

Mahesh C. Gandhi vs The Deputy Commissioner For Transport, Belgaum Division And Anr. on 15/7/2005

ORDER

D.V. Shylendra Kumar, J.

1. This writ petition raises a short but interesting question as to the liability for payment of lifetime tax by a private vehicle registered outside the State of Karnataka and which has occasion to make use of the road in the State of Karnataka.

2. The petitioner is the owner of Tata Estate Diesel car bearing registration No. GA-01 C-5829, registered at Panaji, in the State of Goa, and who claims that he had paid the lifetime tax in that State for this vehicle, having been called upon to pay lifetime tax in the State of Karnataka under the provisions of the Karnataka Motor Vehicles Taxation Act, 1957 (hereinafter referred to as 'the Act' for short), in terms of order dated 30-11-2001, a copy of which is produced at Annexure-J to the writ petition, and being aggrieved by the demand for payment of Rs. 25,070/- raised pursuant to this order, and having failed in his appeal before the Deputy Commissioner of Transport in MV Appeal No. 16 of 2002, in terms of the order dated 13-8-2004, a copy of which is at Annexure-P to the writ petition, is before this Court questioning the legality of the levy of such lifetime tax on the vehicle in question in the State of Karnataka, under the provisions of the Act.

3. One undisputed fact leading to levy of lifetime tax is that the authorities had found when they had intercepted the vehicle on 23-1-2001 at Hubli, within the State of Karnataka that the vehicle was using the roads in the State of Karnataka ever since 10-3-2000 upto that date intermittently and the petitioner was frequently plying the vehicle between Panaji and Hubli etc.

4. Petitioner, for getting over this tax liability has raised several contentions, including that the levy is not in consonance with the provisions of the Act; that the respondents are not enabled under any provisions of the Act to levy a lifetime tax in respect of a vehicle registered outside the State of Karnataka and which even on facts is found continuously to be within the State of Karnataka for a period referred to above which is less than 12 months and a fortiori so when the vehicle is inside the State of Karnataka only intermittently during this period.

5. Initially notices had been issued to the respondents and the Government Advocate was directed to take notice on behalf of the respondents. The matters was heard at length and the writ petition was admitted on 23-6-2005 by issuing Rule. The matter was further heard and has been taken up for further hearing today.

6. Statement of objection has been filed by the respondents. The stress is that the vehicle being in the State of Karnataka for more than 30 days, the vehicle cannot even claim the benefit of payment of short time tax in terms of Sub-section (2) of Section 3 of the Act; that the liability for the payment of tax in respect of the vehicle of this nature is in terms of Clause (b) of the fourth proviso to Sub-section (1) of Section 3 of the Act read with Part A5 of the Schedule to the Act; that the classification of the vehicle is not in dispute but the dispute is with regard to the payment of lifetime tax under this provision. What is generally claimed by the respondent is that the payment of lifetime tax in another State by the petitioner does not absolve the petitioner from payment of tax within the State of Karnataka, so long as the vehicle is used on the roads in Karnataka and the provisions of the Act provides for levying of such lifetime tax on such vehicles. The petitioner having not complied with the requirements of Sub-section (2) of Section 3 of the Act for claiming the benefit of short term tax, cannot now turn around and challenge the

levy of lifetime tax, is what is urged as another defence in the statement of objections.

7. I have heard Ms. Anuradha, learned Counsel for the petitioner, Niloufer Akbar, learned Additional Government Advocate appearing for the respondents.

8. Ms. Anuradha, learned Counsel for the petitioner by drawing my attention to the provisions of Section 47 of the Motor Vehicles Act, 1988 (for short, 'MV Act'), submits that the vehicle even as per the version of the respondents was found in the State of Karnataka for a period of less than 12 months i.e., from 10-3-2000 to 23-1-2001; that it is neither compulsory nor the petitioner is obliged to get the vehicle registered in the State of Karnataka; that the vehicle has already been registered in the State of Goa and lifetime tax has been paid there; that when the petitioner is not under any obligation to get the vehicle registered in the State of Karnataka, the authorities cannot insist or pressurise the petitioner to have the vehicle registered in the State of Karnataka; that the liability for payment of tax arises only when the vehicle is registered in the State of Karnataka or becomes compulsorily registerable in the State of Karnataka; that such an event not having happened, the petitioner can retain the registration in the State of Goa; that the petitioner is not obliged to pay lifetime tax as demanded under the impugned demand order and affirmed in the appeal.

9. Submission of learned Counsel for the petitioner, by drawing reference to the charging section, is that the scheme for levy of lifetime tax is linked to the incidence of registration of the vehicle; that the liability arises at the time of registration of the vehicle inside the State of Karnataka; that there being no registration within the State of Karnataka, there is no liability on the part of the petitioner for payment of lifetime tax on the vehicle and therefore the impugned demand is bad in law and not supported by the provisions of the Act and therefore requires to be quashed.

10. Submission of Niloufer Akbar, learned Additional Government Advocate appearing for the respondents, is that the Act provides for payment of tax for quarterly, half yearly and annually and also for short term tax for short term use of the vehicle on the roads in the State of Karnataka, as provided under Sub-section (2) of Section 3 of the Act; that the Act provides for payment of tax on quarterly, half yearly and annually in respect of the vehicle figuring in Parts A1 and A2 of the Schedule of the Act, whereas, in respect of vehicles figuring in Parts A3, A4 and A5, it is lifetime tax; that the vehicle in question is one which figures in Part A5 and therefore it is a vehicle in respect of which lifetime tax is required to be paid; that the only situation where the payment of lifetime tax is avoided is when a person has sought for permission and paid the tax for short term use of the roads, as contemplated under Sub-section (2) of Section 3 of the Act; that this provision of law is not applicable to the petitioner on the face of it, inasmuch as the vehicle was on the roads in the State of Karnataka for a period of more than 30 days, in which event, it is taken out of the purview of sub-Section (2) of Section 3 of the Act and therefore, levy of tax is necessarily lifetime tax as provided for in Category B group of vehicles occurring in Part A5 of the schedule to the Act.

11. The Categories A and B are for the purposes of making a distinction between the liability towards lifetime tax for vehicles which are being registered for the first time and as new vehicles after introduction of the lifetime tax and for the determination of the liability for payment of lifetime tax in respect of vehicles which had already been registered before the introduction of this scheme of taxation and for collection of lifetime tax for the balance period or rest of the lifetime of the vehicle. It is not in dispute that the lifetime tax demanded on the vehicle of the petitioner is on the premise that it is a vehicle which had been registered earlier and for the remainder of its life, in the sense under Category B of Part A5.

12. Learned Additional Government Advocate in support of her submission that under the provisions referred to above a charge is created even for vehicles of the type owned by the petitioner for payment of lifetime tax, relied on the decision of this Court in the unreported case of GSDB Tilak v The Assistant Regional Transport Officer, W.P. No. 3420 of 1998, which was affirmed by the Division Bench in terms of the order dated 3-1-2002 rendered in W.A. No. 560 of 1998, which I was a member, a decision of this Court in the case of B.T. Patil and Sons v. Department of Transport, 2000(2) Kar. L.J. Sh. N. 17 : ILR 1999 Kar. 2010 as also a Division Bench decision of this Court in the case of Mrs. v. Soudha kumari v Regional Transport Officer and Taxation Authority, ILK 1985 Kar. 615 (DB)

13. In the case of GSDB Tilak, which the learned Government Advocate points out that the order of the Single Bench was also affirmed by a Division Bench in terms of the judgment dated 3-1-2002 in W.A. No. 560 of 1998. It has been held that there was no scope for interference with an order of the taxing authority levying lifetime tax in respect of a motor vehicle registered in the State of Andhra Pradesh and where lifetime tax had been levied as the vehicle was found in the State of Karnataka for a period exceeding 30 days; that in the present case also the vehicle was admittedly within the State for more than 30 days and therefore the levy should be upheld.

14. This Court on facts found that as the order determining the tax liability in respect of the vehicle was found to be one which was neither irregular nor an arbitrary one, and the determination being based on evidence available on record, there was no scope for interference and the writ appeal had come to be dismissed as warranting no interference. The learned Judge had incidentally referred to the facts of the case and in the context of the provisions of Sub-section (1) of Section 3 of the Act, found no occasion to interfere with the finding based on the facts therein and levy being one based on the evidence, which was not in dispute and held that the order did not call any interference.

15. The question never arose nor was examined as to the nature of the liability to tax under the charging section nor has it been discussed in the course of the order. No discussion either in the appellate order while dismissing the appeal with regard to the scope of the charging section. At any rate, this judgment cannot be taken as laying down any principle of law to be a precedent as it is not one containing any ratio on the question of the scope of the charging section, particularly, in the context of levy of lifetime tax on the vehicles registered outside the State vis-a-vis the occasion for registration etc., under the charging section of the Act and the provisions of Section 47 of the MV Act, 1988.

16. The second decision relied upon by the learned Government Advocate is in the case of B.T. Patil and Sons. While this Court has made a general observation that a mere fact that the vehicle is registered outside the State of Karnataka will not take away the power of the State of Karnataka to levy tax, the scope of provision i.e., the scope of the levy itself was not under examination nor the liability for payment of lifetime tax by vehicles registered outside the State of Karnataka, which may have occasion to come to the State of Karnataka intermittently etc.

17. This decision also cannot be construed as an authority for the proposition as propounded by the learned Government Advocate. What is being considered here is as to whether the charging Section enables the respondents to levy such lifetime tax in respect of the vehicles registered outside the State and found to be in the State of Karnataka for a period mentioned earlier which is less than 12 months.

18. Reliance on the decision in Mrs. Soudha kumari's case, is placed to drive home the point that if the levy is not under Sub-section (2) of Section 3 of the Act, it is necessarily under the Sub-section (1) of Section 3 of the Act and if

so, lifetime tax as provided under Sub-section (1) of Section 3 of the Act is to be paid. The argument is fallacious for the reason that even under Sub-section (1) of Section 3 of the Act, what is provided is for levy of tax at the rates as specified in Part A of the Schedule on all motor vehicles suitable for use on roads. Therefore, one has to necessarily look into Part A of the Schedule for determining the scope and extent of the charging section. If the charging section expressly ropes in the vehicle and in a situation referred to therein, then there is no escape from payment of corresponding tax. The question is as to whether the charging section so provides? The debate is while the learned Counsel for the petitioner contends that the charging section does not so provide for levy of lifetime tax in a situation of the present nature, submission on behalf of the learned Government Advocate, is that it so provides.

19. The charging section under the Act is Section 3:

"3. Levy of tax.--(1) A tax at the rates specified in Part A of the Schedule shall be levied on all motor vehicles suitable for use on roads.

x x x x

Provided that in the case of a motor-cycle the tax shall be levied at the rates specified in Part A1 of the Schedule:

Provided further that in the case of tractors, trailers and power tiller trailers.--

(a) owned by agriculturists and whose main source of income is from agriculture;

(b) owned by agricultural Co-operative Societies including Vyavasaya Seva Sahakari Sangha Niyamitha, Raitha Seva Sahakari Sangha Niyamitha, Sericulture-cum-Farmers Co-operative Societies, Large Sized Co-operative Societies, Co-operative Agricultural Banks, Small Sized Cooperative Societies, Agricultural Credit Societies, Multipurpose Co-operative Credit Societies, Doddapramanada Prathamika Pathina Sahakari Sangha, Primary Co-operative Agriculture and Rural Development Bank and Services Co-operative Societies; and

(c) not falling under Clauses (a) and (b) above but used exclusively for carrying out such agricultural operations as may be prescribed,

the tax shall be levied at the rates specified in Part A2 of the Schedule:

Provided also that in case of Vintage car and Classic car, the tax shall be levied at the rates specified in Part A3 of the Schedule:

Provided also that:

(a) in case of tricycles including auto rickshaw not used for transportation of goods or passengers for hire or reward and vehicles permitted to carry (excluding driver) not more than three persons, the tax shall be levied at the rates specified in Part A4 of the Schedule;

(b) in case of motor-cars including Jeeps other than those owned by companies and imported cars of the year 1985 and later models, the tax shall be levied at the rates specified in Part A5 of the Schedule.

Explanation.--A motor vehicle of which the certificate of registration is current shall, for the purposes of this Act, be deemed to be a vehicle suitable for use on roads.

Note.--For the purpose of the above explanation the certificate of registration shall, notwithstanding anything contained in Section 38 of the

Motor Vehicles Act, 1939, be deemed to be current even if the certificate of fitness is not effective provided such certificate of fitness has not been cancelled.

(2) Notwithstanding anything contained in Sub-section (1), taxes at the rates specified in Part B of the Schedule shall be levied on motor vehicles suitable for use on roads, which are in the State for periods shorter than a quarter, but not exceeding thirty days.

(3) In the case of motor vehicles in respect of which any reciprocal arrangement relating to taxation has been entered into between the Government of Karnataka and any other State Government, the levy of tax shall, notwithstanding anything contained in this Act, be in accordance with the terms and conditions of such reciprocal arrangement:

Provided that the tax leviable under any such arrangement shall not exceed the tax leviable under the Schedule:

Provided further that the terms and conditions of every such reciprocal arrangement shall be published in the Official Gazette, and a copy thereof shall be laid before the State Legislative Assembly.

(4) Notwithstanding anything contained in Sub-sections (1) and (2), a special additional tax at the rates specified in Part D of the Schedule shall be levied on motor vehicles suitable for use on roads carrying passengers or goods in excess of the permitted capacity of the vehicles",

20. Sub-section (1) of Section 3 of the Act under which vehicles of the present nature are subjected to tax is not complete without looking at the schedule as it is under the schedule the rate and the manner in which the tax is levied is indicated. The Schedule is divided into several parts, namely, Parts A, A1, A2, A4, A5 and all these parts are with reference to levy of tax on vehicles fit for use on roads in the context of Sub-section (1) of Section 3 of the Act. Part B of the Schedule comprises of the details of levy of tax in respect of vehicles for a period less than seven days at a time and between 7 to 31 days. For the present case, the levy being one referable to Part A5 of the Schedule to the Act, it is looked into and reads as under: "PART A5

[See Section 3(1)]

Lifetime Tax for Motor-cars, Jeeps, Omnibuses and Private Service Vehicles

----- Item
Class of Motor- Motor- Motor- Motor- Omni-buses, Omni-buses, No. vehicles cars
and cars and cars and cars and private private jeeps not jeeps jeeps jeeps
service service exceeding exceed- exceeding cost of vehicles vehicles 800 CC ing
800 1500 CC which having having CC but and exceeds floor floor

not above or Rs. 6 area upto4 area

exceed- attached lakhs sq.mtrs. exceeding ing with 4
sq.mtrs. 1500 CC trailer but not exceeding

5 sq.mtrs.

(1) (2) (3) (4) (5) (6) (7) (8) A. At the 12000-00 xxx xxx xxx 30000-00 or
36000-00 or time of - seven per seven per registrat- cent of the cent of the ion
of cost of the cost of the new vehicle vehicle vehicle whichever is whichever is
higher higher

 If the
 vehicle is
 already
 registered
 and its
 age from
 the
 month of
 registra-
 tion is:

 (iii)more 9840-00 xxx xxx xxx 24600-00 29550-00 than 3
 years but
 not more
 than 4
 years

 (iv)more 9120-00 xxx xxx xxx 22800-00 27400-00" than 4
 years but
 not more
 than 5
 years

 21. In this part, it is again grouped as Group 'A' and Group 'B'. While Group 'A' is for lifetime tax of registration of a new vehicle, Group 'B' is for lifetime tax in respect of vehicles which had already been registered.

22. A perusal of the scheme of levy of lifetime tax in Part A5 indicates that the levy of lifetime tax is linked to registration of the vehicle. Registration necessarily should be in the State of Karnataka, inasmuch as, levy of tax is only in respect of vehicles registered here and at the point of registration i.e., as and when a vehicle is sought to be registered within the State of Karnataka, levy for payment of lifetime tax in respect of such a vehicle arises and in terms of the amount stipulated to the class of vehicle as in Part A5 of the Schedule to the Act. Even in respect of vehicle classified in Category B of Part A5, the registration should be in the State of Karnataka, in which event, while no further registration is contemplated, tax as provided in respect of such vehicles has to be paid and in respect of vehicles which are not registered in the State of Karnataka as and when the need arises for registration in the State of Karnataka, the liability for payment of lifetime tax as provided in

Category B arises.

23. Insofar as vehicles registered outside the State of Karnataka are concerned, as they are not vehicles registered in the State of Karnataka, the liability for payment of lifetime tax cannot be fastened automatically unless either by a voluntary act on the part of the owner of a vehicle or by compulsion in law the vehicle becomes liable to be registered within the State of Karnataka. Even in respect of such vehicle which had been registered elsewhere, then also the liability for payment of lifetime tax under the Act arises at such time of registration. It is here that the provisions of Section 47 of the Motor Vehicles Act, 1988 comes into play. Section 47 reads as under:

"47. Assignment of new registration mark on removal to another State.--(1) When a motor vehicle registered in one State has been kept in another State, for a period exceeding twelve months, the owner of the vehicle shall within such period and in such form containing such particulars as may be prescribed by the Central Government, apply to the registering authority, within whose jurisdiction the vehicle then is, for the assignment of a new registration mark and shall present the certificate of registration to that registering authority:

Provided that an application under this Sub-section shall be accompanied.--

(i) by the no objection certificate obtained under Section 48; or

(ii) in a case where no such certificate has been obtained, by.--

(a) the receipt obtained under Sub-section (2) of Section 48; or

(b) the postal acknowledgement received by the owner of the vehicle if he has sent an application in this behalf by registered post acknowledgment due to the registering authority referred to in Section 48,

together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted:

Provided further that, in a case where a motor vehicle is held under a hire purchase, lease or hypothecation agreement, an application under this Sub-section shall be accompanied by a no objection certificate from the person with whom such agreement has been entered into, and the provisions of Section 51, so far as may be regarding obtaining of such certificate from the person with whom such agreement has been entered into, shall apply.

(2) The registering authority, to which application is made under Sub-section (1), shall after making such verification, as it thinks fit, of the returns, if any, received under Section 62, assign the vehicle a registration mark as specified in Sub-section (6) of Section 41 to be displayed and shown thereafter on the vehicle and shall enter the mark upon the certificate of registration before returning it to the applicant and shall, in communication with the registering authority by whom the vehicle was previously registered, arrange for the transfer of the registration of the vehicle from the records of that registering authority to its own records.

(3) Where a motor vehicle is held under a hire purchase or lease or hypothecation agreement, the registering authority shall after assigning the vehicle a registration mark under Sub-section (2), inform the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the hire purchase or lease or hypothecation agreement (by sending to such person a notice by registered post acknowledgment due at the address of such person entered in the certificate of registration the fact of assignment of the registration mark).

(4) A State Government may make rules under Section 65 requiring the owner of a motor vehicle not registered within the State, which is brought into or is for the time being in the State, to furnish to the prescribed authority in the State such information with respect to the motor vehicle and its registration as may be prescribed.

(5) If the owner fails to make an application under Sub-section (1) within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the owner to pay, in lieu of any action that may be taken against him under Section 177, such amount not exceeding one hundred rupees as may be prescribed under Sub-section (7):

Provided that action under Section 177 shall be taken against the owner where the owner fails to pay the said amount.

(6) Where the owner has paid the amount under Sub-section (5), no action shall be taken against him under Section 177.

(7) For the purposes of Sub-section (5), the State Government may prescribe different amounts having regard to the period of delay on the part of the owner in making an application under Sub-section (1)".

24. While under Section 47(1) of the MV Act, if the owner of a registered vehicle in one State keeps such vehicle in another State for a period exceeding 12 months, he is compelled to apply to the registering authority in whose jurisdiction such vehicle is kept, for assigning a new registration mark and in the manner prescribed under the rule and is also obliged to furnish the particulars as provided for, Sub-section (4) of Section 47 enables the State Government to frame rules for furnishing of such information with regard to the vehicle by the owner of the vehicle to the registering authority as is provided for under the rule. Non-registration results in other penal consequences as provided under Sub-section (5) and in terms of Section 177 of the MV Act etc.

25. The question is: whether a vehicle registered in another State and which admittedly was inside the State of Karnataka for a period of less than 12 months is also liable to pay lifetime tax under the Act?

26. So far as levy of tax is concerned, Article 265 of the Constitution of India mandates that it should be only under the authority of law that any tax can be imposed and collected. The authority of law is a law made by the Competent Legislature. Learned Government Advocate therefore points out that levy is justified in terms of the charging Section 3(1) of the Act read with Part A5 of the Schedule to the Act.

27. It is a fundamental principle of taxation that a charging section is always construed strictly and in terms of the language; that the subject is taxed by express terms and not by intendment or implication i.e.; that the levy of tax should be spelt out clearly in respect of a particular person, commodity or event. If a conjoint reading of Section 3(1) of the Act with Part A5 achieves this, the matter ends. If it is not, then levy is not justified. It is for such purpose, learned Government Advocate draws attention of the Court to Sub-section (2) of Section 3 of the Act pointing out that the vehicle in question was in the State of Karnataka for a duration of more than 31 days; that when the levy is not covered under Section 3(2) of the Act, it is necessarily covered under Section 3(1) of the Act and as in Part A5.

28. If the levy is not covered under Section 3(2) of the Act, it does not automatically imply it is under Section 3(1) and does not necessarily mean that it should be taxed only under Section 3(1) of the Act, unless language of Section 3(1) of the Act so provides for it. The decision relied upon by the learned Government Advocate is in the context of levy being not under Section 3(2) of the Act and therefore is justified under Section 3(1) of the Act. The

question was not examined in the context of the scope of the charging section, namely, Section 3(1) of the Act read with Part A5 of the Schedule to the Act.

29. On a plain and proper understanding of Part A5 read with Section 3(1) of the Act, it becomes obvious that lifetime tax is collected at the time of registration and at the point of registration and even assuming that a vehicle which is liable to be registered is not so registered, the charging section can be construed as one applicable to a situation where registration is not sought for, but it had become liable for registration from that point of time. If under the law, a vehicle which is already registered in some other State is brought into this State and there is no obligation or compulsion under the law on the part of the owner of such vehicle to get the vehicle registered in the State of Karnataka, then the question of levy of lifetime tax on such a vehicle under Part A5 of the Schedule to the Act does not arise. If any other provision of the Act enables levy and collection, it may be done, but definitely not where it is not so provided, particularly, under Part A5 of the Schedule to the Act.

30. While the State Government has undoubtedly the competence to levy tax on vehicles suitable for use on roads so long as such vehicles are using the roads within the State, in terms of Entry 57 of List II of Seventh Schedule to the Constitution of India and the levy of lifetime tax of the vehicle has also been upheld by the Supreme Court, such levy can only be in accordance with the provisions of the Act and not independent or at variance of the provisions of the Act. It is here the charging section assumes importance. Unless the charging section provides for levy of any tax in a particular situation of the nature, as in the present case, the levy and demand is not made good. So far as the registration of the motor vehicles is concerned, it is governed by the Motor Vehicles Act, 1988, and Section 47 of the MV Act deals with the situation where the vehicles registered in one State are taken to another State and are stationed or remained in the other State for a period exceeding 12 months. In such a situation, the registration in the other State becomes compulsory. This is a Central Act and the source of power can be traced to Entry 35 of the Concurrent List. Therefore, insofar as the registration of motor vehicles is concerned, it is an aspect regulated by the Central Act viz., MV Act, and a vehicle registered in one State, if it has to be compulsorily registered in another State, it should be within the other State for a period exceeding 12 months. Significance of such registration is due to the reason that levy of lifetime tax under the Act on such vehicles, as one owned by the petitioner herein, is linked to the registration of the vehicles. Part A5 of the Schedule to the Act indicates that levy is at the time of registration of new vehicle. Though in category B of Part A5, even vehicles already registered are also roped in for levy of lifetime tax, it should be understood only as in respect of vehicles mentioned in Category A, in the sense at the time of registration of new vehicles and vehicles already registered. The registration in both situations should be necessarily within the State, as otherwise, if the registration is outside the State, the question of levy of tax under the Act does not arise in respect of such vehicles, unless there is an express provision under the Act to charge lifetime tax for such vehicles also. The registration of motor vehicles being an aspect regulated by the Central Act and which cannot be regulated by the State Act, the scheme of the Taxation Act is so made as to subject to levy of lifetime tax only on such vehicles which are registered in the State of Karnataka.

31. If such is the scheme and intendment of the Act and in the present situation, where the vehicle of the petitioner was registered outside the State of Karnataka and was within the State for a duration not exceeding 12 months, it cannot be said that the charging section comes into play for levying lifetime tax on such vehicle. I am of the view that under the charging section - Section 3(1) of the Act read with Part A5 of the Schedule - there is no scope for levying of lifetime tax in the State of Karnataka in respect of the vehicles already registered outside this State and paying or having paid tax therein, unless such vehicle is found in the State of Karnataka for a period exceeding 12

months. As observed earlier, if the vehicle itself is voluntarily got registered in the State of Karnataka, in the sense the owner of the vehicle applies for registration in the State of Karnataka, automatically the liability for payment of lifetime tax becomes operative and such tax can be collected on such vehicles.

32. Accordingly, I am of the view that the levy of lifetime tax under the impugned order dated 30-11-2001 vide Annexure-J and the appellate order dated 13-9-2004 vide Annexure-P are not sustainable, as the levy is beyond the scope of the charging section. Accordingly, these orders are quashed by issue of a writ of certiorari. Writ petition is allowed. Rule made absolute.

33. Learned Counsel for the petitioner submits that in terms of the impugned demand raised, the petitioner has already paid Rs. 15,000/-and also furnished bank guarantee for the balance amount etc. When once the levy and collection of tax under the impugned orders is held unsustainable and orders are quashed, what is collected under those orders are to be refunded to the petitioner.

34. Learned Government Advocate, appearing for the respondents submits that the petitioner having plied the vehicle on the roads in the State of Karnataka, cannot be allowed to have the advantage without payment of commensurate tax and respondents should be permitted to collect such tax as is permissible in law. While that is not an issue before this Court as of now, and the issue before the Court was the justification and legality of the levy of lifetime tax on the vehicle owned by the petitioner in the circumstance that the vehicle was found in the State of Karnataka for a period of less than 12 months, what the other tax is payable for the use of the vehicle in the State of Karnataka under the Act, is a matter not necessary to be discussed in this writ petition and if the law enables the respondents to collect such other tax in accordance with the provisions of law, it is always open to them to collect the same.

35. Unless a demand in consonance with any other provisions is raised on the petitioner, on a proper determination of the same, the respondent will have to refund the amount of Rs. 15,000/-. If any such demand is found in terms of the provisions of the Act, it is open to the respondents to adjust such demand from out of the amount to be refunded and the balance, if any, be paid to the petitioner. Parties to bear their own costs.