

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

{Through Virtual Mode}

WP(C) No. 669/2021

C/w

WP(C) No. 777/2021

Reserved on: 22.04.2021

Pronounced on: 29.04.2021

(i) Zahoor Ahmad Bhat

(ii) Irshad Hussain Munshi

... Petitioner(s)

Through:

*Mr. Faisal Qadri, Sr. Advocate with Mr. Altaf Mehraj,
Advocate, Mr. Fasil Javid, Advocate and Mr. Mukhtar
Ahmad, Advocate*

Versus

(i) Government of JK and Ors.

(ii) Union Territory of JK & Ors.

... Respondent(s)

Through:

*Mr D. C. Raina, Advocate General with Mr. Hakim
Aman Ali, Dy. AG and Mr. Sajad Ashraf, GA*

CORAM:

**Hon'ble Mr Justice Ali Mohammad Magrey, Judge.
Hon'ble Mr Justice Vinod Chatterji Koul, Judge**

(JUDGMENT)

(Magrey, J)

01. The common issue raised in these two writ petitions is proposed to be decided by common order.

02. In these two writ petitions challenge is made to circular bearing No. RTO/K/Estt/85-95 dated 27.03.2021, issued by respondent No. 3- RTO, Kashmir, in terms whereof, the vehicle owners, who have purchased their vehicles from outside Jammu and Kashmir Union Territory bearing outside registration mark, are asked to apply for a new registration mark as per the provisions of Sections 47 and 50 of Motor Vehicles Act, 1988 read with Rule 54 of Central Motor Vehicle Rules 1989 within 15 days from the date of Circular/notification viz 27.03.2021, failing which action as warranted shall be initiated against them.

Brief Facts:-

03. Petitioner in WP(C) No. 669/2021, claims to be the owner of vehicle bearing registration No. DL4CNB-6748, purchased at Delhi and registered under Transport Authority Government of NCT Delhi, usually travels to Delhi for various purposes as also rest parts of the country, therefore, submits that in terms of provisions of Motor Vehicle Act and Rules, no assignment of new registration mark is required with application of Sections 47 and 50 of the Motor Vehicles Act, 1988 (for short Act of 1988) and petitioner in WP(C) No. 777/2021, claims to be owner of vehicle bearing registration No. DL3CD 9392, having purchased the same outside Union Territory of J&K, before some months back is registered under Transport Authority Government of NTC, Delhi.

04. Petitioners while in Srinagar along with vehicles, are stated to be harassed by the Police/Transport Department, merely on the ground of having

the Delhi registration number on the vehicles and on ascertaining the reasons they were informed about the circular aforesaid, issued by respondent No. 3, therefore, being aggrieved, challenge the same on the following grounds:-

- (a). That the impugned Circular has been issued purportedly on the basis of the provisions as contained under section 47 and 50 of the Motor Vehicle Act, 1988.

It is submitted that the perusal of Section 47 would reveal that the power/jurisdiction for assigning a new registration mark on a vehicle is within the power/jurisdiction of the Central Government. In absence of the delegation of the powers otherwise vesting with the Central Government, the respondents have no authority to issue a Circular under challenge in terms of the instant Petition. In other words, it is submitted that the impugned Circular has been issued without jurisdiction, as such, is liable to be quashed.

- (b) That the Motor Vehicles Act, 1988 is a self-contained Code in itself providing the entire mechanism for the implementation and execution of the said Act. the Petitioner state and submit that Section 47 of the Act, has prescribed the entire mode and method for seeking and for assigning the new registration mark on the vehicles removed from one State to other. The said scheme as contained in Section 47 of the Act, has prescribed a time limit of more than 12 months for a vehicle removed from one State to other for inviting the implementation of Section 47. In other words for the implementation of Section 47 and for the assigning of a new Registration Mark, the vehicle removed from one State to other must have been kept in the state for a continuous period of more than 12 months. In the instant case,

- the impugned Circular is neither in accordance to the Scheme envisaged in Section 47 of the Act nor is clear with respect to the implementation of the said section over a particular class of vehicles. Hence, the impugned circular is against the scheme of Section 47 and hence is liable to be quashed.
- (c) That for the implementation of Section 47, the owner of a vehicle has been mandated to apply to the registering authority under whose jurisdiction the vehicle at the time of exceeding of the prescribed period of more than 12 months is situated for the purpose of the assignment of a new registration mark. Therefore, the choice of seeking a new registration mark is with the owner of the Vehicle. It is submitted that the owner of a vehicle who has removed the vehicle from one State to another State is the only person who has the information of the time period which qualifies for the assignment of a new registration mark. Therefore, the Circular impugned herein issued by the Respondents is in excess of the provisions of Section 47 of the Motor Vehicle Act and hence has been issued without any jurisdiction and as such is liable to be quashed.
- (d) That the respondents after the issuance of the impugned circular have resorted to en-masse seizure of the vehicles without following the provisions of the law. It is stated and submitted most respectfully by the Petitioners that the contraventions to any of the provisions of the Motor Vehicle Act have been dealt under Chapter XIII of the Act and more particularly under Section 177. It is apt to mention here that Section 177 deals with the General contravention of the provisions of the said Act. Section 177 has only provided the levying of the fines upon the contravener of the provisions of

the Act of 1988. The respondents in absence of any authority for seizing the vehicles contravened the provisions of Section 47 of the Act of 1988 cannot seize the vehicles bearing the registration mark of the other States of the country. Therefore, the impugned circular issued by the respondents has been put to misuse and has resulted in causing a great inconvenience to the public and to the Petitioners. Hence, on this ground also, the impugned circular is liable to be quashed.

(e) That for the grant of new registration mark on any vehicle under the provisions of Section 47 of the Motor Vehicles Act, 1988, the persons liable for such registration would be required to apply to the registration authority who in turn would subject such a person for levy of tax. The Petitioners state and submit that the respondents in terms of Notification dated 1st of August 2019 and in terms of S.O bearing No. 183 dated 02.06.2020, have issued the guidelines for the levy of tax over the vehicles using any public road in Jammu and Kashmir. In terms of the said Notifications, a person applying for the new registration mark would be subjected to tax @ 9% of the cost of Vehicle over all Motor Vehicles. The Petitioners state and submit that at the time of the purchase of a vehicle and subsequently at the time of seeking registration of the same, the Petitioners have already paid tax towards the concerned Government. In case the impugned circular is implemented in the form, the respondents have issued, the Petitioners as well as similarly placed persons would be subjected to double taxation by the respondents. It is submitted that levying of tax more than once for a similar activity is directed

in conflict with the constitution of India. Hence, the impugned circular is liable to be quashed.

- (f) That the impugned circular has also a fall out over the tourist season which has commenced in Kashmir Valley. The generality of the impugned Circular would also bar many tourists who intend to visit the Valley of Kashmir in their own vehicle being subjected to the seizure of their vehicles. The Petitioners state and submit that the impugned Circular, as such, is directly against the economic prospects of the Valley of Kashmir. In other words, the impugned circular is dehorse the constitutional provisions providing for freedom of movement and providing the right to carry on the trade. The impugned circular, therefore, is also liable to be quashed on this count also.
- (g) That the registration of Motor Vehicles has been dealt in Chapter IV of the Motor Vehicles Act of 1988. In terms of Section 39 of the said Act, every person including the owner of a vehicle is barred from driving any Motor Vehicles Act. It is submitted that every Motor Vehicle after being subjected for registration under this Chapter is assigned a Certificate of Registration. In addition to certificate of Registration, a Motor Vehicle so registered is also assigned a Registration Mark. The Petitioners state and submit that Certificate of Registration assigned to a particular vehicle is universal in nature and cannot be changed unless the same is not suspended or cancelled by the competent authority. Whileas, the registration Mark of a vehicle is subject to change also. It is submitted that this position has been maintained by the provisions of the Motor Vehicles Act by providing the provision for assignment of a new registration Mark to a vehicle. In other words the

Petitioners submit that once a certificate of registration is issued to a vehicle, the same vehicle cannot be subjected to a further registration/fresh registration by levying additional taxes to the owner of the said Vehicle. Section 48 has prescribed the no objection certificate to be sought from the Registering authority with whom a particular Motor Vehicle is registered. The perusal of Section 48 of the Motor Vehicle Act, would reveal that the issuances of the No Objection Certificate by a registering authority has to be to the extent of grant of no objection for assigning a new registration mark to a vehicle only. This in essence would also mean that once a registration certificate is issued for a vehicle, the same would remain in force unless the same is not suspended/cancelled. In the instant case, the impugned Circular issued by the respondents read with the Government Order dated 01.08.2019, and S.O dated 02.06.2020, would subject the owners of the Motor Vehicles for paying the registration taxes twice for the same vehicle. Therefore, the impugned Circular being contrary to the provisions of the Motor Vehicles Act is liable to be quashed.

- (h) That the respondents while issuing the impugned Circular have given an impression to the Petitioners and to the general public that the vehicles removed from other states and brought to the jurisdiction of the Union Territory of Jammu and Kashmir are required to re-register their vehicles and therefore, subject to the payment of the taxes as envisaged in the Notification dated 01.08.2019. In the event of such an interpretation of the Circular impugned on part of the respondents, the Petitioners along with other similarly placed persons would be subjected to the payment of the taxes

already paid by them at the time of the issuance of the Certificate of registration with respect to their vehicles. It is the case of the Petitioner that the Certificate of registration of a vehicle is one thing and the assigning of Registration Mark to a particular vehicle is a part of the Registration Certificate. It is submitted most respectfully by the Petitioners that the registration Mark of a Vehicle could change from one State to another but the Registration of the said Vehicle would remain the same as granted by the Registering Authority. The impugned circular issued by the respondents and the levying of the Tax in terms of the Notification mentioned supra is illegal and against the constitutional scheme as contained in the constitution of India. Hence on this count, also, the impugned circular is liable to be quashed.

05. Mr. Faisal Qadri, learned senior counsel appearing for petitioner in WP(C) No. 669/2021, while reiterating the pleadings made in the writ petition for the relief claimed, has invited the attention of this Court to various provisions of Motor Vehicle Act, 1988, to demonstrate that the circular is issued by the respondent No. 3, without any authority/jurisdiction, therefore, is non-est in the eye of law. He further submits that in the scheme of law, relating to Motor Vehicles, respondent No. 3, has no power/authority to issue such circulars, as the only power with reference to application of Section 47 has to apply in accordance with procedure, asking the motor vehicle owners registered in one State and kept in Union Territory of J&K for a period exceeding 12 months to apply for assignment of new registration mark, as the

language of Section 47 makes it clear that the owner of the vehicle has to apply in such form as may be prescribed by the Central Government and there is no such form prescribed by the Central Government, requiring assignment of new registration mark on removal to another state. Learned senior counsel further submits that the petitioners are owners of vehicles in question do not require re-registration elsewhere in India, as they are holding a valid certificate of registration issued by the Transport Authority in NCT, Delhi in terms of provisions of Motor Vehicles Act, which is effective thereon in India by application of Section 46 of the Act, therefore, the impugned circular is in contravention of Section 46 of Motor Vehicles Act.

06. Mr. Faisal Qadri, learned senior counsel appearing for the petitioner submits that there is no denial of the authority of the respondents to screen, scrutinize, verify the genuineness of the validity of the documents required for movement of the vehicle in the jurisdiction of the respondents, notwithstanding the registration of the vehicle in other States of India, but under the influence of such decision, the powers are already detailed out in the Act and Rules and the impugned circular is only harassing the genuine owners of the vehicles, which enter the premises of J&K, unnecessarily. Learned senior counsel further submits that in exercise of powers conferred by Section 37 and 38, the Government of Jammu and Kashmir has already made the Rules, as required by Sub Section (1) of Section 212 of the Motor Vehicles Act and the 17th day of August, 1992, is appointed date on which the

said rules have come into force. Learned senior counsel further submits that in terms of these rules, there are adequate powers with the Transport authorities for dealing with the screening, scrutinizing, verifying the validity/genuineness of the documents, required for movement of the vehicles in Union Territory of JK. Sections 47 and 50 of the Motor Vehicles Act, 1988, being relevant are extracted as under:-

“47. Assignment of new registration mark on removal to another State

(1) When a motor vehicle registered on 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 applicant in this behalf by registered post acknowledgement due to the registering authority referred to in section 48,*

together with a direction that he has not received any communication from such authority refusing to grant such certificate 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, 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 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 acknowledgement due at the address of such person entered in the certificate of registration the fact of assignment of the said registration mark).

(4) A State Government may make rules under section 65 requiring the owner of 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).

50. Transfer of ownership

(1) where the ownership of any motor vehicle registered under this Chapter is transferred,___

(a) the transferor shall,

- (i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and
- (ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority to in sub-clause (i)___

- (A) the no objection certificate obtained under section 48; or
- (B) in a case where no such certificate has been obtained__
 - (I) the receipt obtained under sub-section (2) of section 48; or
 - (II) the postal acknowledgment received by the transferee if he has sent an application in this behalf by registered post acknowledge 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;

- b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(2) where__

- (a) the person in whose name a motor vehicle stands registered dies, or
- (b) a motor vehicle has been purchased or acquired at a public auction conducted by, or on behalf of, Government,

the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period as may be prescribed by the Central Government.

(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the case may be, or if the person who is required to make an application under sub-section (2) (hereafter in this section referred as the other person) fails to make such application with the period prescribed, the registering authority, may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, 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 (5):

Provided that action under section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount.

(4) Where a person has paid the amount under sub-section (3), no action shall be taken against him under section 177.

(5) For the purposes of sub-section (3), a State Government may prescribe different amounts having regard to the period of delay on the part of the transferor or the transferee in reporting the fact of transfer of ownership of the motor vehicle or the other person in making the application under sub-section (2).

(6) On receipt of a report under sub-section (1), or an application under sub-section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority."

07. Learned senior counsel submits that perusal of Section 47 would reveal that the power/jurisdiction for assigning a new registration mark on a vehicle is within the power/jurisdiction of the Central Government. He further submits that in absence of the delegation of the powers otherwise vesting with the Central Government, the respondents have no authority to issue a circular under challenge. In other words, it is submitted that the impugned circular has been issued without jurisdiction and is liable to be quashed. Learned senior counsel further submits that the scheme as contained in Section 47 of the Act, has prescribed a time limit of more than 12 months for a vehicle removed from one State to the other for inviting the implementation of Section 47. In other words the continuation of the vehicle before registration mark on one state requires 12 months continuous stay in another State for assigning of new registration mark and there is no mechanism provided for declaring a vehicle of such type, requiring the new registration mark as the time period of beyond

12 months requires some mechanism in vogue, which is fair in nature. He further submits that in absence of such mechanism, determining the period of stay of vehicle exceeding 12 months, is the choice of owner of seeking a new registration mark, if he voluntarily intends to disclose the intention of stationing the vehicle permanently in J&K, otherwise, the owner of vehicle who has removed the vehicle from one state to another is the only person who has the information of the time period, which qualifies for the assignment of a new registration mark, therefore, the impugned circular issued by respondent No. 3, is in excess of the provisions of Section 47 of the Motor Vehicles Act, hence without jurisdiction and as such, is liable to be quashed. It is submitted that the contravention to any of the provisions of the Motor Vehicles Act, have been dealt under Chapter XIII of the Act and more particularly under Section 177, which deals with the General contravention of the provisions of the said Act, and provided only the levying of the fines upon the contravener of the provisions of the Act of 1988 and there is no provision for seizing the vehicles contravening the provisions of Section 47 of the Act of 1988.

08. Learned senior counsel further submits that in the event the owner of a vehicle applies for grant of new registration mark on any vehicle under the provisions of Section 47 of the Motor Vehicles Act, 1988, the persons liable for such registration would be required to apply to the registering authority, who in turn would subject such a person for levy of tax and in terms of

notification dated 1st of August, 2019, bearing S.O No. 183 dated 02.06.2020, the guidelines for the levy of tax over the vehicles using any public road in Jammu and Kashmir are already notified and a person applying for the new registration mark would be subjected to tax @ 9% of the cost of the vehicle over all Motor Vehicles. It is submitted that at the time of purchase of a vehicle and subsequently at the time of seeking registration of the vehicle, has already paid tax towards the concerned Government and in the event the impugned circular in the present form is given effect, this will amount to double taxation and this levy of tax more than once for a similar activity is directly in conflict with the Constitution of India. It is submitted that the impugned circular has curtailed freedom of movement and providing the right to carry on the trade, which is a fundamental right of the petitioner, guaranteed under Article 19 (1) (g) of the Constitution of India, violation whereof gives right to the petitioner to approach this Court for enforcement of such right.

09. Learned senior counsel submits that the certificate of registration is universal in nature and cannot be changed unless the same is not suspended or cancelled by the competent authority. While as, the registration mark of a vehicle is subject to change also, as the position has been maintained by the provisions of the Motor Vehicles Act, by providing the provision for assignment of a new registration mark to a vehicle. In other words, it is submitted that once a certificate of registration is issued to a vehicle, the same vehicle cannot be subjected to a further registration/fresh registration by levying additional taxes to the owner of the said vehicle. It is submitted that

Section 48 of the Motor Vehicles Act, 1988 would reveal that the issuance of No Objection Certificate by a registering authority has to be to the extent of grant of no objection for assigning a new registration mark to a vehicle only and not change of registration, therefore, there is no question of payment of tax.

10. Learned senior counsel submits that the scheme of application of Section 50 of Motor Vehicles Act, 1988 is not applicable to the facts and circumstances of the case. learned senior counsel has referred to and relied upon the Judgment of Karnataka High Court dated 01.07.2016 to support the contention that there is no scope for the respondents to levy tax even in the event vehicles require for assigning of new registration mark, which will definitely amount to double taxation. He further submits that the Judgment of the Division Bench of Karnataka High Court has earned finality after dismissal of the Civil Appeal No(s). 2635-2638/2017, filed by the State of Karnataka and Ors.

11. Learned senior counsel appearing for the petitioners drew our attention to Sections 46 and 47 of the Motor Vehicles Act, 1988 and also, relevant provisions of the Act. While reading the above provisions in juxtaposition to each other, learned senior counsel contended that the condition precedent for levy of tax on motor vehicles was registration of the vehicles. Therefore, Section 3 of the Act, which is the charging Section would come into play only after the registration of motor vehicles and hence, the registration of the motor vehicle is a sine qua non for levy of tax on the vehicle. He submitted that the

levy of tax on the motor vehicle is not on the entry of the vehicle to the Union Territory of Jammu and Kashmir. But the levy of tax on motor vehicles being registration of the vehicle, therefore, the Union Territory of JK was not right in this regard, learned senior counsel drew out attention to part-A5 of the schedule to the Act, wherein registration of a new vehicle is the basis for levy of lifetime tax, i.e., in Category A and in Category B, levy of lifetime tax is on a vehicle which is already registered and on the basis of its age from the month of registration. He contended that the aforesaid basis of levy of tax on motor vehicles have remained the same even after the amendments made in the Act. It is contended that in respect of vehicles registered outside Jammu and Kashmir and not falling within the scope of Section 3(2) of the Act, the proportionality of tax is exorbitant.

12. Both the sides have relied upon certain judicial precedent in support of their contentions which shall be adverted to later.

13. Admittedly there is no challenge to the levy of tax on motor vehicles using public road in the Union Territory of J&K, as notified in terms of SRO 492 of 2019, but may be the scheme of law as projected by learned senior counsel appearing for the petitioners does not warrant such tax on mere entry of vehicle in the Union Territory of J&K, which is already registered outside Union Territory of J&K. Learned senior counsel appearing for the petitioners has while reiterating the grounds taken in the writ petition for the relief claimed referred to and relied upon the Division Bench Judgment of Karnataka High Court in case titled **State of Karnataka and Ors. Vs.**

Jagadev Biradar and Ors. Contention of learned senior counsel with reference to Judgment is that the point and issue involved stands already settled with the declaration that mere entry of vehicle registered in one state cannot form the ground for asking for assignment of new registration mark unless the conditions stipulated in the provisions of the Act with reference to application of Section 47 of the Motor Vehicles Act, are fulfilled by adherence to the procedures and with reference to notifications issued by the Government of India.

14. On consideration of the matter and in terms of order passed on 05.04.2021, the notice was issued to learned Advocate General for his assistance with further direction to respondents to file response.

15. Respondents have filed reply through Joint Transport Commissioner, Jammu and Kashmir, wherein they have stated that the present writ petition being without any cause of action is not maintainable for the reason that infringement of legal, statutory or fundamental right of a citizen is sine qua non before invoking the jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. In the instant case, the petitioner in absence of any cause of action has attempted to throw challenge to the circular which owes its source to Sections 47 and 50 of the Motor Vehicles Act, 1988. It is stated that the petitioner has also claimed that no tax in the event of assigning of new registration mark be levied despite Notification dated 01.08.2019 and S.O dated 02.06.2020, the petitioner has not thrown challenge to these provisions of law. It is stated that circular dated 27.03.2021, only enjoins upon

the concerned vehicle owners to adhere to the provisions of Sections 47 and 50 of the Motor Vehicles Act 1988 read with Rule 54 of Central Motor Vehicles Rules, 1989, within the prescribed period. The impugned Circular calls from the concerned to get the needful done within a period of 15 days failing which action warranted under law would get initiated.

It is stated that a conjoint reading of the relevant provisions of the Motor Vehicles Act, 1988 especially Sections 47 and 50 would indicate that there is a definite purpose behind the enactment of the Rule and as such, the Circular cannot be questioned on any ground much less grounds urged in the writ petition. It is stated that the necessity to get such provisions implemented more vigorously in the given set of circumstances in the Union Territory of J&K has become more relevant for many reasons inter alia on the grounds of (i) security (ii) smooth regulations of the provisions of the Motor Vehicles Act (iii) collection of revenue in accordance with law and other relevant factors.

16. It is stated that the Transport Department in the given context has a major role to play in this regard. It is required to upkeep latest record of all the vehicles on Transport Department's portal 'Vahan'. Moreover, the possibility of the theft of vehicles being get unnoticed/unchecked also gets ruled out. Another object behind Sections 47 and 50 is that each State/UT gets its due revenue which in the event of non-registration of such vehicles is not possible. There are host of other factors which are relevant for appreciating the intention of the legislation in enacting Sections 47 and 50 of the Motor Vehicles Act, 1988. The so-called plea of seizure of vehicle in relation to the

aforementioned provisions is unrelated as the vehicles are seized only when the owner of the vehicle is unable to produce the requisite documents. Within the purview of the impugned circular, if a person is not having documents, he is afforded opportunity to do the needful within the reasonable period and even such owners are permitted to furnish such documents in the office of the competent authority. It is further stated that each State/UT has its own rate of tax for the purpose of registration of the vehicles and when a vehicle is used for a period of more than 12 months, as provided in Section 47, the necessity for its registration in the UT becomes more important because at the time of registration, many reports including the Crime report etc., are also sought and real owners get identified for the purpose of the registration. Moreover, the UT of Jammu and Kashmir has its own portal for the purpose of managing the smooth and proper flow of the vehicles on its roads including the pressure on the roads so as to cater the problems which often arise on account of unmanaged traffic pressure on the roads. Section 47 and 50 of the Motor Vehicles Act has a laudable object underlining the purpose, as such, it cannot be said to be bad in any manner or on any ground whatsoever.

17. Mr. D. C. Raina, learned Advocate General appearing for respondents submits that the scheme of law discussed by the Division Bench of the Karnataka High court is not the subject in the instant writ petition, therefore, has no application. He further submits that there is no scope for the Court to enter the zone of adjudication, which has no reference, as the mere point taken as challenge to the authority of respondent No.3- RTO, Kashmir

in issuing the circular asking the due adherence on the application of provisions of Sections 47 and 50 of the Motor Vehicles Act, 1988.

18. Learned Advocate General, appearing counsel for the respondents has questioned the maintainability of the writ petition for the relief claimed, as none of the legal/fundamental rights of the petitioners have been violated. He submits that there is no cause of action, which has accrued to the petitioners by mere issuance of circular, qua violation of their right. It is submitted that the impugned circular is only aimed at ensuring of assigning of new registration mark to the vehicles, which are bearing registration mark of other states, but are plying in the Union Territory of J&K, as mandated by Section 47 of the Motor Vehicles Act, 1988. Learned Advocate General has invited the attention of various provisions of Motor Vehicles Act, and the Rules to demonstrate that the Transport authorities are within the jurisdiction/power to screen, scrutinize and verify the genuineness and validity of the documents of the vehicle for ensuring implementation of provisions of scheme of law. He further submits that there is no question of harassment to the citizens of India, who are owners of the different type of vehicles and with the authority of the registration of their vehicles/ permission to move around in all over India. He further submits that under the scheme of law, which is fair and transparent to vehicle owners, whose vehicles registered in other states, by application of scheme of law apply for assignment of new registration mark once the vehicle remains in Jammu and Kashmir for exceeding 12 months, therefore, need for issuing the circular. He further

submits that the circular is also issued for ensuring screening, scrutinization, verification of genuineness and validity of the documents of the vehicles, which is not violating any of the rights of the petitioners.

19. Heard learned counsel for the parties, perused the records and considered the matter.

20. Registration of motor vehicles is entirely governed by Chapter IV of the MV Act. No motor vehicle can be brought on the road without registration. A tax shall be levied on all motor vehicles suitable for use on roads by virtue of the exclusive power of taxation conferred on the State Government. Therefore, the moment a vehicle is registered under the MV Act, the liability to pay tax arises. The principle in the given case, for taxation by the State Government, is the requirement of registration under the Central Act.

If the vehicle is once registered in any State in India, it shall not be required to be registered elsewhere in India. But 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 apply to the registering authority, within whose jurisdiction the vehicle then is, for the assignment of a new registration mark. This is as provided under Section 46 and 47 of the MV Act.

Therefore, a lifetime tax that is levied at the point of registration of a vehicle in terms of Section 3 read with Part A5 of the schedule to the Act, cannot be levied on a vehicle registered outside the Union Territory of JK, which remains in the Union Territory of J&K for a period exceeding twelve months.

21. Court in order to be satisfy with the validity of the impugned circular issued by respondent No. 3-RTO, Kashmir, before declaring that bad in law and in

contravention of the provisions of the Motor Vehicles Act and Rules, further examined all relevant provisions of the Act with particular reference to Section 46, 47, 49 and 50 and the Rules made by the Central Government as also by the Government of JK, including SRO 492 dated 01.06.2019, issued under Section 3 of the Jammu and Kashmir Motor Vehicles Taxation Act and notification S.O 183 dated 02.06.2020. Sub Section (4) of Section 47 of Motor Vehicles Act, 1988, empowers the State Government to 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 and in terms of Sub Section (5) of Section 47 of Motor Vehicles Act, 1988, it is provided that 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 may be prescribed under section 177 shall be taken against the owner where the owner fails to pay the said amount.

22. In terms of Section 64 of the Motor Vehicles Act, the Central Government is empowered to make rules to provide for all or any of the matters, covered under clause- (g) of Section 64 of Motor Vehicles Act, 1988, which provides the form in which and the period within which the application referred to in sub-section (1) of section 47 shall be made and the particulars it shall contain. Clause-(g) of Section 64 of Motor Vehicles Act, 1988 being relevant is extracted as under:-

“(g) *the form in which and the period within which the application referred to in sub-section (1) of section 47 shall be made and the particulars it shall contain;*

23. The Central Motor Vehicles Rules, 1989, made in exercise of the powers conferred by sections, 28, 38, 65, 96, 107, 111, 138, 159, 176 and 213 of the Motor Vehicles Act, 1988 read with Section 212 of the Motor Vehicles Act, 1988 are exhaustive on the subject and Rule 54 is the only Rule, which deals with assignment of new registration mark. Rule 54 being relevant is extracted as under:-

“ 54. *Assignment of new registration mark*

(1) *Application for a new registration mark under sub-section (1) of section 47 shall be in the form prescribed by the Central Government.*

(2) *The registering authority shall, before assigning a registration mark under sub-section (1) of section 47 or before entering the particulars of transfer of ownership of motor vehicle in the certificate of registration, require the owner, or as the case may be, the transferee, to produce the motor vehicle before itself or before the Inspector of Motor Vehicles, in order that the registering authority may satisfy itself that the particulars of the vehicle recorded in the certificate of registration are correct and the vehicle complies with the provisions of these rules.*

(3) *The owner of a motor vehicle, which is registered in one State and is brought into or is for the time being kept in the State of Jammu and Kashmir shall intimate to the registering authority in whose jurisdiction the vehicle is kept for use in Form F.T of the First Schedule within seven days from the date of entry of the motor vehicle in the State.*

(4) *If the owner of the motor vehicle or the person in possession of the motor vehicle fails to apply for the assignment of new registration mark under sub-section (1) of section 47 of the Act, he shall be liable to pay the amount of fifty rupees for the default for first month and twenty-five rupees per month for the default of subsequent months, if continued.*

Provided that, the amount payable under this rule in lieu of action under section 117 of the Act, shall not exceed one hundred rupees.

(5) *The registering authority assigning a new registration mark to a motor vehicle, shall be in Form R. M. I of the First Schedule appended to these rules, and shall intimate to the registering authority which originally issued the certificate of registration, that a new registration mark has been assigned to the motor vehicle and call for the records of registration of vehicle or certified copies thereof. The registering authority shall simultaneously inform the owner and the other party, if any, to any agreement of hire purchase, specified in the note appended to the certificate of registration of such new registration mark.*

- (6) (a) *Registering Authority may reserve a particular registration number on a written request of a motor vehicle owner where more than one person desire the same number, the registering authority shall maintain a chronological list of all such applicants till regular number is available for allotment. On the appointed day the registering authority shall auction the said number and the highest bidder shall be given the requested number:
Provided he deposits the bid amount in cash in lump with the registering authority on spot. The registering authority may also accept the bank draft or the pay order or the travellers cheques in lieu of cash:*
- (b) *Till the regular registration number is allotted the registering authority shall be competent to continue the temporary registration. Provided where such waiting period exceeds one month fresh fee shall be payable at the same rate as is prescribed for the regular registration.*
- (7) *The registering authority may allot a temporary registration number after fulfilling required formalities and payment of fees prescribed for registration, which shall be preceded by the alphabet "X" and which shall be valid for one month or till such time as the registering authority may prescribe."*

24. The scheme of law as discussed hereinabove on the subject of challenge leaves no scope for the Court to stop the authorities from seeking of new registration mark, but the sub-section (1) of section 47 of the Motor Vehicles Act, 1988, in the form as provided in the above rule within the period mentioned, but such exercise is dependent on the declaration of the vehicle owner kept in a State for a period exceeding 12 months, now the question is the provisions of law provide the mandate of assignment of new registration mark to a motor vehicle, which is registered in one State and is moved to another State and remains in that State exceeding twelve months, but the owner does not make declaration, then what should be the mechanism to deal with such eventuality, is not dealt with by the scheme of law, rules and the orders, therefore, the Commissioner Secretary, Transport Department, was right in seeking some time to deal with this eventuality.

25. Both petitioners are admittedly owners of the vehicles which are registered with the Transport authorities NCT, Delhi and admittedly the owners are residents

of Union Territory of J&K, besides have admitted entry of vehicles in the Union Territory of J&K, but have denied the vehicles remaining in Jammu and Kashmir exceeding 12 months, which require them by application of Section 47 to have apply for new registration mark as per the provisions of Section 47 of the Motor Vehicles Act.

26. We have gone through the Judgment of the Division Bench of Karnataka High Court and on thorough examination, we feel that the point involved in the present petitions has no direct bearing on the application of the Judgment, as the impugned circular does not seek any re-registration of the vehicle, which will involve levy of tax, but only seeking enforcement of the provisions of Sections 47 and 50 of the Motor Vehicles Act, 1988.

27. Factual matrix as supplied by the parties to the lis along with documents on record with further reference to provisions of the Motor Vehicles Act and the Rules framed thereunder, supported by the Judgments of the Courts, enables this Court to arrive to a just and proper conclusion that the impugned circular issued by respondent No. 3 is unnecessary, as being without authority to the extent of warning the genuine owners of the vehicles having outside registration and making entry in the Union Territory of J&K, for their assignment of new registration mark compulsory is contrary to Rule 54 of the Central Motor Vehicles Rules, 1989, therefore, we are inclined to quash the said impugned circular, but while doing so we do not by any stretch of imagination take away the powers of the Central Government/Government of Jammu and Kashmir to deal with the eventuality of screening, scrutinizing, verifying the validity/genuineness of documents of a vehicle, having outside registration and making entry in the Union Territory of J&K

for whatever purpose be as a tourist, businessman or employee etc. We feel it also necessary to make it clear to the respondents that mere quashment of the impugned circular does not take away the authority of the respondents from dealing with the cases of those vehicle owners, who have got their vehicles registered outside the Union Territory of JK, but after making entry in the Union Territory of JK and remained for a period exceeding 12 months, requires assignment of new registration mark in tune with the application of Section 47, but for that some mechanism as agreed by the Principal Secretary to Government, Transport Department is to be placed in vogue with due adherence to compliance of Section 47 of the Motor Vehicles Act.

28. We are also not interfering with the powers of the Transport Authority/respondents to deal with the cases, which fall under Section 50 of the Motor Vehicles Act, as the matters which fall under the application of Section 50 are not the subject in these writ petitions.

29. We have already noticed the scheme of law, which provides for assignment of new registration mark but deem it proper to reiterate that if the vehicle once registered in any State in India, it shall not be required to be registered elsewhere in India, but when the Motor Vehicle registered in one State, has been kept in another State for a period of exceeding 12 months, the owner shall apply to the Registering Authority within whose jurisdiction the vehicle is for the assignment of new registration mark, this is as provided under Sections 46 and 47 of the Motor Vehicles Act. Therefore, a life time tax that is levied at the point of registration of a vehicle in terms of Section 3 of the Motor Vehicles Act, cannot be levied on a vehicle registered, merely on a presumption that a vehicle registered outside Union

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Territory of JK, has remained in the Union Territory of J&K for a period exceeding 12 months.

30. In view of above background, the instant writ petitions are allowed to the extent as indicated above in the following manner:-

- (i) By a writ of certiorari, the impugned circular to the extent of asking the petitioners to have their vehicles registered for assignment of new registration mark with the respondent No. 3, without their declaration in tune with the mandate of Rule 54 of Central Motor Vehicles Rules, 1989 and without providing any mechanism, is quashed.
- (ii) By a writ of mandamus, the respondents are directed to have the compliance of Section 47 of the Act, read with Rule 54 of Central Motor Vehicles undertaken for assignment of new registration mark of the vehicles.
- (iii) Notwithstanding above directions, we leave it open for the respondents to screen, scrutinize, verify, validity/genuineness of documents of any vehicle entering in Union Territory of J&K from outside, having outside registration.

Both the writ petitions are disposed of along with connected CM(s).

(Vinod Chatterji Koul)
Judge

(Ali Mohammad Magrey)
Judge

SRINAGAR

29.04.2021

“Mohammad Yasin Dar”

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| i. | <i>Whether the Judgment is reportable?</i> | <i>Yes/ No.</i> |
| ii. | <i>Whether the Judgment is speaking?</i> | <i>Yes/ No.</i> |