

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

FRIDAY, THE 17TH DAY OF NOVEMBER 2023 / 26TH KARTHIKA, 1945

WP(C) NO. 3697 OF 2022

PETITIONER:

SATHEESH KUMAR S.
AGED 48 YEARS
PROPRIETOR, NANMA MANUFACTURED SAND, VALLAKKAD,
ATTINGAL, P.O ATTINGAL, THIRUVANANTHAPURAM DISTRICT,
PIN 695 103
BY ADVS.
JOJI GEORGE JACOB
BABY KURIAKOSE
RAAJESH S.SUBRAHMANIAN
V.R.RAJESH(K/257/2008)

RESPONDENTS:

- 1 TRANSPORT COMMISSIONER
TRANSPORT COMMISSIONERATE, KERALA, TRANS TOWERS,
VAZHUTHACAUD, THYCAUD P.O, THIRUVANANTHAPURAM PIN 695
014
- 2 DEPUTY TRANSPORT COMMISSIONER
SOUTH ZONE, KUDAPPANAKUNNU, THIRUVANANTHAPURAM, KERALA
695 044
- 3 JOINT REGIONAL TRANSPORT OFFICER
NEDUMANGAD TOWN RD, NEDUMANGAD, THIRUVANANTHAPURAM 695
541
BY ADV ADVOCATE GENERAL OFFICE KERALA

THUSHARA JAMES-SR.GP

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JUDGMENT

Dated this the 17th day of November, 2023

Heard Sri.Raajesh S.Subrahmanian, learned counsel for the petitioner as well as Smt.Thushara James, learned Senior Government Pleader for the respondents.

2. The petitioner who owns two vehicles having registration Nos.KL 21 V 0707 and KL 21 V 0106. The petitioner has approached this Court impugning orders in Exts.P5, P6, P7 and P9 notices and orders in respect of the demand of tax on those vehicles at the rate of 8% of the purchase value under the Kerala Motor Vehicles Act,1976 and Rules made thereunder.

3. The learned counsel for the petitioner submits that the petitioner's vehicles are registered as goods carriage vehicles and he has paid tax on those vehicles at the rates applicable to the goods carriage vehicles. Now the demand has been raised

for payment of tax has been the rate prescribed for construction equipment of the vehicles.

4. The petitioner purchased 'cab chassis' from the manufacturer. This cab chassis comprises of two separate parts one is the cab, which is the front portion of the vehicle, wherein the driver will be seated and the second part is the chassis, on the top which installations can be made, for the purpose of putting the vehicle to appropriate use. The registration of the vehicles is granted under the provisions of the Motor Vehicles Act, 1988. After purchase of these vehicles, petitioner got installed on chassis portion of a concrete mixer machines used for construction purposes. The State legislature has enacted the Kerala Motor Vehicles Taxation Act, 1976 for levy of tax on the motor vehicles. Section 3 of the Kerala Motor Vehicles Taxation Act provides levy of tax on every motor vehicle used or kept for use in the State, at the rate specified for such vehicle. It is also provided that in respect of new motor vehicle of any

of the classes specified in items, 1, 2, 6, 7(i)(b), 7(i)(c), 10(iii) and 11(i) of the schedule. The tax is to be levied from the date of purchase of the vehicle on one time basis at the rates specified in Annexure 1. The schedule under clause 10(iii) of the schedule provides for construction equipments vehicles such as excavators, loaders, back hoe, compactor rollers, road rollers, dumpers, motor graders, mobile cranes, dozers forklift trucks, self loading concrete mixtures etc. Thus the vehicle mentioned in clause 10(iii) of the schedule is only enumerated any other vehicle which is not mentioned but used in construction as construction equipment may also get covered for imposition of tax applicable for such construction equipment vehicles. The Annexure 1 of the Act provides rate for imposition of levy of motor vehicle tax under the provisions of the Kerala Motor Vehicles Taxation Act,1976 at the rate of 8% on construction equipment vehicles.

5. Learned counsel for the petitioner submits that the construction equipment vehicle has to be understood and constitute, a motor vehicle stationary and used only at the construction site and which cannot ply on the road. Since the petitioner's vehicles can ply on the road and were registered as goods carriage vehicles and the petitioner's vehicles would not attract the levy of tax under the Kerala Motor vehicle Taxation Act at the rate prescribed for construction equipment vehicles. Therefore, he submits that the impugned orders and levy of tax on the petitioner's vehicles at the rate applicable for construction equipment vehicles is well justified against the provisions of the Kerala Motor Vehicles Act and Rules.

6. On the other hand, Ms.Thushara James, learned Senior Government Pleader submits that, it is not in dispute that the State is empowered to levy tax on motor vehicles in the State at the rate is specified in the schedule and Annexure. She further submits it

is irrelevant whether a vehicle can ply on the road or it is used at the construction site. If the vehicle is used for construction purposes and it is not been used as goods carriage vehicles, it is liable to be taxed at the rate specified for construction equipment vehicle. The petitioner has got fitted the concrete mixture on the chasis of these vehicles and the vehicles are exclusively used for construction purposes and therefore, these vehicles are liable to be taxed under the provisions of Section 3 read with Schedule and the Annexure 1.

7. I have considered the submissions, it is not in dispute that the petitioner's vehicles cannot be used as goods carriage vehicles. Merely on the ground that the petitioner's vehicles can ply on the road with the equipment of concrete mixture fixed on them could not be enough to say that the vehicles are not construction equipment vehicles. It is further the definition as provided under clause 10(iii) of the schedule enumerated any other equipment vehicle

which is exclusively used for construction purposes is to be considered as construction equipment liable for the purposes of levy of the tax for such vehicles. Considering the use of the petitioner's vehicles only for the construction purposes, I am of the view that petitioner's vehicles are liable to be taxed at the rate prescribed for construction equipment vehicles and not for the goods carriage vehicles. I find no substance in this writ petition. Therefore, the present writ petition is hereby dismissed.

Sd/-

DINESH KUMAR SINGH
JUDGE

WP(C) No.3697 of 2022

8

APPENDIX OF WP(C) 3697/2022

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE RC PARTICULARS OF VEHICLE NO KL 21 V 0707
EXHIBIT P2	TRUE COPY OF THE RC PARTICULARS OF VEHICLE NO KL 21 V 0106
EXHIBIT P3	TRUE COPY OF THE NOTICE ISSUED BY 3RD RESPONDENT IN RESPECT OF VEHICLE NO KL 21 V 0707
EXHIBIT P4	TRUE COPY OF THE NOTICE ISSUED BY 3RD RESPONDENT IN RESPECT OF VEHICLE NO KL 21 V 0106
EXHIBIT P5	TRUE COPY OF ORDER OF THE 3RD RESPONDENT BEARING NO C4/5678/2020/NDD DATED 24-11-2020
EXHIBIT P6	TRUE COPY OF ORDER OF THE 3RD RESPONDENT BEARING NO C4/5678/2020 /NDD DATED 24-11-2020
EXHIBIT P7	THE ORDER NO SZX/26/2020 DATED 18-01-2021 PASSED BY THE 2ND RESPONDENT
EXHIBIT P8	TRUE COPY OF APPEAL/REVISION FILED BEFORE THE 1ST RESPONDENT
EXHIBIT P9	TRUE COPY OF THE ORDER NO. B1/48/2021/TC DATED 30-06-2021
EXHIBIT P10	TRUE COPY OF THE ORDER DISMISSING THE REVIEW
EXHIBIT P11	TRUE COPY OF THE PERMIT ISSUED TO VEHICLE BEARING REGISTRATION NO KL 16W4845 ISSUED BY RTO ATTINGAL
EXHIBIT P12	TRUE COPY OF THE PERMIT ISSUED TO VEHICLE BEARING REGISTRATION NO KL16W4873 ISSUED BY RTO ATTINGAL
EXHIBIT P13	TRUE COPY OF THE PERMIT ISSUED TO VEHICLE BEARING REGISTRATION NO KL16W4877 ISSUED BY RTO ATTINGAL
EXHIBIT P14	TRUE COPY OF THE PERMIT ISSUED TO VEHICLE BEARING REGISTRATION NO KL16W4843 ISSUED BY RTO ATTINGAL
EXHIBIT P15	TRUE COPY OF THE RC STATUS OF VEHICLE NO KL33M6967
EXHIBIT P16	TRUE COPY OF THE RC STATUS OF VEHICLE NO KL67C0715

WP(C) No.3697 of 2022

9

RESPONDENTS EXHIBITS

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| EXHIBIT R3(A) | TRUE COPY OF THE TEMPORARY REGISTRATION OF VEHICLE BEARING NO KL21 V 0707ALONG WITH DRAWINGS |
| EXHIBIT R3(B) | TRUE COPY OF THE TEMPORARY REGISTRATION OF THE VEHICLE BEARING NO KL 21 V 0106 ALONG WITH DRAWINGS |
| EXHIBIT R3(C) | TRUE COPY OF THE INSPECTION REPORT, OF THE ASSISTANT MOTOR VEHICLES INSPECTOR.NEDUMANGAD PERTAINING TO VEHICLE NO KL 21 V 0707 |
| EXHIBIT R3(D) | TRUE COPY OF THE INSPECTION REPORT ISSUED BY THE ASSISTANT MOTOR VEHICLES INSPECTOR, NEDUMANGAD PERTAINING TO VEHICLENO.KL 21 V 0106 |
| EXHIBIT R3(E) | TRUE COPY OF THE RELEVANT PAGE OF THE SCHEDULE TO THE KERALA MOTOR VEHICLE TAXATION ACT, ALONG WITH THE ANNEXURE 1 |