

No.B2/8029/TC/2010.

Transport Commissionerate
Kerala, Thiruvananthapuram
Dated, 27.09.2011.

From

The Transport Commissioner
Thiruvananthapuram

To

All Deputy Transport Commissioners
All Regional Transport Officers
All Joint Regional Transport Officers

Sir,

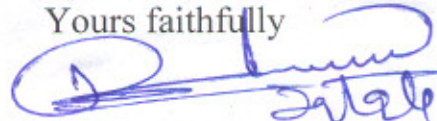
Sub:- Motor vehicles Department – WA No.412/10 filed by Chief
Post Master General and connected cases –reg.

Ref:- 1. Letter No. T4.WA.412/2010 dated 20.08.2011 from AG,
Kerala.

2. Judgment of the Honorable High Court, Kerala in WA
No. 412/10 and others dated 31st May 2011.

I am to invite your attention to the subject matter. The case was filed by the Postal Department, Kerala circle claiming exemption of tax, in the light of the Article 285(1) of the Constitution of India, for the vehicle owned by them. The division bench of the Honorable High Court has pointed out that Motor Vehicle tax is an indirect tax levied for the use of roads in the state and not a tax on property thus making it outside the scope of Article 285(1) before concluding that the vehicles owned by the petitioner is liable to be taxed. In this context I am to request you to act accordingly, in the light of the above decision, for the vehicles owned by the Central Government Departments/Institutions unless specifically exempted by the State Government invoking Section 22 of the Kerala Motor Vehicle Taxation Act 1976. The copy of the judgment is forwarded via e-mail.

Yours faithfully



Senior DTC (Taxation)

For Transport Commissioner

[Handwritten initials and date]
27/09/11

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT .

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE B.P.RAY

TUESDAY, THE 31ST MAY 2011 - 10TH JYAISHTA 1933

WA.No. 412 of 2010

AGAINST THE JUDGEMENT/ORDER IN WPC.15432/2006 Dated 24/06/2009

APPELLANTS/PETITIONERS

1. CHIEF POSTMASTER GENERAL,
KERALA CIRCLE, THIRUVANANTHAPURAM-33.
2. ASSISTANT POSTMASTER GENERAL (MAILS AND
MAIL MARKETING), O/D, CHIEF POSTMASTER GENERAL,
THIRUVANANTHAPURAM-33.

BY ADV. SRI.S.KRISHNAMOORTHY, CGC

RESPONDENTS/RESPONDENTS

1. STATE OF KERALA,
REP. BY ITS SECRETARY ROAD TRANSPORT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. TRANSPORT COMMISSIONER,
OFFICE OF THE TRANSPORT COMMISSIONER,
THIRUVANANTHAPURAM.
3. REGIONAL TRANSPORT OFFICER,
THIRUVANANTHAPURAM.

BY G.P. SRI.K.P.PRADEEP

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ALONG WITH
W.A. NO.366/2010 & WPC NO.11636/2011 ON 31.05/2011, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE B.P.RAY

TUESDAY, THE 31ST MAY 2011 - 10TH JYAISHTA 1933

WA.No. 366 of 2010()

AGAINST THE JUDGEMENT IN WPC.37633/2004 Dated 24/06/2009

APPELLANTS/PETITIONERS

1. POSTMASTER GENERAL,
CENTRAL REGION, KOCHI-18.
2. THE MANAGER, MAIL MOTOR SERVICE,
ERNAKULAM, KOCHI-682016.
3. THE SUPERINTENDENT OF POST OFFICES,
IDUKKI DIVISION, THODUPUZHA-635584.
4. THE SUPERINTENDENT OF POST OFFICES,
ALAPPUZHA DIVISION,ALAPPUZHA-688012.
5. THE SENIOR SUPERINTENDENT OF POST
OFFICES, THRISSUR DIVISION, THRISSUR-680001.

BY ADV. SRI.S.KRISHNAMOORTHY, CGC

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA, REP. BY ITS
SECRETARY(TRANSPORT), GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-1.
2. TRANSPORT COMMISSIONER, OFFICER OF
THE TRANSPORT COMMISSIONER, THIRUVANANTHAPURAM.
3. REGIONAL TRANSPORT OFFICER,
OFFICE OF THE RTO, ERNAKULAM-682030.
4. THE JOINT REGIONAL TRANSPORT OFFICER,
OFFICE OF THE JT.RTO, THODUPUZHA
5. REGIONAL TRANSPORT OFFICER, OFFICE OF
THE RTO, ALAPPUZHA.
6. REGIONAL TRANSPORT OFFICER,
OFFICE OF THE RTO, THRISSUR.

BY G.P. SRI.K.P.PRADEEP

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ALONG
WITH W.A. 412/2010 & WPC 11656-2011 ON 31.05.2011, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING

C.N.RAMACHANDRAN NAIR &
BHABANI PRASAD RAY, JJ.

C.R.

Writ Appeal Nos.412 & 366 of 2010 &
W.P.(C) No.11656 of 2011

Dated this the 31st day of May, 2011.

JUDGMENT

Ramachandran Nair, J.

The question raised in the connected Writ Appeals and the W.P. (C), all filed by the Postal Department, is one and the same i.e. whether the State Government is entitled to levy motor vehicle tax in respect of the vehicles owned and used by the Postal Department in Kerala. We have heard Standing-Counsel appearing for the appellants/petitioners and the Government Pleader appearing for the State Government and it's departments.

2. The proposition canvassed by the Standing Counsel appearing for the Postal Department is that motor vehicles belonging to Central Government Departments including the Postal Department come within the description of "property" belonging to the Union of India referred to in Article 285(1) of the Constitution of India which is exempt from tax under any State-law. However, this contention did not find

acceptance with the learned Single Judge who held that motor vehicle tax is an indirect tax which is not covered by Article 285(1) of the Constitution by following the decision of the Supreme Court reported in (2004) 136 STC 641 SC, which again was rendered by the Supreme Court following two earlier decisions of the Constitution Bench in SEA CUSTOMS ACT case (AIR 1963 SC 1760) and in NEW DELHI MUNICIPAL COMMITTEE VS. STATE OF PUNJAB reported in (1997) 7 SCC 339. However, in the two writ petitions filed by the Postal Department, the learned Single Judge took the view that Postal Department can approach the State Government for getting exemption by invoking powers conferred on the State under Section 22 of the Kerala Motor Vehicles Taxation Act, 1976 (hereinafter called "the Act"). It is against the common judgment rendered by the learned Single Judge in the two writ petitions filed by the Postal Department, they filed the Writ Appeals. Since the same issue was raised in another writ petition that was pending before the Single Bench, we ordered posting of the said case also for hearing and disposal along with the Writ Appeals.

3. Section 3 of the Act authorises levy and collection of motor vehicle tax on every vehicle kept for use in the State. It is the settled position by several decisions of the Supreme Court, particularly in *BOLANI ORES LTD. VS. STATE OF ORISSA* reported in 1974(2) SCC 777 that motor vehicle tax is a compensatory tax levied for use of the road by the vehicles. Admittedly, levy and collection of tax on motor vehicles is within the exclusive domain of the State under Entry 57 of List II of the VIIth Schedule to the Constitution which is as follows:

"Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III."

Nowhere in the Motor Vehicles Act, 1988, which is a Central legislation nor in any law made by Parliament, any exemption is provided for levy of tax on Central Government vehicles registered and operated in any State. Entry 33 of List III authorises both Parliament as well as the State Legislature to make law on mechanically propelled vehicles and the principles on which tax on

such vehicles are to be levied. This provision has no relevance so far as the controversy raised in this case is concerned i.e. whether by virtue of operation of Article 285(1) of the Constitution, the Postal Department or the Central Government can claim exemption from motor vehicle tax payable to the State Government for the vehicles registered and used in Kerala. The contention raised by Standing Counsel appearing for the appellants/petitioners is that the finding of the learned Single Judge that motor vehicle tax is not a direct tax is not correct. According to the appellants/petitioners, liability to pay tax is on the registered owner which is the Postal Department for the vehicles owned and operated by them in Kerala. So much so, the incidence of tax is directly falling on the Government Department is the case of the appellants/petitioners. We are unable to agree with this contention because motor vehicle tax otherwise popularly known as "road tax" is a tax for use of the vehicles on roads and not for ownership of the vehicles. There is a presumption in the Act that every registered vehicle is deemed to be kept for use in the State and so much so, liable to pay tax. However, for any period of non-user of the vehicle, the

registered owner is entitled to furnish Form G and get exemption from tax for the period during which the vehicles was not put to use on road under Section 5 of the Act read with Rule 10 of the Motor Vehicles Taxation Rules. We find that the incidence of tax is directly on the use of the vehicles on the roads maintained by the State and so much so, is not a direct tax on the Government or Central Government Department on account of the ownership of the vehicles. Article 285(1) of the Constitution is as follows:

"285. Exemption of property of the Union from State taxation:- (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

What is clear from sub-section (1) is that unless Parliament otherwise provides State shall not levy any tax on the property of the Union. We have already held above that motor vehicle tax is not a tax on the motor

vehicle, but a tax on the use of the motor vehicle on the road and so much so, the motor vehicle tax is outside the scope of exemption covered by Article 285(1). Further, it is worthwhile to refer to Entry 32 of List I of the VIIth Schedule which is as follows:

"32. Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides."

The above provision contained in the Union List recognises the property of the Union Government situated in the State subject to legislation by the State unless Parliament otherwise provides. There is no Parliamentary law exempting vehicles owned by Central Government and operating in any State, from the operation of the laws of such States. So much so, in our view, the claim of exemption from motor vehicle tax made by Central Government Department is thoroughly misconceived. For the foregoing reasons we approve the finding of the learned Single Judge that Article 285(1) of the Constitution does not bar the State from levying tax on motor vehicles owned by the Central Government and operated in the State under

Section 3 of the Act. However, it is a matter of policy for the State Government to consider whether exemption from motor vehicle tax could be granted to Central Government's vehicles or vehicles belonging to any particular department of the Central Government. Any such exemption can be considered and granted by the State Government under Section 22 of the Act and in our view, the learned Single Judge rightly suggested the appellants to approach the State Government for exemption. Consequently Writ Appeals are dismissed confirming the judgment of the learned Single Judge. Since the question raised in the writ petition is also the same, W.P.(C) is also dismissed.

Sd/-
C.N.RAMACHANDRAN NAIR
Judge

Sd/-
BHABANI PRASAD RAY
Judge

True copy

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P.S. to Judge