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No.B1-386/TC/04.

Head Office  
Motor Vehicles Department  
Thiruvananthapuram  
Dated 02.07.2004

Circular No.23/2004

- Sub: Motor Vehicles Department - Vehicles purchased in public auction - realisation of tax arrears - issued clarification - reg.
- Ref: 1) Letter No.C/92/CZ-I dated 31.01.2004 from the Deputy Transport Commissioner, Central Zone, Thrissur.  
 2) Letter No.R2/07087/03/PP dated 17.01.04 from the Joint RTO, Pattambi.  
 3) This office letter of even No. dated 04.05.04 addressed to the Joint RTO, Ottapalam.

The Joint RTO, Pattambi vide reference read as second paper above has sought for clarification as to whether the liability for payment of arrears of vehicle tax in respect of vehicles sold in public auction by Government may be fixed either on the previous owner or on the auction purchaser. The question was arised when the Tahsildar, Ottappalam has confiscated the Autorickshaw bearing registration number KL-09/C-5429 for non-payment of instalment dues to the financier of the vehicle. Accordingly the relevant portion laid down in the Kerala Revenue Recovery Act 1968 as placed below was informed to the Joint RTO, Pattambi for necessary action.

Section 60 of the Kerala Revenue Recovery Act 1968 reads thus:-

"All immovable property brought to sale on account of arrears of public revenue due on land shall be sold free from all encumbrances and if any balance shall remain after liquidating the arrears with interest there on and cost of process, it shall be paid over to the defaulter.

From the above provision it can be seen that a sale of immovable property for arrears of public revenue becomes free from encumbrances, because of the specific provision in the said section. There is no indication in the Act that any other sale of movable property or immovable property will be free from encumbrances.

Motor Vehicles being a movable property, sale of such property under the provisions of the Revenue Recovery Act, will not become free from encumbrance.

In the decision reported in I.L.R. 1976 (1) ker 256 (Abraham Joseph VS RTO, Kottayam) it was held as follows:

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Jt RTO, MV in information.

Pr way

"A sale of immovable property for arrears of public revenue becomes free from encumbrances because of the specific provision in Section 60 of the Kerala Revenue Recovery Act, 1968. There is no indication in the Act that any other sale of movable or immovable properties will be free from encumbrances. Notice of sale of movable properties under the Act is to be in Form 2. There is no indication in the Form also that the sale will be free of all encumbrances so, it cannot be said that the sale of movables under the Act will be free of encumbrances. Under section 2 (b) of the T.P.G. Act 1963, the petitioner will be the operator of the vehicle he purchased in revenue sale. As per section 7 and 11 of the T.P.G. Act, 1963 the petitioner will be liable for the T.P.G. arrears of the vehicle for the period prior to his purchase. So the petitioner has no escape from the payment of arrears demanded from him if there is no bar of limitations. Moreover, what is purchased by the petitioner is only the interest of the defaulter in the vehicle. This is subject to the right of the State to realise the arrears of T.P.G. and will not include the right to realise the above arrears. In this view of the matter also, the right to realise the arrears is not lost by the revenue sale"

The dictum laid down in the above decision can be applied in the instant case. Under section 3 (1) of the KMVT Act, 1976 tax shall be levied on every motor vehicle used or kept for use in the State. Section 3 (3) says that the registered owner of or any person having possession or control of a motor vehicle shall be deemed to use or kept such vehicle for use in the State. Under sub section (1) of section 9 of the Act, the transferee is liable to pay the tax, which remains unpaid before the transfer.

In the light of the above decision and the provisions of law, the auction purchaser of the vehicle in the instant case is liable to pay the tax, which remains unpaid before the auction sale. Instructions given in Circular No.5/81 from this end will apply to this case.

The above mentioned clarification is also brought to the notice of all taxation officers. Receipt of the Circular should be acknowledged.

*K.P. Somarajan*  
 (K.P. SOMARAJAN, IPS)  
 TRANSPORT COMMISSIONER

To  
 All Deputy Transport Commissioners,  
 All Regional Transport Officers &  
 All Joint Regional Transport Officers.

Copy to: CA to TC, Joint TC, Senior DTC & Secretary, Senior DTC (Taxation), Senior AO, FO, LO, Asst. Secretary, STA, All SS and JS, Accounts Officer and spare.