IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 9TH DAY OF AUGUST 2018 / 18TH SRAVANA, 1940

WP(C).No. 18992 of 2018

PETITIONER(S)

SAJI JOSEPH,
KATTAKKAYAM HOUSE, PLASSANAL P.O., PALA.

BY ADV.SRI.I.DINESH MENON

RESPONDENT(S):

1. **THE STATE OF KERALA,**
   REPRESENTED BY SECRETARY, LAW (LEGISLATION-A) DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM-695001.
2. **THE REGIONAL TRANSPORT OFFICER,**
   KOTTAYAM-686002.

R BY GOVERNMENT PLEADER, SRI. P. SANTHOSH KUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-08-2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 18992 of 2018 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF VEHICLE KL-35 G 5463.**
EXHIBIT P2	**TRUE COPY OF THE ENDORSEMENT IN THE ASSESSMENT OF TAX BASED ON THE FLOOR AREA MADE BY 2ND RESPONDENT.**
EXHIBIT P3	**TRUE COPY OF THE JUDGMENT IN WP(C) NO.36656/2016 DATED 20.11.2017.**
EXHIBIT P4	**TRUE COPY OF THE INTERIM ORDER IN WP(C)NO.12522/2018 DATED 10.4.2018.**

RESPONDENT'S EXHIBITS: NIL

// True copy //

PA to Judge

das

DAMA SESHADRI NAIDU, J.

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W.P.(C). No. 18992 of 2018 (Y)

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Dated this the 9th day of August, 2018

JUDGMENT

The petitioner is a stage carriage operator. When he remitted the Motor Vehicle Tax based on seating capacity, the department insisted it should be based on floor area. The demand was because of the amendment effected through Kerala Finance Bill 2016. Aggrieved, the petitioner filed this writ petition.

2. A learned Division Bench of this Court in *State of Kerala V. Mohandas U.K.*[1] considered the issue. Their lordships have held:

> "3. The specific contention raised by the State was that on introduction of the "Code of Practice for Bus Body Design and Approval" brought out by the Government of India, there is a reduction in seating capacity of stage carriages. The tax as levied on stage carriages in the State was based on the seating capacity and the permitted standing capacity. TheState, hence, for augmentation of revenue as also for

1 Judgment, dated 12th July 2018

> bringing in tax parity between the old and new stage carriages, brought in amendments so as to levy tax on the new vehicles registered with effect from 18.7.2016 on the measure of floor area of a stage carriage. The existing stage carriages registered prior to 18.7.2016 were to be levied tax on the seating and standing capacity as was available in the statute prior to the amendment."

3. In fact, the learned Division Bench has held that the motor vehicles registered before 01.10.2017 could pay the tax under the unamended provision. But it has left open the issue about the applicable rate—whether it should be based on seating capacity or floor area—for the vehicles registered after 01.10.2017.

4. As submitted by the petitioner's counsel and the learned Special Government Pleader, here the vehicle was registered before 01.10.2017. Therefore, the ratio of *Mohandas U.K.* squarely applies.

5. I, accordingly, allow this writ petition. In other words, the petitioner can pay the motor vehicle tax under

unamended provision. Now the petitioner's counsel requests that the authority will have to endorse in the Registration Certificate that the tax for that vehicle is collected based on seating capacity. The authorities may do so.

Sd/-

DAMA SESHADRI NAIDU
JUDGE

das 9.08.2018