

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

WP (C) 3117/2023

c/w

CCP(S) 67/2024

Reserved on: 19.07.2024

Pronounced on: 09.08.2024

Ishfaq Ahmad Tramboo (aged 65 years),
S/o Abdul Ahad Tramboo,
R/o Nishat, Srinagar.

... Petitioner

Through: Mr. Hakim Suhail Ishtiaq, Advocate

V/s

1. UT of J&K through
Commissioner/Secretary, Transport Department,
Government of J&K, Civil Secretariat, Srinagar/Jammu.
2. Transport Commissioner, Government of J&K,
Srinagar.
3. Regional Transport Officer,
Kashmir, Srinagar.

... Respondents

Through: Mr. Jehangir Ahmad Dar, GA

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. The petitioner in the instant petition filed under Article 226 of the Constitution is aggrieved of the demand of 9% of declared value of the vehicle of the petitioner bearing registration no. "HR 26 CL 6404", made by respondent 3 as a condition precedent for assigning a new registration mark to his said vehicle in the Union Territory of Jammu and Kashmir (for short UT).

2. The facts giving rise to the filing of the instant petition as stated therein are that the petitioner claims himself to be the registered owner of the aforesaid vehicle registered with the transport authority of Gurgaon, Haryana. The petitioner states to have purchased the said vehicle in the year 2015 and plied the same at its place of registration and intending to ply now in the UT brought the said vehicle to the UT in the month of October, 2023 and in order to ply the said vehicle in the UT for more than 12 months, the petitioner states to have approached the respondent 3 herein for assigning of a new registration mark to his said vehicle in order to ply the same in the UT which the respondent 3 did not agree to, without first depositing of 9% of the value of vehicle amounting to Rs.4.00 lacs as calculated by respondent 3.
3. Aggrieved of the said demand of respondent 3 herein, the petitioner herein has maintained the instant petition heavily relying upon a Division Bench Judgement of this Court passed in case titled as **“Zahoor Ahmad Bhat and another vs. Government of J&K and Others”** passed in WP(C) 669/2021 decided on 29.04.2021, relating precisely to the same controversy as is being raised in the instant petition by the petitioner herein.
4. **Reply** to the petition has been filed by the respondents herein wherein at paras 3, 5 and 6 it is being stated that the registering

authorities are charging 9% as token tax (road usage tax) at the assessed value of the vehicle already registered outside the UT for the rest of its life as envisaged under section 3 of the J&K Motor Vehicles Taxation Act, 1963, whereas in para 8 the respondents herein in the said reply have stated that the remarks of the Division Bench in the judgement *supra* to the extent that the lifetime tax that is levied at the point of registration of a vehicle cannot be levied on a vehicle registered merely on a presumption that the vehicle registered outside the UT of J&K has remained in the UT of J&K for a period exceeding 12 months cannot be construed as a court direction on waiver of tax. In para 10 of the said reply it is stated that the said remark is in perfect consonance with the provisions of section 47 of the Motor Vehicles Act, 1988.

It is also stated in the objection that the judgment passed in the aforesaid Zahoor Ahmad Bhat's case as also orders passed in the contempt petition arising thereunder, being CCP(D) 16/2021, were challenged by the answering respondents before the Apex Court in SLP(C) no. 14654/2023 which, however, came to be dismissed by the Apex Court on 04.08.2023 on the ground of delay. The respondents herein have further stated in the objections that complying with orders passed by the Division Bench of this Court in the judgement *supra qua* the vehicle of the petitioner therein, the said vehicle was assigned

registration mark of UT without the road tax, however, the respondents have approached the transport department of NCT of Delhi for proportionate refund of the road tax paid in the case of the vehicle in question in that case and that the respondents are willing to officially forward the case of the petitioner herein to the Government of Haryana, if the petitioner applies before them.

Heard learned counsel for the parties and perused the record.

5. Before proceeding to advert to the issue involved in the instant petition, it would be appropriate to refer hereunder the provisions of section 41, 46 and 47 of Motor Vehicles Act of 1988, being relevant to the controversy:-

41. Registration, how to be made.—(1) 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: Provided that 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 purposes of this Act.

(2) An application referred to in sub-section (1) shall be accompanied by such fee as may be prescribed by the Central Government.

(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.

(4) In addition to the other particulars required to be included in the certificate of registration, it shall also specify the type of the motor vehicle, being a type as the Central Government may, having regard to the design, construction and use of the motor vehicle, by notification in the Official Gazette, specify.

(5) The registering authority shall enter the particulars of the certificate referred to in sub-section (3) in a register to be maintained in such form and manner as may be prescribed by the Central Government.

(6) The registering authority shall assign to the vehicle, for display thereon, a distinguishing mark (in this Act referred to as the registration mark) consisting of one of the groups of such of those letters and followed by such letters and figures as are allotted to the State by the Central Government from time to time by notification in the Official Gazette, and displayed and shown on the motor vehicle in such form and in such manner as may be prescribed by the Central Government.

(7) A certificate of registration issued under sub-section (3), whether before or after the commencement of this Act, in respect of a motor vehicle, other than a transport vehicle, shall, subject to the provisions contained in this Act, be valid only for a period of fifteen years from the date of issue of such certificate and shall be renewable.

(8) An application by or on behalf of the owner of a motor vehicle, other than a transport vehicle, for the renewal of a certificate of registration shall be made within such period and in such form, containing such particulars and information as may be prescribed by the Central Government.

(9) An application referred to in sub-section (8) shall be accompanied by such fee as may be prescribed by the Central Government.

(10) Subject to the provisions of section 56, the registering authority may, on receipt of an application under sub-section (8), renew the certificate of registration for a period of five years and intimate the fact to the original registering authority, if it is not the original registering authority.

(11) 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):

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

(12) Where the owner has paid the amount under sub-section (11), no action shall be taken against him under section 177.

(13) For the purposes of sub-section (11), 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) or sub-section (8).

(14) An application for the issue of a duplicate certificate of registration shall be made to the 1[~~last~~ registering authority] in

such form, containing such particulars and information along with such fee as may be prescribed by the Central Government.

46. Effectiveness in India of registration.—Subject to the provisions of section 47, a motor vehicle registered in accordance with this Chapter in any State shall not require to be registered elsewhere in India and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout India.

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

Provided that an application under this sub-section shall be accompanied—

- (i) by the no objection certificate obtained under section 48, or
- (ii) (ii) in a case where no such certificate has been obtained, by—
 - (a) the receipt obtained under sub-section (2) of section 48; or
 - (b) the postal acknowledgement received by the owner of the vehicle if he has sent an application in this behalf by registered post acknowledgement due to the registering authority referred to in section 48, together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted:

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

(2) The registering authority, to which application is made under sub-section (1), shall after making such verification, as it thinks fit, of the returns, if any, received under section 62,

assign the vehicle a registration mark as specified in sub-section (6) of section 41 to be displayed and shown thereafter on the vehicle and shall enter the mark upon the certificate of registration before returning it to the applicant and shall, in communication with the registering authority by whom the vehicle was previously registered, arrange for the transfer of the registration of the vehicle from the records of that registering authority to its own records.

(3) Where a motor vehicle is held under a hire-purchase or lease or hypothecation agreement, the registering authority shall, after assigning the vehicle a registration mark under sub-section (2), inform the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the hire-purchase or lease or hypothecation agreement (by sending to such person a notice by registered post 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 a motor vehicle not registered within the State, which is brought into or is for the time being in the State, to furnish to the prescribed authority in the State such information with respect to the motor vehicle and its registration as may be prescribed.

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

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

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

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

On a conjoint reading of aforesaid provisions, it emanates that a motor vehicle has to be registered once upon payment of fee prescribed by the Central Government and such registration shall be valid throughout India and a vehicle once registered is not required to be registered elsewhere in India and also that

after the registration of vehicle by the registering authority, such authority has to assign a registration mark to such vehicle and further in a situation where a vehicle is removed to another State or UT after requisite formalities, the registering authority of that State or UT wherein the vehicle is kept for more than 12 months has to assign a registration mark assigned to it by the Central Government and arrange for the transfer of registration of the vehicle from the records of the registering authority where the vehicle is initially/originally registered and further the State Government has the power to frame rules requiring the owner of a motor vehicle not registered within the State wherein it 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 not pertaining to the registration fee. It is also manifest that the Motor Vehicles Act, 1988 nowhere provides for re-registration of a vehicle and payment of fee upon such re-registration.

6. Further, section 3 of J&K Motor Vehicle Taxation Act, 1957, reveals that the same is operating in a different arena and cannot said to be a condition precedent for a person who seeks registration of his vehicle though a demand under said section 3 of the said Act can be made by the authority at the time of the registration of the new vehicle under and in terms of the Motor Vehicle Act, 1988.

7. It is noteworthy that this court while dealing with the issues involved in the instant petition need not to delve deep into the said issues as the same stand set at rest by the Division Bench in the aforesaid Zahoor Ahmad Bhat's case having been upheld by the Apex Court. Thus, under these circumstances a reference in this regard to para 29 of the judgment *supra* of the Division Bench would be advantageous, which reads as under:

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

[In the aforesaid para, apparently due to typographical error section 3 of the Motor Vehicles Act instead of J&K Motor Vehicles Taxation Act, 1957 has been mentioned].

8. Having regard to the judgment *supra* of the Division Bench inasmuch as the issues involved in the instant petition, the petition deserves to be allowed.

9. Accordingly, the petition is allowed and by issuance of a writ of mandamus the respondents in general and respondent 3 in particular are commanded to assign registration mark of the UT of J&K to the aforesaid vehicle of the petitioner in terms of section 47 of the Motor Vehicles Act of 1988 without demanding 9% token tax. Let the needful be done by the respondents within four weeks' time from the date of passing of this order. The respondents, however shall be at liberty to take up the matter with regard to the aforesaid vehicle of the petitioner with the registering authority of the State of Haryana for refund of token tax paid on the vehicle in question for its payment towards the UT of J&K as has been done in the above Zahoor Ahmad Bhat's case.

10. In view of the aforesaid disposal of the main petition, the contempt petition CCP(S) 67/2024 pales into insignificance and as such shall stand closed.

(JAVED IQBAL WANI)
JUDGE

Srinagar
09.08.2024
Mubashir

Whether the order is speaking: Yes
Whether the order is reportable: Yes