

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 02ND DAY OF JULY 2019 / 11TH ASHADHA, 1941

W.P.(C)No.32847 of 2018

PETITIONERS:

1 KERALA AUTOMOBILE DEALERS ASSOCIATION
C/O M/S MARIKAR ENGINEERS, 34/2401-A,
N.H.BYE PASS ROAD, CHAKKARAPARAMBU,
KOCHI, PIN-682023,
REPRESENTED BY ITS PRESIDENT SRI JOHN K.PAUL.

2 M/S RAJASREE MOTORS PVT. LTD.,
2/393C, NH 47, MARADU P.O.,
KOCHI- 682304, REPRESENTED BY ITS HEAD SALES,
SRI.PRAVEEN SANKARANARAYANAN.

BY ADVS.
SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO MOTOR VEHICLES
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001.
- 2 THE TRANSPORT COMMISSIONER,
MOTOR VEHICLES DEPARTMENT,
TRANS TOWERS, THIRUVANANTHAPURAM,
PIN- 695001.
- 3 THE REGIONAL TRANSPORT OFFICER AND REGISTERING AUTHORITY,
ERNAKULAM, CIVIL STATION,
KAKKANADU, ERNAKULAM,
PIN- 682030.
- 4 THE REGIONAL TRANSPORT OFFICER AND REGISTERING AUTHORITY
KANNUR, CIVIL STATION,
KANNUR, PIN- 670102.

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2

5 THE JOINT REGIONAL TRANSPORT OFFICER,
SUB REGIONAL TRANSPORT OFFICER,
ANGAMALY, ERNAKULAM.

BY SPL. GOVERNMENT PLEADER SRI P.SANTHOSH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09.04.2019, THE COURT ON 02.07.2019 DELIVERED THE
FOLLOWING:

"CR"

JUDGMENT

The 1st petitioner is an Association of Automobile dealers in Kerala, which is registered under the provisions of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, as evident from Ext.P1 certificate of registration dated 29.03.2006. The 2nd petitioner is a dealer of passenger vehicles manufactured by Mercedes-Benz and a member of the 1st petitioner Association. The petitioners have filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P2 circular dated 06.08.2018 issued by the 2nd respondent Transport Commissioner, whereby the Deputy Transport Commissioner, the Regional Transport Officers and the Joint Regional Transport Officers are directed to take necessary steps to ensure registration of the vehicles kept by automobile dealers for test drive, on the ground that some of the automobile dealers are using such vehicles for test drive for longer periods and thereafter, selling those vehicles at a lower price, which cause revenue loss to the State Exchequer. The petitioners have also

sought for a writ of certiorari to quash Ext.P4 check report dated 26.07.2018; Ext.P5 tax receipt dated 02.08.2018 (evidencing remittance of motor vehicle tax of Rs.10,92,820/- in respect of the 2nd petitioner's vehicle to which Ext.P4 check report has been issued); and also Ext.P8 notice dated 16.08.2018 issued by the 4th respondent Regional Transport Officer, Kannur, whereby the automobile dealers are required to register their vehicles kept for test drive. The further relief sought for is a declaration that the directions contained in Ext.P2 circular are violative of the provisions contained in the Motor Vehicles Act, 1988 (for brevity, 'the MV Act') and the rules framed thereunder and hence unenforceable; and a writ of mandamus commanding the respondents not to insist the *bona fide* dealers of motor vehicles, who have obtained trade certificates under Rules 33 and 35 of Central Motor Vehicle Rules, 1989 (for brevity, 'the CMV Rules') to register the vehicles in their possession for using the same for demonstration purposes (hereinafter referred to as 'demo vehicles').

2. On 09.10.2018, when this writ petition came up for

admission, the learned Special Government Pleader sought time to get instructions. On 17.10.2018, the learned Special Government Pleader sought time to file statement.

3. On 31.10.2018, a statement of the 5th respondent Joint Regional Transport Officer is placed on record. On 13.11.2018, the petitioners have filed a reply affidavit.

4. On 03.12.2018, when this writ petition came up for consideration, the learned counsel for the petitioners sought time to get instructions from the 2nd petitioner as to the total number of 'demo vehicles' in its dealership and also the total number of trade certificates. The learned counsel was also directed to get instructions as to whether 'demo vehicles' are purchased by the dealership.

5. Heard the learned counsel for the petitioners and also the learned Special Government Pleader appearing for the respondents.

6. The issue that arises for consideration in this writ petition is as to whether any interference is warranted on Ext.P2 circular dated 06.08.2018 issued by the 2nd respondent Transport Commissioner whereby, the registering authorities in

the State are directed to take necessary steps to ensure registration of the vehicles kept by the automobile dealers for demonstration purposes, i.e., 'demo vehicles'.

7. After the order of this Court dated 03.12.2018, the learned counsel for the petitioners has made available for the perusal of this Court the stock list maintained by the 2nd petitioner, in which 'demo vehicles' are also included. The learned counsel has also made available for the perusal of this Court the tax invoice in respect of two vehicles, as per which the 2nd petitioner purchased 'demo vehicle' at a special cash discount of Rs.1,09,683/-, as against the cash discount of Rs.10,411/- for the vehicle intended for sale to the customer. The vehicle covered by tax invoice No.VH0000005912 dated 10.09.2018 is a Mercedes-Benz car V213/E220D with a basic price of Rs.3,706,262/- (cash discount - Rs.10,411/-). Tax invoice No.VH0000005751 dated 31.08.2018 is in respect of a 'demo vehicle' with the very same basic price (special cash discount - Rs.1,09,683/-).

8. The submission made by the learned counsel for the petitioners is that, in terms of the dealership agreement

entered into by the 2nd petitioner with M/s.Mercedes-Benz India Private Limited, 'demo vehicles' are given at a special cash discount and such vehicles will be used for a period of two years or three years as 'demo vehicles' and thereafter, the 2nd petitioner will sell those vehicles. Such vehicles do not require registration under the provisions of the MV Act and the CMV Rules. The stand to the contra in Ext.P2 circular of the 2nd respondent and Ext.P8 notice of the 4th respondent is legally unsustainable.

9. Per contra, the learned Special Government Pleader would submit that 'demo vehicles' require registration under the MV Act and the CMV Rules. Therefore, the stand taken in Ext.P2 circular and Ext.P8 notice is perfectly legal. The learned Special Government Pleader would also point out that the demo vehicles of various automobile dealers have already been registered, as evident from Annexure R5(c) series of photographs.

10. Chapter V of the MV Act deals with the registration of motor vehicles. Section 39 of the MV Act, which deals with the necessity for registration, provides that no person shall

drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner. As per the proviso to Section 39, nothing in this section shall apply to a motor vehicle in possession of a dealer, subject to such conditions as may be prescribed by the Central Government.

11. As per Section 40 of the MV Act, subject to the provisions of Section 42, Section 43 and Section 60, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in whose jurisdiction he has the residence or place of business, where the vehicle is normally kept. Section 41 of the MV Act deals with the procedure for registration. As per sub-section (1) of Section 41, an application by or on behalf of the owner of a motor vehicle for registration shall be in such form and shall be accompanied by such documents, particulars and information

and shall be made within such period as may be prescribed by the Central Government. As per the proviso to sub-section (1) where a motor vehicle is jointly owned by more persons than one, the application shall be made by one of them on behalf of all the owners and such applicant shall be deemed to be the owner of the motor vehicle for the purpose of this Act. As per sub-section (2), an application referred to in sub-section (1) shall be accompanied by such fee as may be prescribed by the Central Government. As per sub-section (3), the registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in such form and containing such particulars and information and in such manner as may be prescribed by the Central Government. As per sub-section (11) of Section 41, if the owner fails to make an application under sub-section (1), or, as the case may be, under sub-section (8) 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 (13).

As per the proviso to sub-section (11), action under Section 177 shall be taken against the owner where the owner fails to pay the said amount.

12. Section 43 of the MV Act deals with temporary registration. As per sub-section (1) of Section 43, notwithstanding anything contained in Section 40, the owner of a motor vehicle may apply to any registering authority or other prescribed authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark. As per sub-section (2), registration made under this Section shall be valid only for a period not exceeding one month, and shall not be renewable. As per the proviso to sub-section (2), where a motor vehicle so registered is a chassis to which a body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or any unforeseen circumstances beyond the control of the owner, the period may, on payment of such fees, if any, as may be prescribed, be extended by such further period or periods as the registering

authority or other prescribed authority, as the case may be, may allow. As per sub-section (3), in a case where the motor vehicle is held under hire-purchase agreement, lease or hypothecation, the registering authority or other prescribed authority shall issue a temporary certificate of registration of such vehicle, which shall incorporate legibly and prominently the full name and address of the person with whom such agreement has been entered into by the owner.

13. Chapter III of the CMV Rules, 1989 deals with registration of motor vehicles. Rule 33 deals with condition for exemption from registration. As per Rule 33, for the purpose of the proviso to Section 39, a motor vehicle in the possession of a dealer or manufacturer of automobiles or automobile ancillaries or a test agency specified in Rule 126 shall be exempted from the necessity of registration subject to the condition that he obtains a trade certificate from the registering authority having jurisdiction in the area in which the dealer or manufacturer of automobiles or automobile ancillaries or a test agency specified in Rule 126 has his place of business, in accordance with the provisions of this Chapter.

14. Rule 34 of the CMV Rules deals with the trade certificate. As per sub-rule (1) of Rule 34, an application for the grant or renewal of a trade certificate shall be made in Form 16 and shall be accompanied by the appropriate fee as specified in Rule 81. As per sub-rule (2) of Rule 34, separate applications shall be made for each of the following classes of vehicles, namely:- (a) motorcycle; (b) invalid carriage; (c) light motor vehicle; (d) medium passenger motor vehicle; (e) medium goods vehicle; (f) heavy passenger motor vehicle; (g) heavy goods vehicle; (h) E-rickshaw; (I) E-Cart; (j) any other motor vehicle of a specified description.

15. Rule 35 of the CMV Rules deals with grant or renewal of trade certificate. As per sub-rule (1) of Rule 35, on receipt of an application for the grant or renewal of a trade certificate in respect of a vehicle, the registering authority may, if satisfied that the applicant is a bona fide dealer or manufacturer of automobiles or automobile ancillaries or a test agency specified in Rule 126 and requires the certificates specified in the application, issue to the applicant one or more certificates, as the case may be, in Form 17 within thirty days

from the date of receipt of such an application and shall assign in respect of each certificate a trade registration mark consisting of the registration mark referred to in the notification made under sub-section (6) of section 41 and followed by two letters and a number containing not more than three digits for each vehicle, for example:- AB - represent State Code; 12 - Registration District Code; TC 1 - Trade Certificate number for the vehicle. As per sub-rule (2) of Rule 35, no application for trade certificate shall be refused by the registering authority unless the applicant is given an opportunity of being heard and reasons for such refusal are given in writing.

16. As per Rule 37 of the CMV Rules, trade certificate granted or renewed under Rule 35 shall be in force for a period of 12 months from the date of issue or renewal thereof and shall be effective throughout India. Rule 39 deals with use of trade registration mark and number. As per sub-rule (1) of Rule 39, trade registration mark and number shall not be used upon more than one vehicle at a time or upon any vehicle other than a vehicle bona fide in the possession of the dealer or manufacturer of automobiles or automobile ancillaries or a test

agency specified in Rule 126 in the course of his business or on any type of vehicle other than the one for which the trade certificate is issued. As per sub-rule (2) of Rule 39, the trade certificate shall be carried on a motor vehicle in a weatherproof circular folder and the trade registration mark shall be exhibited in a conspicuous place in the vehicle.

17. Rule 40 of the CMV Rules deals with restrictions on use of trade certificate or trade registration mark and number. As per Rule 40, a trade certificate shall be used only by the person to whom it is issued and such person shall not allow or offer or cause the certificate or the number assigned in connection therewith to be used by any other person. As per the proviso to Rule 40, the provision of this rule shall not apply where the person to whom the certificate is granted, or a person bona fide in his employment and acting under his authority, or any other person bona fide acting on behalf of the holder of a trade certificate is present in the vehicle, or if such vehicle is designed for use by only one person and is being used by a prospective purchaser of that vehicle for the purpose of reasonable test or trial.

18. Rule 41 of the CMV Rules deals with purposes for which motor vehicle with trade certificate may be used. As per clause (c) of Rule 41, the holder of a trade certificate may use a vehicle in public place, under that certificate, for a reasonable trial or demonstration by or for the benefit of a prospective purchaser and for proceeding to or returning from the place where such person intends to keep it; as per clause (d), for proceeding to or returning from the premises of the dealer or of the purchaser or of any other dealer for the purpose of delivery; and as per clause (g), for proceeding to or returning from an exhibition of motor vehicles or any place at which the vehicle is to be or has been offered for sale. Rule 41 reads thus;

“41. Purposes for which motor vehicle with trade certificate may be used.— The holder of a trade certificate shall not use any vehicle in a public place under that certificate for any purpose other than the following:— (a) for test, by or on behalf of the holder of a trade certificate during the course of, or after completion of, construction or repair; or (b) for proceeding to or returning from a weigh bridge for or after weighment, or to and from any place for its registration; or (c) for a reasonable trial or demonstration by or for the benefit of a prospective

purchaser and for proceeding to or returning from the place where such person intends to keep it; or (d) for proceeding to or returning from the premises of the dealer or of the purchaser or of any other dealer for the purpose of delivery; or (e) for proceeding to or returning from a workshop with the objective of fitting a body to the vehicle or painting or for repairs; or if) for proceeding to and returning from airport, railway station, wharf for or after being transported; or (g) for proceeding to or returning from an exhibition of motor vehicles or any place at which the vehicle is to be or has been offered for sale; or (h) for removing the vehicle after it has been taken possession of by or on behalf of the financier due to any default on the part of the other party under the provisions of an agreement of hire-purchase, lease or hypothecation."

(underline supplied)

19. As per Rule 42 of the CMV Rules, which deals with the delivery of vehicle subject to registration, no holder of trade certificate shall deliver the motor vehicle to a purchaser without registration, whether temporary or permanent.

20. Rule 43 of the CMV Rules deals with the register of trade certificates. As per sub-rule (1) of Rule 43, every holder of a trade certificate shall maintain a register in Form 19 in duplicate which shall be in a bound book, with pages numbered

serially. As per sub-rule (2), the particulars referred to in Form 19 except the time of return under column 7, shall be entered in the register before the commencement of each trip by the holder of the trade certificate or his representative and a duplicate copy of Form 19 made prior to the commencement of each trip shall be carried during the trip by the driver of the vehicle and shall be produced on demand by any officer empowered to demand production of documents by or under the Act. As per sub-rule (3), the holder of a trade certificate shall, at the end of a trip, fill in column 7 of Form 19 (both original and duplicate), and the register and the duplicate shall be open for inspection by the registering authority. As per Rule 44 of the CMV Rules, which deals with suspension or cancellation of trade certificate, if the registering authority has reason to believe that the holder of any trade certificate has not complied with the provisions of Rules 39 to 43, it may, after giving the holder an opportunity of being heard, suspend or cancel the trade certificate held by him.

21. Rule 47 of the CMV Rules deals with application for registration of motor vehicles. As per sub-rule (1) of Rule 47,

an application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of seven days from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by the document enumerated in clause (a) to (l) of sub-rule (1) .

22. A reading of the provisions under the MV Act and the CMV Rules referred to hereinbefore would make it explicitly clear that the exemption from registration provided under Section 39 of the MV Act is applicable, subject to the conditions provided in Rule 33 of the CMV Rules, in respect of a motor vehicle in possession of a dealer or manufacturer of automobiles or automobile ancillaries or a test agency specified in Rule 126, subject to the condition that such a dealer or manufacturer of automobiles or automobile ancillaries or test agency specified in Rule 126 obtains a trade certificate from the registering authority having jurisdiction in the area in which it has the place of business. As per Rule 37, the validity of a trade certificate is only for a period of 12 months from the date of issue or renewal thereof.

23. As per sub-rule (1) of Rule 39 of the CMV Rules, a

trade registration mark and number shall not be used upon more than one vehicle at a time or upon any vehicle other than the vehicle *bona fide* in the possession of the dealer or manufacturer of automobile or automobile ancillary or a testing agency specified in Rule 126 in the course of his business or on any type of vehicle other than one for which the trade licence is issued. Rule 40 referred to hereinbefore deals with restrictions on use of trade certificate. As per the proviso to Rule 40, the restriction contained in that Rule shall not apply where a vehicle, subject to the conditions stipulated in the proviso, is being used by a prospective purchaser of that vehicle for the purpose of reasonable test or trial.

24. The condition for exemption from registration provided under Rule 35 of the CMV Rules has application only in respect of a motor vehicle in the possession of a dealer or manufacturer of automobile or automobile ancillary or a test agency specified in Rule 126, subject to the condition that he obtains a trade certificate from the registering authority having jurisdiction; and as per sub-rule (1) of Rule 39 the trade registration mark and number shall not be used upon any

vehicle other than a vehicle bonafide in possession of that dealer in the course of his business. A 'demo vehicle' purchased by an automobile dealer at a special cash discount or otherwise is not a vehicle intended for sale to the customer. It is a vehicle intended to be used by that dealer as 'demo vehicle' for a period of two years or three years, which cannot be treated as a vehicle bonafide in possession of that dealer in the course of his business, which can be driven in any public place or any other place under the authorisation of trade certificate granted under the CMV Rules. A vehicle intended for sale will be in the possession of an automobile dealer till it is sold to a customer. Such vehicles alone are covered by the proviso to Section 39 of the MV Act, read with Rules 35, 39, 40 and 41 of the CMV Rules.

25. The common question of law that arose for consideration before the Apex Court in **Tata Motors Limited v. State of Jharkhand [(2018) SCC OnLine SC 2810 : CDJ 2018 SC 1298]** pertained to levy of tax by the State under Section 6 of the Bihar Motor Vehicles Taxation Act, 1994 (for brevity, 'the Bihar Act') on the chassis of the motor vehicles

manufactured by the appellants therein, during the period those chassis were in their possession, i.e., before they were delivered to the dealers and/or the purchasers of the said vehicles. The Bihar Act envisages three kinds of taxes, namely: (a) on registered vehicles under Section 5 of the Act; (b) on vehicles held under trade certificates as per Section 6 of the Act; and (c) in respect of vehicles registered, where the registration is temporary, a marginal tax under sub-section (4) of Section 7 of the Act. The tax under Section 5 of the Bihar Act is paid by the ultimate buyers who, on purchase of vehicles and becoming owners thereof, get these vehicles registered in their names. After the manufacture of the vehicle and before it is sold to the ultimate buyer to use the said vehicle, a temporary registration is required by the manufacturer under Section 7 of the Bihar Act. Since this registration is temporary for a limited duration, a fractional tax is paid by the manufacturer or dealer under sub-section (4) of Section 7 of the Bihar Act. Section 6 deals with those vehicles which are in possession of a manufacturer or dealer in the course of his business and are held under trade certificates.

26. In **Tata Motors' case**, after referring to the provisions under Bihar Act, i.e., Section 5, which deals with levy of tax; Section 6, which deals with tax payable by a manufacturer or a dealer; and Section 7, which deals with payment of tax, the Apex Court held that, as is clear from the reading of these Sections, Section 5 is the charging section as per which every owner of a registered motor vehicle is under an obligation to pay tax on such vehicle, rates whereof are specified in Schedule I. Insofar as Section 6 is concerned, liability is cast on the manufacturer of motor vehicles or a dealer in motor vehicles to pay tax in respect of motor vehicles in his possession in the course of his business as a manufacturer or a dealer, under the authorisation of trade certificate granted under the CMV Rules. Here tax is at annual rate specified in Schedule III, which is 'in lieu' of the rates specified in Schedule I. It clearly implies, therefore, that a manufacturer or dealer pays the tax in respect of vehicles in his possession for which he has been granted trade certificate which authorises him to possess the said vehicle before it is sold to the ultimate consumer. Obviously, the rate specified in

Schedule III is much lesser than the tax which is payable by the registered owner under Section 5 of the Bihar Act. Sub-section (4) of Section 7, on the other hand, applies to those cases where motor vehicles are temporarily registered under Section 43 of the MV Act. In contrast with Section 6, here the person, unlike the manufacturer or dealer having trade certificate, gets the vehicle registered on temporary basis. The tax levied here is 1/12th of the tax payable for the year for such vehicles. The three situations, thus, become obvious. A manufacturer after manufacturing motor vehicle would be in possession of the said vehicle till it is delivered to a dealer. Likewise, a dealer would remain in possession of such a vehicle till it is sold to the consumer. Ordinarily, a motor vehicle cannot be driven unless it is registered. That requirement is provided under Section 39 of the MV Act. It is in consonance with this provision that under Section 5 of the Bihar Act, tax is levied by the respondent State on the owner of the registered vehicle, at the time of registration. Since this tax is to be paid by the ultimate owner who purchases the vehicle, to avoid double taxation and payment of same tax by the manufacturer or

dealer, Rule 33 of the MV Rules exempts such manufacturer or dealer from the necessity of registration subject to the condition that they obtain trade certificates from the registering authority. It is because of the reason that in the course of their business as manufacturer or dealer the vehicle would come on the road and would be driven. For this reason, a dealer or a manufacturer of motor vehicle is permitted to obtain trade certificate so that he is exempted from registering the vehicle in his name. The Bihar Act, even in such a case, contemplates levy of tax. This tax is payable under Section 6 at the annual rate specified in Schedule III, as noted above. In case a dealer or a manufacturer is not having trade certificate, in order to drive the motor vehicle during the period it remains with him, he is supposed to get the vehicle registered for a temporary period. This temporary registration is to be done as per the provisions contained in Section 43 of the MV Act. The Apex Court clarified that such temporary registration can be obtained by any person who is the owner of a motor vehicle and is not confined to a dealer or a manufacturer. An owner who gets the vehicle temporarily registered in his name is supposed to pay

tax under the Bihar Act though at a much lesser rate than the rate specified in Schedule I, inasmuch as it is only at the rate of 1/12th of the tax payable for the year for such vehicles. It is because of the reason that temporary registration is for a period of one month. The Apex Court found that the High Court has rightly concluded that the amendment made to the MV Act would have no relevance to the provisions contained in the Bihar Act. Whether the definition of 'dealer' includes manufacturer or not would be immaterial inasmuch as under Section 6 of the Bihar Act, the Legislature has made provision to tax both the dealer as well as the manufacturer. The Apex Court agreed with the respondents that the tax was in respect of motor vehicles in possession of the manufacturer in the course of his business as a manufacturer, or in possession of the dealer in the course of his business as a dealer under the authorisation of trade certificate granted under the CMV Rules. The manufacturer comes in the possession of the motor vehicle after the vehicle is manufactured and is suitable for use on roads. The dealer in the course of his business of getting the motor vehicle from the manufacturer and selling it to a

customer comes in the possession of the motor vehicle on the basis of a trade certificate granted under the CMV Rules.

27. A reading of the provisions under the MV Act and the CMV rules referred to hereinbefore, in the light of the law laid down by the Apex Court in **Tata Motors' case (supra)**, leads to the irresistible conclusion that a manufacturer after manufacturing motor vehicle would be in possession of the said vehicle till it is delivered to a dealer. Likewise, a dealer would remain in possession of such a vehicle till it is sold to the consumer. As per the mandate of Section 39 of the MV Act, no motor vehicle can be driven in any public place or in any other place unless it is registered in accordance with Chapter IV of the said Act. The proviso to Section 39, read with Rule 33 of the CMV Rules, which deals with condition for exemption from registration, covers only motor vehicles in possession of a dealer or manufacturer of automobile or automobile ancillary or a testing agency specified in Rule 126, subject to the condition that he obtains a trade certificate, in accordance with the provisions under the CMV Rules, from the registering authority having jurisdiction in the area in which he has his place of

business. The motor vehicles covered by these provisions are motor vehicles in his possession, in the course of his business as a manufacturer till it is delivered to a dealer, or as a dealer till such vehicles are sold to the consumers. A 'demo vehicle' purchased by automobile dealers, at a special cash discount or otherwise, which are intended to be used for demonstration purpose, for a specified period of two years or three years in terms of the respective dealership agreements, are not vehicles intended for sale to the customer. Therefore, a 'demo vehicle' cannot be termed as a vehicle in possession of that dealer in the course of his business as a dealer, which can be driven in any public place or any other place under the authorisation of trade certificate granted under the CMV Rules.

28. As already noted, in the stock list maintained by the 2nd petitioner, a copy of which is made available for the perusal of this Court by the learned counsel for the petitioners, 'demo vehicles' are included. The learned counsel for the petitioner would submit that, 'demo vehicles' will continue as such in the stock list till that vehicles are sold after its use for demonstration purpose, for a period of two or three years.

Since 'demo vehicles' continue in the stock list, for the period of its use for demonstration purpose, such vehicles can be driven in any public place or any other place under the authorisation of trade certificate granted under the CMV Rules.

29. Clause (14) of Section 2 of the Income Tax Act, 1961 define 'capital asset' to mean property of any kind held by an assessee, whether or not connected with his business or profession, but does not include those enumerated in sub-clause (i) to (v) thereof. Sub-clause (i) of clause (14) of Section 2 reads thus;

“(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession;”

A 'demo vehicle' purchased by an automobile dealer at a special cash discount or otherwise, which is not intended for sale to the customer, cannot be included in the stock list, in order to make it appear that it is a vehicle bonafide in possession of that dealer, in the course of his business, which can be driven in any public place or any other place under the authorisation of a trade certificate granted under the CMV Rules. The said vehicle, which is being used by that dealer for

demonstration purpose, for a period of two years or three years, is required to be registered as per the mandate of Section 40 of the MV Act, by submitting an application for registration under Section 41 of the said Act, within the period prescribed under sub-rule (1) of Rule 47 of the CMV Rules.

30. Clause (e) of Section 2 of the Kerala Motor Vehicles Taxation Act, 1976, define the term 'purchase value' to mean the value of the vehicle as shown in the purchase invoice and includes value added tax, goods and services tax or such other tax as may be levied by the Central or State Government, cess and customs/excise duty chargeable on vehicles. As per the first proviso to clause (e), the discount or rebate given by the dealer to the registered owner shall not be deducted from the bill amount for computing the purchase value.

31. Section 3 of the Kerala Motor Vehicles Taxation Act deals with the levy of tax. As per sub-section (1) of Section 3, subject to the provisions of the said Act, on and from the date of commencement of that Act, tax shall be levied on every motor vehicle used or kept for use in the State, at the rate specified for such vehicle in the Schedule. As per the first

proviso to sub-section (1), no such tax shall be levied on a motor vehicle kept by a dealer in, or a manufacturer of such vehicle, for the purpose of trade and used under the authorisation of a trade certificate granted by the registering authority. A 'demo vehicle' purchased by an automobile dealer, which is not intended for sale to the customer, cannot be treated as a vehicle kept by that dealer for the purpose of trade and used under the authorisation of a trade certificate granted by the registering authority. The benefit of the first proviso to sub-section (1) of Section 3 of the Kerala Motor Vehicle Taxation Act can be extended only to the vehicles kept by that dealer for the purpose of sale to the customers, which can certainly be used under the authorisation of a trade certificate granted by the registering authority, subject to the restrictions on use of trade certificate, as contained in Rule 40 of the CMV Rules, for the purposes enumerated in Rule 41 of the said Rules.

32. Along with a statement filed by the 5th respondent, the photographs of certain vehicles used by the automobile dealers at Kochi, as 'demo vehicles', which have already been

registered under Section 39 of the MV Act, are placed on record. In view of the statutory provisions referred to hereinbefore, conclusion is irresistible that 'demo vehicles' purchased by an automobile dealer, at a special cash discount or otherwise, which are not intended for sale to the customers, which are being used by that dealer for demonstration purpose for a period of two years or three years, cannot be treated as a vehicle bonafide in possession of that dealer, in the course of his business, which can be driven in any public place or any other place under the authorisation of a trade certificate granted under the CMV Rules. Therefore, 'demo vehicles' are required to be registered as per the mandate of Section 40 of the MV Act, by submitting an application for registration under Section 41 of the said Act, within the period prescribed under sub-rule (1) of Rule 47 of the CMV Rules.

33. In that view of the matter, no interference is warranted on Ext.P2 circular dated 06.08.2018 issued by the 2nd respondent Transport Commissioner and the consequential proceedings, as evidenced by Ext.P4 check report, Ext.P5 tax receipt and also Ext.P8 notice issued by the 4th respondent

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Regional Transport Officer.

In the result, the writ petition fails and the same is accordingly dismissed.

Sd/-

**ANIL K. NARENDRAN,
JUDGE**

AV

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE REGISTRATION CERTIFICATE BEARING NO.ER:297/06 DATED 29.03.2006.
- EXHIBIT P2 TRUE COPY OF THE CIRCULAR BEARING NO.C1/220/2018/TC DATED 06.08.2018.
- EXHIBIT P3 TRUE COPY OF THE JUDGMENT DATED 02.06.2016 IN WP(C) 17610/2016.
- EXHIBIT P4 TRUE COPY OF THE CHECK REPORT BEARING D NO: 494860, DATED 26.07.2018 AND LEGIBLE COPY.
- EXHIBIT P5 TRUE COPY OF THE RECEIPT EVIDENCING THE REMITTANCE OF THE TAX PERTAINING TO THE VEHICLE OF RS.10,92,820/-
- EXHIBIT P6 TRUE COPY OF THE REQUEST SEND BY THE 1ST PETITIONER BY EMAIL DATED 04.08.2018 TO THE 4TH RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE REPLY ISSUED BY THE 4TH RESPONDENT TO THE FIRST PETITIONER BY WAY OF EMAIL DATED 13.08.2018.
- EXHIBIT P8 TRUE COPY OF THE ONE OF SUCH NOTICE BEARING NO.R4/5619/2018C DATED 16.08.2018.
- EXHIBIT P9 TRUE COPY OF APPOINTMENT LETTER DT.20.12.2017 ISSUED BY THE 2ND PETITIONER IN FAVOUR OF NAJI EBRAHIM

RESPONDENTS' EXTS:

- ANNEXURE R5 (A) TRUE COPY OF ENGLISH VERSION OF THE CHECK REPORT
- ANNEXURE R5 (B) TRUE COPY OF PHOTOGRAPH SHOWING THE CHASSIS NUMBER OF THE VEHICLE
- ANNEXURE R5 (C) TRUE COPY OF REGISTRATION PARTICULARS AND PHOTOS OF THE VEHICLES.