IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

THURSDAY ,THE 06TH DAY OF DECEMBER 2018 / 15TH AGRAHAYANA, 1940

WA.No. 1803 of 2018

AGAINST THE ORDER/JUDGMENT IN WP(C) 29019/2018 of HIGHCOURT

APPELLANT/S:

1 KUN MOTOR CO.PVT. LTD.,1, CUDALLORE MAIN ROAD, MURUNGAPAKKAM, PUDUCHERRY, 605 004, REPRESENTED BY COLLIN ELSON, SALES MANAGER.

2 VISHNU MOHAN,RANI BHAVAN, KELSON ROAD, KOWDIAR, THIRUVANANTHAPURAM-695003.

BY ADVS.
HARISANKAR V. MENON
KRISHNA. K
MEERA V.MENON

RESPONDENT/S:

1 THE ASST. STATE TAX OFFICER, SQUAD NO. III, KERALA STATE GST DEPARTMENT, THIRUVANANTHAPURAM AT NEYYATTINKARA - 695 121.

2 STATE OF KERALA, REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

OTHER PRESENT:

SRI C E UNNIKRISHNAN SPL GP

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06.12.2018, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CR

J U D G M E N T

Vinod Chandran, J

The issue arises as to whether the omission to upload e-way bill with respect to the transport of a car purchased in Puthuchery, by a person normally residing in Thiruvananthapuram, attracts Section 129 of the Kerala State Goods and Services Tax Act, 2017 (KSG&ST Act for brevity). The impugned judgment found that there should be an adjudication carried on and refused release of the vehicle. In appeal, at the admission stage, we *prima facie* found that there is no requirement for detaining the vehicle for reason of there being no mandate to upload an e-way bill when the transport is of used personal effects coming within the description of "used personal and household effects" as found in the Annexure, exempted by sub-rule (14) of Rule 138 of the Kerala Goods and

Services Tax Rules, 2017 (KG&ST Rules hereafter); which a used car would be. The State at that stage sought for time to file a counter affidavit since the dismissal of the writ petition was at the admission stage itself.

2. A counter affidavit has been filed and we have heard Sri.Harishankar V Menon on behalf of the appellants and Sri C. E. Unnikrishnan, the learned Special Government Pleader (Taxes) on behalf of the State.

3. On facts it has to be noticed that the 1st appellant is a dealer in motor vehicles and the 2nd appellant purchased a Mini-Cooper car from the 1st appellant. A temporary registration in the name of the 2nd appellant was also taken from Puthuchery Motor Vehicles Department as also an insurance cover obtained. The 2nd appellant then, could have driven the vehicle to Thiruvananthapuram where he normally resides. However, the purchase

being made of a fancy car at a fancy price he felt that he should not subject the car to a long journey from Puthuchery to Thiruvananthapuram. He hence entrusted the same to the dealer itself for transportation. Here, we have to notice that the dealer has a transportation and logistic wing which is also registered under the GST enactment. The goods were transported in a specially equipped carriage by road. The invoice of purchase of car showed collection of IGST, obviously deeming the sale to be an inter-state one. An invoice is issued for the transporting charges, which too shows collection of IGST, being the tax for service of transportation of the vehicle. The vehicle in which the car was carried was detained at Amaravila, within the State of Kerala.

4. A notice was issued as seen from Ext.P4(b) which contained three grounds, one of which was, of no e-way bill having been uploaded.

The other grounds were of registration in Puthuchery being suspicious and the compensation cess having been collected at a lesser rate; which grounds were given up when Ext.P4(a) order of detention was issued; referring only to failure to upload the e-way bill.

5. The appellants are respectvely the dealer-transporter and the purchaser-owner of the vehicle. Both were issued with the notices and the order of detention and hence were before this Court seeking release of the vehicle. The primary contention was that the car was purchased by the 2nd appellant from the 1st appellant, delivery effected and a temporary registration taken out. The car then becomes the personal effect of the former, who transported it to his normal place of residence. There was hence no requirement for uploading e-way bill under Rule 138 for reason of the exemption granted under Sub-rule (14) of Rule 138 read with

the Annexure. It was also argued that the 2nd appellant if had driven the vehicle from Puthuchery to Thiruvananthapuram there would have been no such detention or demand for tax. The demand raised as per the notice issued and the order passed was the applicable tax and penalty at 100% of the tax applicable, being the IGST which the dealer had already collected as evidenced from the invoice produced at Ext.P1.

6. The learned Single Judge rightly found Section 129 to be the mechanism for detention,seizure and release of goods and conveyance, in transit, with interim release controlled by sub-section (4) of Section 67, by virtue of Section 129(2). Release of goods detained can be effected under sub-clause (a) of Section 129, when the owner comes forth, on payment of applicable tax and penalty coming to 100% of tax and when any other person so offers, on payment of

applicable tax and penalty equal to 50% of tax under sub-clause(b). Sub-clause (c) of Section 129(1) speaks of release, also on furnishing security under clause (a) or (b), as prescribed. If (a) or (b) is complied and the goods released, then the proceedings stand concluded and on furnishing security there should be an order passed under Section 129(3). It is also provided that on failure to pay tax and penalty there could be confiscation proceedings under Section 130, obviously intended at realisation of tax and penalty imposed. Rule 138 of the KG&ST Rules mandates furnishing of information prior to movement of goods, by generating an e-way bill, a copy of which, physical or mapped to a radio frequency identification (RFID), has to accompany the goods along with the sale invoice or bill of supply or delivery challan, when in transit.

7. The learned Single Judge looked at the

decision in *Commercial Tax Officer v. Madhu M.B (2017) 64 GST 9 (Ker)* wherein a Division Bench of this Court found that for obtaining release, of the goods and vehicle detained under Section 129, there has to be necessarily payment of tax and penalty or furnished; bank guarantee for the said amounts and a bond for the value of the goods. The Division Bench had set aside the order of the learned Single Judge which directed interim release, on payment of 50% of the demanded tax in that case. *(Asst.Sales Tax Officer v. Indus Motors Ltd. (2018) 5 SGSTR 402 (Ker))*was also relied on in which another Division Bench (ourselves) had found that even if the transaction is not taxable, Rules 55 and 138 of the KG&ST Rules prescribed documents to accompany the goods as provided thereunder and any failure; would result in detention under Section 129 and consequent demand of applicable tax and penalty. The learned Single Judge noticed

Exts.P1 and Ext.P3, the tax invoice of sale of vehicle and tax invoice for transportation, both of which indicated the supply at Thiruvananthapuram. The second proviso to sub-rule (3) of Rule 138 was noticed to find that even an unregistered person transporting goods by his own conveyance or by a hired one or through a transporter may generate the e-way bill on the common portal. Sub-rule (14) of Rule 138 was also noticed as was argued by the learned Counsel appearing for the appellant before the learned Single Judge; but the contention left to be answered by the detaining authority. Rule 55A wherein it was prescribed that in cases where there is no requirement of an e-way bill, only tax invoice need accompany the goods in transit was also noticed. From the aforesaid provisions the learned Single Judge found that though the 2nd appellant is an unregistered person, he could get

his car transported by his own conveyance or by hired one, in which event, he or the transporter may generate the e-way bill on the common portal. Then the learned Single Judge raised a doubt as to whether there was a completed intra-state sale or whether the transport was for an inter-state sale. The contention that the car was a used personal effect was also noticed. The learned Single Judge refused to venture into such adjudication for it being premature. Considering the fact that the appellant wanted only release of the goods as an interim measure, the learned Single Judge confined his consideration to that.

8. Considering the issue of an interim release, the learned Single Judge held that if the 2nd appellant had driven the car by himself to Puthuchery then, the tax regime would not have hampered the transport. But however, the 2nd

appellant having entrusted the vehicle to a transporter, the consequence of his driving the car from Puthuchery to Kerala remains in the conjectural realm, it was observed. Sub-rule (2) of Rule 138 was noticed to find that the registered person as a consignee or as a consignor has to generate e-way bill and upload it in the common portal. The decision in *Indus Towers* (supra) was relied on to find that if there is contravention of the provisions under the Act and Rules definitely Section 129 operates, as a result of which detention can be carried out. Consequence would be an order under Section 129(3) after affording an opportunity of hearing, and if tax and penalty is demanded, confiscation also could be ordered if the amounts demanded are not paid up. The learned Single Judge hence refused to release the vehicle as an interim measure, other than by resort to Section 129 and directed adjudication by the

detaining officer under Section 129.

9. Before us, the learned Counsel appearing for the appellants contended that there was a temporary registration taken out by the 2nd appellant which indicated the transfer of property in goods to the 2nd appellant by the 1st appellant. To advance his contention that the purchase of the car was over before the transport commenced and it becomes a personal effect, the learned Counsel appearing for the appellants refers to various dictionary meanings and two decisions in *(1959) All E.R 733 [Elliott v. Grey and (1959) 3 All E.R 737 [Morris Motors Ltd. v. Litty]* and the judgment of a Division Bench of this Court in *C.E Appeal 14/2014 dated 07.07.2017*. The learned Counsel also takes us through the provisions being Rule 55A and Rule 138 to contend that there is no requirement to upload the e-way bill if it falls under Annexure of Rule 138. *2016 (4) SCC 82 Commissioner of Commercial*

Taxes, Thiruvananthapuram v. KTC Automobiles **is relied on to assert that the sale took place at Puthuchery and the purchaser took possession of the goods by virtue of the temporary registration taken and insurance cover obtained in his name.**

10. The learned Special Government Pleader would however, contend that there can be no sale said to have been carried out or a transfer of property in goods, in Puthuchery merely for reason of a temporary registration issued. It is pointed out that the vehicle had run only 17kms as seen from the Odometer, the copy of which is produced as Annexure R2(a). It is contended that temporary registration is a necessary requirement insofar as delivery of the goods by a purchaser under Rule 41 and Rule 42 of the Central Motor Vehicle Rules,1989. It cannot for a moment be imagined that the 2nd appellant had taken delivery of the vehicle from the dealer and then carried out temporary

registration, subsequent to which the vehicle was entrusted to the dealer, the 1st appellant to transport the same to his place of residence at Thiruvananthapuram. It is submitted that Sections 7 and 10 of the Integrated Goods and Service Tax Act, 2017 (IG&ST Act), leads to the irresistible conclusion that an inter-State supply of goods would be completed only when the movement of goods terminates with delivery to the recipient. The goods and services tax regime is a destination based regime where the delivery of goods decides the nature of the transaction whether it is inter-State or intra-State. It is submitted that there could be no doubt that the present transaction is an inter-State transaction and there can be no delivery found, at Puthucherry merely by reason of the temporary registration obtained for the car, which is an essential requirement for delivery to the purchaser. The parties to the

transaction too understood it to be an inter-State sale, hence the IG&S tax collected in the invoice. A trade certificate as can be seen from Rule 41 of the CMV Rules cannot be the document on which delivery made to a purchaser of a vehicle intended for use in the roads. Rule 42 requires the holder of a trade certificate, being a dealer, to deliver a motor vehicle to a purchaser with registration whether temporary or permanent.

11. The temporary registration taken out for the car has in fact been taken out by the dealer without which the purchaser cannot take the vehicle out on to the public road. It is also argued that for the purpose of temporary registration the vehicle is never taken out of the dealership. There can also be no dispute, it is argued, that the transport was of a brand new car purchased by the 2nd appellant from the 1st appellant. If it never came into the possession of

the purchaser then it cannot be treated as a used personal effect, even if a used car is found to be a personal effect. Without prejudice, it is argued, a personal effect is something which is worn on the person and a car can never be considered as a personal effect. Reliance is placed on *(1976) 1 SCC 996 Rana Hemant Singhji Vs. Commissioner of Income Tax* to tear down the contention raised of a "personal effect". It would definitely not be a household effect. Annexure to Rule 138 (14) of the KGST Rules, does not have any relevance to the inter-State sale of a car in pursuance of which the transport was made. Reference is also made to the Customs Tariff Act to argue that, to be termed as used, the person using it should have obtained some kind of utility by way of using that commodity. *Indus Towers Ltd.*(supra), is relied on to contend that this Court, this very Bench, had held that even in cases where there is no tax effect for the

transaction, pursuant to which transport is carried out; the compliance of the statutory prescriptions is sacrosanct, in default of which there could be automatic imposition of penalty. The *bonafides* or otherwise of a transport, is not at all a question which can be considered by an adjudicating authority especially since it is a civil liability cast on the persons carrying out conveyance. The detention is not related to an attempt at evasion alone, is the compelling argument. The learned Special Government Pleader would urge this Court to leave the adjudication to the adjudicating authority especially since there is a mixed bundle of facts and law involved to be considered. The adjudicating authority at the first instance has to look into it and this Court need not preempt such consideration. The decision relied on by the appellant in KTC Automobiles (supra) has absolutely no application and if at all it can be applied, it

has to be in favour of the State, concludes the learned Special Government Pleader.

12. We feel it would be worthwhile to delve into the aspect of whether the sale was an intra-state one or an inter-State one. The seller understood it to be an inter-State one, as is revealed from the invoices, both of sale of car and the transportation. Here, we have to observe that, if it was an intra-State sale, then, the State of Kerala, where the vehicle was detained would have absolutely no tax benefit and there is no cause for detention. When it is said that, if the car was driven by the purchaser from Puducherry to Kerala there would be no cause of detention, then it should be understood as an intra-State sale and in that case, if the goods were detained within Puthuchery, probably there could be a contention raised by the Union Territory of Puthuchery as to contravention of the taxing provisions. Tax which

was due to the Union Territory will not flow into its coffers could be a contention taken. As has been rightly pointed out by the learned Special Government Pleader(Taxes)the G&ST regime being destination based and the purchaser being from an outside State, it was understood by the seller that it was an inter-State sales. The State of Kerala stood to benefit by that understanding. There is no dispute that the tax payable on an inter-State sale was paid by the purchaser and the same reflected in the invoice issued by the seller. We however raise a caveat here, that the nature of the transaction whether it is inter-State or intra-State supply is to be decided from the provisions in the statute and not by the intention or understanding of the parties to the transaction.

13. In understanding inter-State and intra-State sale, one has to look at the IG&ST Act, specifically Chapter IV, which speaks of

'Determination of Nature of Supply'; the word "supply" being defined under Section 7 of the Central Goods and Services Tax Act, 2017 (CG&ST Act). The levy under Section 9 of that Act is on every supply of goods and services. Section 7 of the IG&ST Act, provides for inter-State supply to be, when the location of the supplier and the place of supply are in two different States or two different Union Territories or a State and a Union Territory. Likewise Section 8 speaks of intra-State supply to be when the location of the supplier and the place of supply of goods are in the same State or in the same Union Territory. Both these provisions are subject to Section 10, of which sub-section (1)(a) is relevant for our purpose, which is extracted below:

> ***"10. Place of supply of goods other than supply of goods imported into, or exported from India.***

(1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under:

(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient."

14. To determine the place of supply of goods, what is relevant is that the movement of goods should be occasioned by the transaction of supply, as evident from the words "where the supply involves movement of goods". It is in such circumstances that the location of supply would be the location of the goods, at the time at which the movement of goods terminates for delivery to the recipient. What is discernible is that, we repeat,

the transaction of supply itself, should occasion the movement of the goods. Then the location of the supply would be fixed as the place where the goods are delivered, so as to apply Section 7 or Section 8.

15. A transaction which terminates with the supply within a State is an intra-State supply. However, when a dealer or manufacturer within the State of Kerala purchases goods for the purpose of further sale or manufacture within the State of Kerala, from an outside State dealer and transports it to their manufacturing unit or dealership, then the transaction occasions the movement of goods. Though the sale occurs in that outside State, the place of supply of goods is in this State since the transaction of sale occasions the movement of goods from one State to another and the supply is terminated in this State; whether the movement is by the supplier or the recipient himself. But, when a person residing in one State goes to another

State and purchase goods for his own use, the supply with respect to the transaction terminates on the individual taking possession of the goods in that other State. The movement of the goods, after such sale is terminated and delivery is effected, whether it be inside the State or to outside that State, would be the prerogative of the purchaser, who owns the goods, in whom the property in such goods vests and such movement would not be that occasioned by the sale transaction or the supply thereon.

16. In the present case, a resident of Trivandrum within the State of Kerala went to the Union Territory of Puthuchery and purchased a car from a dealership there. It is the specific submission of the purchaser that the said car was not available within the State of Kerala for purchase, there being no dealership for the manufacturer within the State of Kerala. There is

also no question of any tax evasion as of now, by a purchase made from outside the State, since there is a uniform rate prescribed all over the country. The shift in so far as the GST regime being destination based taxation, is only the shift from the earlier regimes, which was source of goods or origin based. Hence earlier, when goods were sold from one State to another, the levy was under the CST Act, which benefit goes to the State from which the sale originates. In the destination based regime, there is a shift in so far as when there is an inter-State sale, the tax benefit accrues to the State in which supply is made, where the goods eventually are used.

17. When, a resident of Trivandrum purchases a car in Puthuchery, takes possession of the same, obtain temporary registration in his name and takes out an insurance cover for a period of one year, also in his name; which insurance cover

is mandatory under Section 146 of the M.V. Act, the presumption can only be that the delivery was effected in Puthuchery itself. All of these factors indicate that the transfer of property in goods vests with the purchaser, at Puthucherry itself, wherein the supply terminated. For all we can see, the purchaser could then take a tour of the country and then come to his residence at Trivandrum or take it into any other State and use it there during the one month period, in which the vehicle can be used on the roads by virtue of the temporary registration. The registration obtained in one State is also effective throughout India by virtue of Section 46 of the M.V. Act. This is the volition of the purchaser and the movement of the goods after the supply has terminated, in accordance with Sections 7 & 8, read with Section 10 of the IG&ST Act is not the concern of the taxing authorities or even the motor vehicle authorities, the latter of

whom is only concerned with the permanent registration being made within the State in which the vehicle is proposed to be used. The requirement also is that, necessarily the vehicle would have to be permanently registered in the State in which the purchaser has his residence or place of business and normally intends to keep it for use as provided in Section 42 of the M.V. Act.

18. *Madhu M.B.* was a case in which the goods were detained for reason of no nexus between the documents accompanied and the actual goods under transport. The Division Bench found that under Rule 140(2), there is a provision for release of goods on a provisional basis, but only on execution of a bond in Form GST INS 04 and furnishing of security in the form of a bank guarantee equivalent to the amount of applicable tax and penalty payable. The Division Bench after considering the provision requiring production of goods on a demand made; also directed

expeditious finalization of adjudication proceedings, since the dealer would not be entitled to deal with the goods till adjudication is over. Pertinent is the fact that it was a case in which there was a discrepancy noticed with respect to the documents accompanied and the actual goods in transport. *Indus Towers Ltd.* considered two writ petitions where the detention was on account of no e-way bill having been uploaded or accompanied with the goods. In one, the transaction was return of goods after job-works and the other stock transfer from the dealers godown to their work site. Both were instances where the dealer asserted the transport to be without liability to tax, but technically could have been otherwise; meaning a sale. In the present case as we noticed the transaction admittedly was of sale, with liability to tax and the applicable tax having been paid as evidenced from the invoice accompanying the transport. The

perceived doubt as to whether the transaction was an intra-state or inter-state sale actually brings forth a Catch-22 situation; for if it was the former there is no ground for detention within the State of Kerala and if it was the latter then the applicable tax is satisfied, which document is accompanying the transport also.

19. Rule 41 of the Central Motor Vehicles Rules details the purposes for which motor vehicle with trade certificate may be used. Sub-clause (d) of Rule 41 speaks of "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." Rule 42 however, mandates that the delivery of a vehicle to a purchaser can be only after registering the vehicle temporarily or permanently. The application for registration has to be made under Rule 47 in Form No.20 to the registering authority within a period of 7 days

from the date of taking delivery of such vehicle, excluding the period of journey and in respect of vehicles temporarily registered, an application shall be made before the temporary registration expires. The issue of certificate of permanent registration is under Rule 48 after verification of the documents furnished therein. A conspectus of the above provisions would indicate that it was perfectly possible for the dealer to have transported the vehicle on the strength of a trade certificate but however, made the delivery of the vehicle in Thiruvananthapuram only after taking either a temporary registration or a permanent one from the registering authority having jurisdiction over Thiruvnanathapuram.

20. Here, undoubtedly the vehicle was temporarily registered at Puthuchery. It cannot be said that the temporary registration cannot decide the aspect of sale, especially when the temporary

registration was taken out in the name of the purchaser. If the vehicle need not be moved out of the dealership for the purpose of temporary registration, the question arises as how it ran for 17 kilometers; obviously after the registration. The transfer of property of goods was occasioned on the temporary registration being made, but, however, the seller-dealer understood it as an inter-state sale since the purchase was intended for use in a State other than the State from which the sale was effected. The purchaser had also paid IGST, a portion of which would be accrued to the State in which eventually the car would be used.

21. In this context, we have to see KTC Automobiles (supra) wherein the Department, under the Kerala General Sales Tax Act, proceeded under Section 45A on the premise that the dealer had shown 263 numbers of car having sold from its Mahe Branch when the cars had never been delivered at

Mahe by the manufacturer. The allegation was that the cars were merely registered by the motor vehicles department of Mahe and the cars never physically reached there. Mahe being a Union Territory, at that point, levied lesser tax on the sale of motor vehicles than Kerala from which State actually the sale was made, the purchasers being all residents of the State of Kerala. The specific contention raised by the dealer as seen from paragraph 8 was that the first sale of a motor vehicle is only at the place of registration of the vehicle by the authority empowered to register motor vehicles under chapter IV of the Motor Vehicles Act. It was held:

> **19. From the above submissions and counter-submissions of the parties as well as relevant statutory provisions in the Motor Vehicles Act, 1988; the Central Motor Vehicles Rules, 1989; Section 4(2) of the Central Sales Tax Act, 1956; Sections 4, 19 and 20 of the Sale of Goods Act and the**

relevant provisions of the KGST Act and the Rules noticed earlier, we find no difficulty in accepting the submissions advanced on behalf of the appellant that the application of registration is by law required to be made by or on behalf of the owner whose name is to be mentioned in the registration form along with relevant particulars of the vehicle such as engine number and chassis number and hence, registration of a motor vehicle is a post-sale event.

20. But this legal proposition does not take the appellant far. It must be carefully seen as to when the properties, particularly possession of a motor vehicle passes or can pass legally to the purchaser, authorising him to apply for registration. Only after obtaining valid registration under the Motor Vehicles Act, the purchaser gets entitled to use the vehicle in public places. Under the scheme of the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989 the dealer cannot permit the purchaser to use the motor vehicle and thus enjoy its possession unless and until a temporary or

permanent registration is obtained by him. Only thereafter, the vehicle can safely be said to be no more under possession of the dealer. Clearly, mere mentioning of engine number and chassis number of a motor vehicle in the invoice of sale does not entitle the intending purchaser to appropriate all the goods i.e. the motor vehicle till its possession is or can be lawfully handed over to him by the dealer without violating the statutory provisions governing motor vehicles. Such transfer of possession can take place only when the vehicle reaches the place where the registering authority will be obliged to inspect for the purpose of finding out whether it is a roadworthy and registrable motor vehicle and whether its identification marks tally with those given in the sale invoice and the application for registration. The possession can lawfully be handed over to the purchaser at this juncture because law requires the purchaser as an "owner" to make an application for registration but at the same time the law also prohibits use of the motor vehicle by the owner until it is duly registered by

the registering authority.

21. Hence, in order to satisfy the requirement of law noticed above, the dealer can deliver possession and owner can take possession and present the vehicle for registration only when it reaches the office of the registering authority. With the handing over of the possession of a specific motor vehicle just prior to registration, the dealer completes the agreement of sale rendering it a perfected sale. The purchaser as an "owner" under the Motor Vehicles Act is thereafter obliged to obtain certificate of registration which alone entitles him to enjoy the possession of the vehicle in practical terms by enjoying the right to use the vehicle at public places, after meeting the other statutory obligations of insurance, etc. Hence, technically though the registration of a motor vehicle is a post-sale event, the event of sale is closely linked in time with the event of registration. Neither the manufacturer nor can the dealer of a motor vehicle permit the intended purchaser having an agreement of sale to use the

> **motor vehicle even for taking it to the registration office in view of the statutory provisions already noticed. Hence lawful possession with the right of use is permissible to be given to the intended owner only after reaching the vehicle to the office of the registering authority. Thus seen, in practical terms though sale precedes the event of registration, in normal circumstances and as the law stands, it is coterminous with registration of a new motor vehicle.**

(underlining by us for emphasis)

The registration obtained of the vehicle hence establishes beyond any pale of doubt that the property in the goods stood transferred to the purchaser and the transport by the 1st appellant was on behalf of the purchaser, the 2nd appellant.

22. In this context we will also refer to the decision of a Division Bench of this Court in *C.E. Appeal 14 & 15 of 2014 Commissioner of Central Excise Vs. Sai Service Station Ltd. dated*

07.07.2017. This Court was concerned with the question as to whether the sale of pre-owned cars was a sale simplicitor or service, in the context of the assessee therein not having registered the pre-owned cars in its name and merely facilitates the sale from the prior owner. This Court found that the "sale or the ownership transfer of a motor vehicle is governed by the Sale of Goods Act and not the Motor Vehicles Act". We referrred to this only to emphasize that whatever be the position, in the subject transaction there is transfer of property in goods and completed sale within Puthuchery as per the Sale of Goods Act and the Motor Vehicles Act. The fact that temporary registration was obtained at Puthuchery, and insurance cover taken in the name of the registered owner establishes that the sale had been completed at Puthuchery itself.

23. The fact remains that the 2nd appellant could have very well driven the vehicle from Puthuchery to Kerala without any problem. If the vehicle was driven by the petitioner, there was absolutely no reason to upload an e-way bill. However, as noticed at the beginning, the purchaser having taken delivery of a fancy car at a fancy price was apprehensive of driving the car from Puthuchery to Kerala. Quite understandable, given the traffic and road conditions. The fact also is undisputed that the vehicle has run for 17 kms as is seen from Ext.R1(a). This is the background in which we have to understand the purchaser having taken delivery of the vehicle at Puthuchery, and its entrustment to the dealer to transport the vehicle from Puthuchery to Thiruvananthapuram. The sale made by the dealer and the service of transportation of the vehicle are quite distinct transactions; one of supply of goods and the other

of service. The transport cannot be understood as one in the course of sale for the purpose of supply at Thiruvananthapuram.The service of transportation was for a consideration on which also tax was paid by the dealer. The transportation was by the logistics wing of the selling dealer who had collected tax on the consideration for the service rendered.

24. Now the question also arise as to whether the brand new car taken delivery of by the 2nd appellant at Puthuchery and transported to Thiruvananthapuram can be termed to be a used car and hence a used personal effect. How "used" is generally understood, is evident from the various definitions as available in the dictionaries as extracted here-under:-

Oxford Advanced Learner's Dictionary:

Used: that has belonged to or been used by

somebody else before SECOND-HAND: used cars

New Webster's Dictionary:

Utilized in or employed for some accomplishment or function; having undergone use; secondhand

Collins COBUILD English Dictionary:

A used car has already had one or more owners

Would you buy a used car from this man.. His only big purchase has been a used Ford.

We see from the various definitions as extracted from the dictionaries herein above that "used" means something which is second hand. A car on purchase from the authorised dealer of the manufacturer, with a registration taken is owned by the registered owner and looses its sheen of a brand new car. It is common knowledge too that the minute a car is driven out of a dealership, the price dips and it only has second-hand value which is not exigible to tax as per Notification No. 8/2018-Central Tax (Rate) dated 25.01.2018 of the

Government of India, Ministry of Finance; which though levies tax on old and used motor vehicles, confines it to a positive margin on the subsequent sale, from the purchase price.

25. The definition of "personal effects" includes a car as is discernible from its meaning in Black's Law Dictionary, which is extracted here under:

> **"Personal effects: Articles associated with person, as property having more or less intimate relation to person of possessor; "effects" meaning movable or chattel property of any kind. Usual reference is to the following items owned by a decedent at the time of death: clothing, furniture, jewelry, stamp and coin collections, silverware, china, crystal, cooking utensils, books, cars, televisions, radios, etc. Term when used in will, includes only such tangible property as**

attended the person, or such tangible property as is worn or carried about the person. In re Sorensen's Estate, 46 Cal.App.2d 35, 115 P.2s 241, 243. Term "personal effects" when employed in a will enjoys no settled technical meaning and, when used in its primary sense, without any qualifying words, ordinarily embraces such tangible property as is worn or carried about the person, or tangible property having some intimate relation to the person of the testator or testatrix; where it is required by the context within which the term appears, it may enjoy a broader meaning. In re Stengel's Estate, Mo.App., 557 S.W.2d 255, 260"

26. *Rana Hemant Singhji* was in the context of the specific words employed in the definition that was considered; which was as follows:

> **(4A) "Capital asset" means property of any kind held by an assessee, whether or not connected with his business,**

> **profession or vocation, but does not include**
>
> **(i)...**
>
> **(ii) personal effects, that is to say movable property (including wearing apparel, jewellery, and furniture) held for personal use by the assessee or any member of his family dependent on him"**

It was held "*a close scrutiny of the context in which the expression occurs shows that only those effects can legitimately be laid to be personal which pertain to the assessee's person. In other words, an intimate connection between the effects and the person of the assessee must be shown to exist to render them personal effects.*" The silver bars or bullion, by no stretch of imagination could be deemed to be effects meant for personal use was the finding. Even the sovereigns and silver coins, which were asserted to be brought out of iron safes, only for puja, for purposes of ornamentation

of the deity, was also held to be not personal effects, especially in the context of the factual finding that they were delivered to the Bank for sale. The decision has no application here. The reference to Customs Tariff Act is also irrelevant since the taxing statute herein does not, by specific words or intendment adopt that definition available in the other enactment. Even going by the normal connotations, a car is the personal effect of the person, who carries the registration in his name, who also carries with it the liability to compensate any third party injury caused by the use of such car on the roads. In the case of a car the like of which has been purchased by the 2nd appellant, it is also a priced possession, to be driven around and more to be flaunted as a status symbol.

27. We also are in agreement with the proposition as seen from the English decisions

placed before us. *Elliott v. Grey* was concerned with a situation where a motor car, without an insurance policy, being parked outside the registered owner's house after it had broken down. The vehicle was not in a movable condition, since the owner had jacked up the wheels and removed the battery and terminated his insurance cover. Whether he could be charged under the Road Traffic Act, for not having a valid insurance cover was the question. Considering the words: "to use .. a motor vehicle on road" without an insurance cover was held to mean "to have the use of a motor vehicle on a road". Whether it could actually be driven was irrelevant in so far as it could have been moved, though in a broken down condition and hence the owner had the use of the motor vehicle on the road. Section 146 of the M.V. Act also similarly prohibits use of a motor vehicle in a public place, without a valid insurance cover, complying with

requirements of Chapter XI. The Kerala Motor Vehicles Taxation Act also speaks of a tax to be levied on any vehicle "kept for use within the State"; whether it is actually used or is incapable of being used due to mechanical condition or otherwise, is quite irrelevant. *Morris Motors Ltd. v. Lilley* is a case in point wherein the plaintiffs were manufacturers of motor cars, who marketed and sold the cars manufactured through its authorised distributors. An individual purchased a car with warranty, which was for the new vehicle and for the first owner/user. The purchaser took delivery of the car and then sold it to a motor dealer, who advertised the car in a newspaper under the heading 'New Cars', which was challenged by the manufacturer. It was held that a car ceased to be new, when it was sold in retail by the authorised dealer and is registered with the local authority and had been driven away by a purchaser. Here also

even accepting the fact that there need be no production of the vehicle for a temporary registration, it has to be noticed that the car had been driven for 17kms. The brand new car would have an odometer showing zero and necessarily it was driven only after the supply to the purchaser. The purchaser came to the possession of the vehicle on its retail sale and had taken out a registration albeit temporary, in his name, as also an insurance, the policy covering his risk as a registered owner of the vehicle. From the moment the vehicle is temporarily registered, in the purchasers name; it is deemed that he is keeping it in his possession for use on the roads and any liability incurred in such use as against third parties would be the sole responsibility of the registered owner and not the supplier, who is the authorised dealer of the manufacturer.

28. We do not understand how the State

could take a contention that if the car had been driven into the State of Kerala from the U.T. Of Puthuchery; then there could not have been a detention under Section 129, since then there would have been no question of uploading of e-way bill. We cannot also comprehend how an intra-State sale would be converted to an inter-State sale merely for reason of it being transported in a carriage. A purchase of, say, a Television by a resident of Kerala from Bangalore would be an intra-State sale and the nature of the supply, whether it be an inter-state or intra-State, would not depend on whether the purchaser carries it as a head-load through the borders or transports it through his own conveyance or through a transporter. The incidence of tax is on the supply and not on the nature of transport. There is no distinction in so far as the IG&ST Act is concerned, of a supply by road or on a carriage. We hence are of the opinion

that the supply of the new vehicle by its authorised dealer terminated on it being purchased by the 2nd appellant in Puthuchery and the subsequent movement of the goods was not occasioned by reason of the transaction of supply. The goods having come into the possession of the purchaser, and the vehicle having been used, however negligible the distance run, we are also of the opinion that it is his "used personal effect" and there can be alleged no taxable transaction in so far as the movement of goods from Puthuchery to Trivandrum in Kerala, especially since the car had been registered in the name of the purchaser.

29. Though a temporary registration it has to be noticed that there is absolutely no enabling provision, though also no prohibition, in getting a permanent registration of the vehicle by yet another person. We also have to notice that even if such a provision existed, a second sale of the

motor vehicle is not taxable within the State, unless there is a premium on the original sale price as seen from Notification No.8/2018 Central Tax-(Rate). Hence on these two grounds, of an intra-State sale having occasioned and the transport being of used personal effects, we find that the detention was illegal.

30. We would normally not have interfered with the denial of exercise of discretion by the learned Single Judge. But, for the well accepted exceptions of invocation of the extraordinary powers under Article 226 dating back to *AIR 1967 SC 1401 Telco Ltd. Vs. CCT*, when *"action is taken under an invalid law or arbitrarily without sanction of law"(sic)*. It was held *"In such a case, the High Court may interfere to avoid hardship to a party which will be unavoidable if the quick and more efficacious remedy envisaged by Article 226 were not allowed to be invoked"(sic).

Having found the detention to be without sanction of law, the vehicle having been already released, what remains is to quash the notice issued and the order passed, under Section 129, both being illegal and totally without jurisdiction. We do so, setting aside the judgment in the writ petition and allow the appeal leaving the parties to suffer their respective costs.

Sd/-

K. VINOD CHANDRAN,

Judge

Sd/-

ASHOK MENON,

Judge

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