the vehicles sold between 27.03.2020 to 31.03.2020 when the nation was in lockdown due to pandemic should be registered.*
>
> *By an order dated 27.03.2020, this Court directed that no registration of BS-IV vehicles shall be done in Delhi and NCR region. On 13.08.2020, this Court clarified the order dated 27.03.2020 by re-affirming that no registration of the vehicle of BS-IV should be made after 31.03.2020.*

In an application filed by the Federation of Automobile Dealers Association, this Court on 24.11.2020 directed registration of vehicles which were sold prior to 31.03.2020 and were granted permanent registration prior to that date.

In IA NOS. 102618 & 118668/2020, 113087/2020, 130236/2020, 118512 & 118511/2020, 134723 & 134733/2020, 33511 & 33965/2021, 50960 & 50962/2021, 57084/2021, 61308 & 61309/2021, 105997 & 106002/2021, we have already granted registration for vehicles which were sold prior to 31.03.2020 and were permanently/temporarily registered and were uploaded on e-Vahan Portal prior to 31.03.2020.

Order dated 24.11.2020 is clarified to the effect that all vehicles sold between 27.03.2020 to 31.03.2020 shall be registered provided the transactions have been uploaded on E-Vahan portal and the temporary/permanent registration was granted before the cut off date i.e.31.03.2020."

[17]. In this way, order dated 24.11.2020 has been clarified to the effect that all the vehicles sold between 27.03.2020 to 31.03.2020 shall be registered, provided that the transactions have been uploaded on E-Vahan Portal and the temporary/permanent registration was granted before the cut-off date i.e. 31.03.2020.

[18]. Learned Senior Counsel for the petitioner vehemently submitted that the aforesaid order dated 30.11.2021 has been passed after the order dated

13.08.2020, thereby putting to an end to the controversy involved in the present writ petition. *Inter se* dealers does not mean purchase by a single dealer. Learned Senior Counsel further submitted that the purchases are not *inter se* dealers sale as these vehicles have not been sold between or among dealers themselves. The word *inter se* has been defined in the Oxford Dictionary and also in Major Law Lexicon. According to Oxford Dictionary, *inter se* denotes between or among themselves. In Major Law Lexicon, *inter se* or *inter sese* denotes between or among themselves. In support of his contention, learned Senior Counsel referred to the order dated 28.06.2021 passed in ***M/s Infinity Cars Pvt. Ltd. Vs. State of Maharashtra and others***, wherein the Bombay High Court has allowed the registration of vehicles which have been purchased by the dealer in its own name on or before 31.03.2020. The Court has interpreted the word *inter se* sales on the premise that the petitioner thereafter had purchased the vehicles and registered them in its own name prior to 31.03.2020. It was held that the registration was not in breach of order dated 24.10.2018 passed by the Hon'ble Apex Court. On the issue of registration of those vehicles, it was clarified that there is no bar in law for registration of the vehicles in the name of such dealer. The dealer would be within its right to purchase and register any vehicle in his own name. With reference to orders dated 27.03.2020 and 13.08.2020, the

Court has also clarified that the said orders were in the context of sales, which were neither conducted nor registered on E-Vahan Portal before 31.03.2020. The Court was mindful of the fact that the dealers were conducting *inter se* sales and registering vehicles in each others' name during the extended period in COVID-19. The Court also took note of peculiar situation arising out of pandemic COVID-19, where the dealers attempted to get rid of bar in the order dated 24.10.2018 by conducting *inter se* sales and register the vehicles within the time given by the Court. Precisely, registration of BS-IV vehicles was the outcome of the said order. Sales and registration of such vehicles were deprecated by the Hon'ble Apex Court and not permitted in its orders dated 27.03.2020 and 13.08.2020. The Court further observed that the aforesaid two orders have nothing to do with those vehicles which were sold prior to 31.03.2020 and the sales were registered and put on E-Vahan Portal before 31.03.2020. The Bombay High Court has deliberated upon the issue of *inter se* sales and also brought out the sale transfer by dealer to himself or themselves from the purview of *inter se* sales/transfers.

[19]. Learned Senior Counsel made much emphasis on the order dated 24.11.2020, vide which IA No.101822 of 2020 was allowed and the vehicles detailed in the list were allowed

to be registered. Even vide order dated 30.11.2021 passed in IA No.138633 of 2021, order dated 24.11.2020 was clarified to the effect that all the vehicles sold between 27.03.2020 to 31.03.2020 shall be registered, provided that the transactions have been uploaded on E-Vahan Portal and the temporary/permanent registration was granted before the cut-off date i.e. 31.03.2020. Learned Senior Counsel further relied upon Rule 48 of Central Vehicles Rules, 1989 to contend that on receipt of application under Rule 47 of the aforesaid Rules and after verification of documents attached therewith, the Registering Authority has to issue a certificate of registration in terms of Form 23-A to the owner of the motor vehicle subject to the provision of Section 44 within a specified period of 30 days from the date of receipt of such application. Learned Senior Counsel further relied upon the stand taken by the respondent-State in reply to CWP No.1620 of 2021 titled D.V. Automobiles Vs. Union of India and others, vide which respondent-State on affidavit dated 01.04.2021 has stated that the certificates of registration have already been issued for the vehicles mentioned in the said writ petition and the registration certificates have been handed over to the petitioner therein. Learned Senior Counsel also submitted that since necessary payments towards registration fee, GST, Insurance and other relevant taxes have already been made by the petitioner in respect of above-mentioned BS-IV compliant vehicles, which were purchased on or before 31.03.2020 in the State of Punjab and the same had been uploaded on E-Vahan Portal on or before 31.03.2020, therefore, the certificate of registration is required to be issued in terms of Form 23-A for these vehicles.

[20]. *Per contra*, learned counsel for respondent No.1 vehemently submitted that rigour of order dated 13.08.2020 was never diluted in any of the subsequent orders passed by the Hon'ble Apex Court and the order dated 13.08.2020 alone would take away the present controversy. Learned counsel further submitted that in compliance of order dated 08.07.2020, affidavits dated 22.07.2020 and 30.07.2020 have been filed by the Union of India before the Hon'ble Apex Court. Along with affidavit dated 30.07.2020, data viz. vahan verification details of FADA members, vahan verification details of non-FADA members and vehicles verified by FADA and non-FADA was placed. The said pen drive/data submitted by the Union of India along with affidavit dated 30.07.2020 contained details of sale of vehicles as submitted by FADA members and non-FADA members as well as their verification as per E-Vahan data base. On the basis of aforesaid affidavit, the Hon'ble Apex Court took note of unusually a large number of transactions, which had taken place during the lockdown period *inter se* dealers and vide its order dated 13.08.2020,

disallowed the registration of vehicles sold *inter se* dealers during lockdown period. Learned counsel further submitted that the phrase *inter se* dealers would only indicate transaction between two or more dealers and would not include vehicles self-purchased by the dealers.

[21]. Having heard learned counsel for the parties and after perusal of the orders passed by the Hon'ble Apex Court from time to time, I am of the view that in view of order dated 30.11.2021 passed by the Hon'ble Apex Court in IA No.138633 of 2021 for clarification of order dated 24.11.2020 and also in view of order dated 24.11.2020 passed in IA No.101822 of 2020, the controversy has to be put to an end. The registrations of vehicles including the vehicles, self-purchased in its own name by the dealer on or before 31.03.2020, the vehicles sold upto 31.03.2020 and uploaded on E-Vahan Portal and granted temporary/permanent registration before cut-off date i.e. 31.03.2020 have been considered for issuance of certificate of registration in terms of Form 23-A. Respondents have raised suspicion with regard to genuineness of the sales/transactions by the petitioner in its own name. In view of order dated 30.11.2021 passed by the Hon'ble Apex Court, the issue stands answered.

[22]. Apparently, the purchase was made about 2 years ago. In the fitness of things and also in order to appreciate

bona fide of the petitioner in purchasing the vehicles for its own use, it would be appropriate to direct the petitioner not to sell the vehicles in question further for a period of one year. The aforesaid arrangement would suffice to ensure that the vehicles were in fact purchased by the petitioner for its own use i.e. for the use of its employees, who are in big number. Petitioner is a big concern and the stand of the petitioner that the vehicles in question were purchased by it for the use of its employees would be ventilated and the aforesaid condition of imposing restraint qua further transfer of vehicles by the petitioner in favour of prospective vendees for a period of one year, would ensure that the vehicles were in fact purchased by the petitioner for the benefit of its employees/staff.

[23]. Subject to the aforesaid observations, this writ petition is allowed.

(RAJ MOHAN SINGH)
JUDGE

07.04.2022
Prince

Whether reasoned/speaking Yes/No

Whether reportable Yes/No