
(2014) 12 KL CK 0034

In the High Court Of Kerala

Case No : Writ Appeal No. 20 of 2008 in W.P.(C). 35713/2007 and W.P.(C). Nos. 29555 of 2009, 24912 of 2010 and 5664 and 7597 of 2013

Jomon M. Arackal

APPELLANT

Vs

The Tahsildar

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Kerala Motor Vehicles Taxation Act, 1976 — Section 11, 22, 23, 24, 28(2)(g)
Motor Vehicles Act, 1988 — Section 88

Citation : (2015) 1 ILR 331 : (2015) 1 KHC 1 : (2015) 1 KLJ 265 : (2015) 1 KLT 163

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.V. Ramakrishna Pillai, J;A.M. Shaffique, J;A.K. Jayasankaran Nambiar, J;A. Hariprasad, J

Bench : Full Bench

Advocate : L. Rajesh Narayan, Advocate for the Appellant; Sebastian Champappilly, Spl. Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—These matters have been referred to the larger bench by the order dated 30.11.2011 of a Full Bench of this Court in W.A. No. 20/2008. The Full Bench expressed a difference of opinion with the views expressed by another Full Bench in Regional Transport Officer Vs. K.V. Abdurahiman, , on the issue of whether a claim for exemption from motor vehicle tax, in respect of vehicles that were in police custody, could be allowed only in accordance with the procedure contemplated in Section 5 of the Kerala Motor Vehicles Taxation Act (hereinafter referred to as "the Act"), read with the provisions of Rule 10 of the Kerala Motor Vehicles Taxation Rules (hereinafter referred to as "the Rules"). The earlier Full Bench, while considering cases of detention of vehicles in police custody, pursuant to a non-payment of tax under the Act, had opined that a claim for exemption from tax under the Act could be maintained only in accordance with the provisions of Section 5 thereof, and by following the procedure contemplated in Rule 10 of the Rules. In the alternative, it was held that the person claiming exemption in such cases could also opt for

paying the tax first and then claiming a refund of the tax so paid by taking recourse to the provisions of Section 6 of the Act read with Rule 15 of the Rules. The referring Full Bench, however, while dealing with cases where the detention of the vehicle in police custody was for reasons other than non-payment of tax under the Act, opined that a claim for exemption from tax under the Act could be maintained in accordance with the provisions of Section 22 of the Act, read with Notification SRO 878/1975 dated 29.09.1975, and it was not necessary for the claimant to comply with the procedure contemplated under Section 5 of the Act, read with Rule 10 of the Rules. The referring bench felt that the decision of the earlier Full Bench in Abdurahiman's case (Supra) required to be clarified in its application to cases where the detention of the vehicle was for reasons other than non-payment of tax under the Act.

2. Before we consider the views expressed in the Full Bench decisions referred to above, it would be apposite to notice the relevant statutory provisions in the Act and the Rules, as also the terms of Notification SRO 878/1975 dated 29.09.1975. They read as follows:

The Kerala Motor Vehicles Taxation Act, 1976

"3. Levy of tax:-(1) Subject to the provisions of this Act, on and from the date of commencement of this Act, a 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:

Provided that 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 authorization of a trade certificate granted by the registering authority:

["Provided further that in respect of a new motor vehicle of any of the classes specified in items 1 2, 6, 7(i)(b), 7(i)(c), 10(iii) and 11(i) of the Schedule, there shall be levied, from the date of purchase of the vehicle, one time tax at the rate specified in Annexure I, at the time of first registration of the vehicle and thereafter tax shall be levied at the time of renewal of registration of such vehicle or on the expiry of the life time tax already paid at the rate specified in the Schedule as per fourth proviso to sub-section (1) of section 4.]

[Provided also that in respect of old motor cycles specified in item (1), old three wheelers specified in item (2), and old motor cars specified in item 11(i) of the schedule, there shall be levied a tax in advance for a period of five years after the expiry of the period in respect of which tax has been paid at the rate specified in Annexure II and for new goods carriages specified in item (3)(i)(a) to (3)(i)(e) and (3)(ii)(a) to (3)(ii)(e), new autorikshaw specified in item 7(i)(a), there shall be levied a tax in advance for a period of five years at the rate specified in Annexure II at the time of first registration of the vehicle and there after tax shall be levied for five years or for one year at the rate specified in the seventh proviso to sub-section (1) to section 4].

(2) The Government may from time to time by notification in the Gazette,

increase the rate of tax specified in the Schedule:

Provided that such increase shall not in the aggregate exceed fifty per cent of such rate.

(3) The registered owner of, or any person having possession or control of a motor vehicle shall, for the purposes of this Act, be deemed to use or keep such vehicle for use in the State, except during any period for which no tax is payable on such motor vehicle under sub-section (1) of Section 5.

(4) Notwithstanding anything contained in sub-section (1), the Government may, from time to time, by notification in the Gazette, direct that a temporary licence for a period not exceeding seven days or thirty days at a time may be issued in respect of any class of motor vehicles specified in the Schedule on payment of the tax specified in sub-section (5) and subject to such conditions as may be specified in such notification.

(5) The tax payable for a temporary licence in respect of a motor vehicle shall be-

(a) where the temporary licence is for period not exceeding seven days, at the rate of one-tenth of the quarterly tax on that motor vehicle; and

(b) where the temporary licence is for a period exceeding seven days but not exceeding thirty days, at the rate of one-third of the quarterly tax on that motor vehicle:

Provided also that in the case of vehicles covered with permit [under sub-sections (8) and (9)] of Section 88 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) and registered in any State other than the State of Kerala and entering the State of Kerala and staying therein, then, the tax payable for such vehicle shall be-

a) if such stay does not exceed seven days one-tenth of the quarterly tax; and.

b) if such stay exceeds seven days but does not exceed thirty days one-third of the quarterly tax.

(6) In the case of motor vehicles in respect of which any reciprocal arrangement relating to taxation has been entered into between the Government of Kerala and any other State Government, the levy of tax shall, notwithstanding anything contained in this Act, be in accordance with the terms and conditions of such reciprocal arrangement:

Provided that the terms and conditions of every such reciprocal arrangement shall be published in the Gazette and a copy thereof shall be placed before the Legislative Assembly of the State.

4. Payment of tax and issue of licence:- (1) The tax levied under sub-section (1) of Section 3 shall be paid in advance within such period and in such manner as may be prescribed, by the registered owner or person having possession or control of the motor vehicle, for a quarter or year, at his choice, upon a quarterly

or annual licence to be taken out by him:

Provided that, in the case of fleet owner, the Government may direct that the tax shall be paid in monthly instalments before such date, in such manner and subject to such conditions, as may be specified in the direction:

[Provided further that where the tax payable in respect of a motor vehicle other than a motor cycle (including a motor scooter and cycle with attachment for propelling the same by mechanical power) or a three wheeler as specified in items 1 and 2 of the Schedule or a motor car as specified in item 1 of the Schedule, for a year does not exceed Rupees one thousand five hundred, the tax shall be paid yearly upon an annual licence:]

Provided also that the registered owner or person having possession or control of the motor vehicle may, at his/her choice, pay the yearly tax payable under the second proviso in advance for any period upto 5 years, upon a licence for such period:

Provided also that the registered owner or a person having possession or control of a motor cycle (including motor scooters and cycles, with attachment for propelling the same by mechanical power), specified in item 1 of the Schedule or three wheelers (including tricycles and cycle rickshaws with attachment for propelling the same by mechanical power) not used for transportation of goods or passengers specified in item 2 of the Schedule [or new goods carriages specified in items 3(1)(a) to 3(i)(e), 3(ii)(a) to 3(ii)(e) new autorikshaws specified in item 7(i)(a) or old motor cars specified in item 11(i) of the Schedule shall pay tax in respect of those vehicles in advance for a period of five years in lump sum upon a licence for such period]

[Provided also that the registered owner or a person liable to pay tax in respect of Private Service Vehicle (Non-Transport Vehicle) for personal use specified in item 6, and Construction equipment vehicles specified in item 10(iii) of the Schedule, shall remit tax in lump sum for two years after the expiry of existing tax period at the rate specified in column (3) of the respective items in the Schedule]

[Provided also that the registered owner or a person liable to pay tax in respect of vehicles specified in items 1, 2, 3(i)(a) to 3(i)(e), 3(ii)(a) to 3(ii)(e), 6, 7(i)(a) to 7(i)(c), 10(iii) and 11(i) of the Schedule for which one time or lump sum tax has been paid, shall not be liable to pay any periodical increase in tax during the period for which he has paid tax for such vehicle].

[Provided also that the owner or a person liable to pay tax in respect of goods vehicles specified in item 3(i)(a) to 3(i)(e) and 3(ii)(a) to 3(ii)(e), autorikshaws specified in item 7(i)(a), motor cab specified in item 7(i)(b) and tourist motor cab specified in item 7(i)(c) of the Schedule shall have an option to remit tax in lump sum for five years at the rate specified in Annexure II or to remit tax for one year at the rate specified in item 3(i)(a) to 3(i)(e), 3(ii)(a) to 3(ii)(e) and 7(i)

(a) to 7(i)(c) of the Schedule respectively.]

Explanation:- (1) The tax for an annual licence shall not exceed four times, tax for two years" licence shall not exceed eight times, tax for 5 years" licence shall not exceed twenty times, tax for 10 years" licence shall not exceed forty times and tax for 15 years" licence shall not exceed sixty times the tax for a quarterly licence;

(1A) Notwithstanding anything contained in any other provision of this Act, "year" in relation to a motor vehicle in respect of which tax has to be paid yearly upon an annual licence in pursuance of the second proviso to sub-section (1), shall mean a period of twelve months commencing on the first day of the quarter in which the vehicle has been, or is, first registered in the State and annual tax licence in respect of such a vehicle shall be taken accordingly:

Provided that if the tax in respect of a motor vehicle for any portion of the year so reckoned has already been paid, the tax payable for the remaining period of that year shall be calculated at the rate of one-twelfth of the annual tax for each calendar month or part thereof:

Provided further that in the case of a motor vehicle in respect of which tax has to be paid yearly upon an annual licence in pursuance of the second proviso to sub-section (1), the tax for the period from the 1st day of April, 1985, to the commencement of the year in relation to such a vehicle shall be paid as if the Kerala Motor Vehicles Taxation (Amendment) Act, 1986 had not been enacted.

(2) In the case of the licence for a year or more, such rebate in respect of the tax, as may be prescribed, shall be granted.

(3) When any person pays the amount of tax in respect of a motor vehicle used or kept for use in the State or obtains an endorsement in the certificate of registration of the vehicle by the Regional Transport Officer concerned that no tax is payable in respect of such vehicle, the Taxation Officer shall-

(a) grant to such person a licence in the prescribed form: and

(b) record that the tax has been paid for the specified period, or that no tax is payable in respect of that vehicle, as the case may be, in the certificate of registration or, in the case of a vehicle not registered under the Motor Vehicles Act, 1939 (Central Act 4 of 1939), in a certificate in such form as may be prescribed:

Provided that no licence shall be granted in respect of a motor vehicle which is exempt from payment of tax under sub-section (1) of Section 5.

[Provided further clause (b) of this sub-section shall not be applicable to e-payment of tax]

(4) No motor vehicle liable to tax under Section 3 shall be kept for use in the State unless the registered owner or the person having possession or control of

such vehicle has obtained a tax licence under sub-section (3) in respect of that vehicle.

(5) No motor vehicle liable to tax under Section 3 shall be used in the State unless a valid tax licence obtained under sub-section (3) is displayed on the vehicle in the prescribed manner.

(6) Notwithstanding anything contained in sub-section (1), no person shall be liable to tax during any period on account of any taxable motor vehicle, the tax due in respect of which for the same period has already been paid by some other person.

[(7) Notwithstanding anything contained in any other provisions of this Act, every registered owner or person having possession or control of a motor vehicle in respect of a motor transport undertaking liable to pay contribution under the Kerala Motor Transport Workers' Welfare Fund Act, 1985 (21 of 1985) shall, before effecting payment of tax produce before the Taxation Officer the receipt of remittance of the contribution towards welfare fund due upto the preceding month.

(8) No tax under this Act shall be collected unless the receipt of remittance of contribution towards welfare fund mentioned in sub-sec.(7) is produced.]

5. Exemption from tax:- (1) In the case of a motor vehicle which is not intended to be used or kept for use during the first month or the first and second months of a quarter, or the whole of a quarter or year, as the case may be, the registered owner or the person having possession or control of such vehicle shall give previous intimation in writing to the Regional Transport Officer from whom the endorsement of tax has been obtained, that such vehicle would not be used for such period and thereupon, the registered owner or such other person shall not be deemed to have used or kept for use the vehicle for such period, and no tax shall be payable in respect of such vehicle for such period.

(2) Nothing in sub-section (1) shall exempt a person from liability to pay tax in respect of a motor vehicle, if, on verification, it is found that the motor vehicle has been used during such period or any portion thereof.

(3) Notwithstanding anything contained in sub-section (1), in an appeal under Section 23 or a revision under Section 24, the burden of proving that a motor vehicle has not been used during any period shall be on the registered owner or the person having possession or control of the motor vehicle, as the case may be.

6. Refund of Tax:- (1) Where the tax for any motor vehicle has been paid for any quarter or year and the vehicle has not been used or kept for use during the whole of that quarter or year or a continuous part thereof not being less than one month, a refund of the tax at such rates as may, from time to time, be notified by the Government, shall be payable subject to such conditions as may be specified in such notification.

[(2) Notwithstanding anything contained in this Act, a registered owner who has paid tax for a year or more shall be entitled to refund of tax at such rates as may be prescribed on cancellation of the registration of the vehicle or removal of the vehicle to any place outside the State on account of transfer of ownership or change of address.]

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22. Exemption from or reduction of tax:- The Government may, if they are satisfied that it is necessary in the public interest so to do, by notification in the Gazette make an exemption or reduction in the rate or other modification, either prospectively or retrospectively, in regard to the tax payable under this Act or under the Kerala Motor Vehicles Taxation Act, 1963 (24 of 1963) or the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963 (25 of 1963).

(i) by any persons or class of persons; or

(ii) in respect of any motor vehicles or class of motor vehicles; or

(iii) in respect of any motor vehicle or class of motor vehicles using a specified route, subject to such terms and conditions as they may deem fit.

23. Appeals:- Any person who is aggrieved by any order of the Taxation Officer or the Regional Transport Officer made under this Act may, within the prescribed time and in the prescribed manner, appeal to such authority as may be prescribed.

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28. Power of Government to make rules:- (1) The Government may, by notification in Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the manner in which tax shall be paid and the documents to be produced for the issue of tax licence;

(b) the form of any tax licence, certificate or declaration and the particulars to be contained therein;

(c) the conditions under which duplicate tax licence may be granted and the fee payable for such grant;

(d) the manner in which refund or reduction or exemption may be claimed;

(e) the total or partial exemption from liability to payment of the tax in respect of any motor vehicle brought into the State by any person visiting the State, or making a temporary stay in the State, the amount which shall be payable on account of such vehicle and the tax licence which any such vehicle shall carry;

(f) the time within which and the manner in which an appeal may be made under

Section 23, the fees to be paid in respect of such appeal and the conduct and hearing of such appeal;

(g) Any other matter which has to be, or may be, prescribed.

(3) In making any rule, the Government may provide that a breach thereof shall be punishable with fine which may extend to fifty rupees.

(4) Every rule made under this Act shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

The Kerala Motor Vehicles Taxation Rules, 1975

10. Exemption from Tax [Section 5(1)]:- The previous intimation referred to in sub-section (1) of Section 5 shall be made to the Regional Transport Officer concerned in Form G or in writing with the particulars required therein so as to reach him within one week from the date of commencement of the period for which exemption from payment of tax in respect of the vehicle is claimed due to non-use.

(2) On receipt of the intimation, the Regional Transport Officer concerned shall certify, after such verification as may be deemed necessary, the non-use of the vehicle for the period for which tax is not payable, by making necessary endorsement in the certificate of registration of the vehicle.

Note:-The previous intimation referred to in this rule shall be sent by registered post acknowledgement due or presented to the office of the Regional Transport Officer, in person and in the latter case, acknowledgment for its receipt shall be obtained.

KMVT RULES

FORM G

INTIMATION OF NON-USE OF A VEHICLE

[Section 5(1) of the Kerala Motor Vehicles Taxation Ordinance and Rule 10 of the Kerala Motor Vehicles Taxation Rules]

To

The Regional Transport Officer,

1. Registration No. of the vehicle

2. Name & address of the owner of the vehicle
3. The place where the vehicle is garaged and the date of garaging
4. Reason for the non-use
5. Probable date on which the vehicle will be put to use
6. Period upto which tax has been paid
7. Period for which tax exemption is requested for
8. Remarks

Place:

Date:

Signature of the Registered owner/ Person in possession of the vehicle.

Acknowledgement

Received on..... from..... in form "G" an application for the tax exemption in respect of (class of vehicle)..... (identification No.).....

Office Seal

Regional Transport Officer

12. Appeals (Section 23):- (1) Time for appeal:- An appeal under Section 23 shall be preferred before the Deputy Transport Commissioner having jurisdiction over the area within 30 days from the date of receipt of the order, which is the subject of the appeal.

(2) Manner of appeal:- The appeal shall be in the form of a memorandum setting forth concisely the grounds of objection to the order, which is the subject of the appeal, and shall be accompanied by the original or a certified copy of that order. The memorandum of the appeal shall be in duplicate.

(3) Fee:- A fee of Rs. 25/- shall be paid in respect of each appeal, payment being made by means of treasury chalan.

(4) Certified copy of documents-issue of:- The Taxation Officer or the Regional Transport Officer, as the case may be, may give any person interested in an appeal referred to in sub-rule (1) a certified copy of the order appealed against, or of any other relevant document on payment of a fee of two rupees, such payment being made by means of court fee stamps affixed to the application for each such copy of the order, petition or document. Such certified copies may be issued by the Taxation Officer or the Regional Transport Officer, as the case may be, on stamp paper to be produced by the applicant within seven days from the date of submission of the application. If for any reason, any or all the certified copies could not be issued, the fact may be communicated in writing to the

applicant, within the said period of seven days.

(5) Conduct of hearing of appeal:- A copy of the memorandum of appeal shall be forwarded by the Deputy Transport Commissioner having jurisdiction over the area to the officer whose order is the subject of appeal, requiring him to forward the connected records of the case and remarks, if any, which he wishes to make on the memorandum of appeal. On receipt of such records and remarks, if any, the Deputy Transport Commissioner shall issue notice to the parties specifying the date, time and place of hearing the appeal, and requiring them to attend the proceedings accordingly. If they attend, he may hear the appellant and the other interested parties, if any, and take such evidence as may be necessary in the circumstances of the case before passing orders. An appeal shall, ordinarily be disposed of, within two months from the date of filing the appeal.

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15. Refund of Tax paid in excess or by mistake:- [Section 28(2)(g)] The Regional Transport Officer may, on application sanction the refund of any tax paid or collected by mistake or in excess or remitted under wrong head of account, provided that such application in writing along with evidence of payment of such amount is presented to the Regional Transport Officer within one year from the date of payment of such amount.

NOTIFICATION SRO No. 878/75 dated 29.09.1975

S.R.O. No. 878/75. - In exercise of the powers conferred by Section 22 of the Kerala Motor Vehicles Taxation Ordinance, (Ordinance No. 7 of 1975), and in supersession of Notification No. (6) 18998/63/PW/TB2 dated 28th June, 1963 published as SRO. No. 609/63 in KG. Extra No. 90 dated 20.6.1963, the Government of Kerala, being satisfied that it is necessary in the public interest, so to do, hereby exempt the following classes of motor vehicles from the payment of tax payable under the said Ordinance:-

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27. All Motor Vehicles held in the custody of the Police or other authorities for offences other than non-payment of tax, for the period during which such vehicles are in such custody.

3. It is in the backdrop of the above legal provisions that a Full Bench of this Court in Abdurahiman's case (Supra) was called upon to consider the issue of whether the owner of a motor vehicle, that was taken into custody for non-payment of tax under the Act, could claim exemption from tax in terms of Section 5 of the Act for the period during which the vehicle was in police custody and, if so, whether he had to comply with the procedure prescribed in Rule 10 of the Rules for the purposes of claiming the exemption. The Full Bench, after a consideration of the relevant provisions of the Act and Rules, found as follows:

"10. At the outset we must note that as early as in 1974, in the case of Bolani

Ores Ltd., as reiterated in *Travancore Tea Co. Ltd. v. State of Kerala* (1980 KLT 568) the Supreme Court has held that motor vehicle tax is compensatory in nature and would be attracted only if the vehicle is used or kept for use in the public roads of the State. In *Travancore Tea Co.*'s case, the Supreme Court while construing the Sections of the Act relating to exemption and refund held as follows:

"S. 5 of the Act provides for exemption from payment of tax under certain circumstances. It enables the registered owner or the person having possession or control of such vehicle to give previous intimation in writing to the R.T.O. that the vehicle would not be used for such period and at the same time surrender certificate of registration and permit of the vehicle. S. 6 enables the registered owner or a person in possession or control of such a vehicle to get refund of tax if conditions specified in S. 6 are satisfied. Thus in order to enable the registered owner or person in possession or control of a vehicle to get exemption of tax, advance intimation to the R.T.O. along with the surrender of certificate of registration is necessary. The provision of S. 3 sub-s.(2) as well as S. 5 and S. 6 are meant to prevent evasion of tax and to provide for exemption from tax in proper cases. Though the purpose of the Act is to tax vehicles that are used or kept for use on the public roads of the State, the State is entitled for the purpose of safeguarding the revenues of the State and to prevent evasion of the tax, to enact provision like provision as in S. 3 raising a presumption that the vehicle is used or kept for use in the State without any further proof unless exemption is claimed under S. 3(2), S. 5 and S. 6. It may be observed that reading Ss. 3, 5 and 6 it is clear that a levy of tax is contemplated only on the vehicles that are used or kept for the use on the public roads of the State."

This decision explains the rationale behind the provisions relating to exemption and refund in respect of tax under the Act.

11. Let us examine the scope of S. 5 keeping in mind the above decision. S. 5 is available in respect of a vehicle "which is not intended to be used or kept for use". An owner or person in possession/control of the vehicle cannot even form an intention either to use the vehicle or to keep the vehicle for use, since, evidently, he would not have any control over the vehicle while the vehicle is in detention. Therefore, when the vehicle is detained the conditions for eligibility for exemption, *prima facie* becomes available. Further when motor vehicle tax is compensatory in nature as declared by the Supreme Court, when a person is unable to incur the liability to compensate for the use of public roads on account of the very detention of the vehicle, it would be unjust to hold that even though he is incapable of having an intention to use or keep the vehicle for use in public roads, he shall pay the tax, simply because the reason for detention of the vehicle is non-payment of tax. As is said by great men of law, it is not a crime not to have money, especially to pay tax. We also see no logic in denying exemption in case of detention for non-payment of tax alone when exemption from tax is available for vehicles which is under custody for involvement in very

serious crimes, even heinous crimes like murder, going by Clause 27 of SRO No. 878/75 issued under S. 22. Moreover, when motor vehicle tax is a compensation for user of public roads of the State, the reasons for non-user becomes irrelevant for the purpose of claiming exemption. Of course, it could have been possible for the legislature to provide for payment of tax in such instances as well, but this having not been done, subsidiary legislative measures may not clothe the Government with power to impose such liability by possibly discriminatory provision.

12. However, since the section providing for exemption prescribes a procedure for claiming that exemption, exemption would be available only if that procedure is complied with. It is settled law that when a statute prescribes that a particular thing shall be done in a particular manner, it shall be done only in that manner and no other manner. R.10 of the Kerala Motor Vehicles Rules provides that for claiming exemption under S. 5, prior intimation as provided in sub-s.(1) thereof shall be made to the R.T.O. concerned in Form G within the period prescribed therein. We are of opinion that going by the plain meaning of the Section, if that procedure is complied with, exemption from payment of tax should be available even in respect of vehicles which are detained for non-payment of tax, which cannot be denied by reading something into the section which is not there or by giving an interpretation contrary to the express language of the Section.

13. Moving on to the question of eligibility for refund, by the same logic there is absolutely no justice in denying the benefit of refund of tax already paid in respect of a vehicle in custody, simply because the seizure and detention are for non-payment of tax. When vehicle is in detention, the person liable to pay tax on the vehicle does not have any control over the vehicle. Therefore, he cannot either use the vehicle or keep the vehicle for use during the period of detention which are the conditions necessary for becoming eligible for refund. When, going by the plain language of the Section, such a person would be eligible for refund of tax, we do not see why we should adopt a strained interpretation to the provision to deny the benefit of the provision in respect of vehicles in detention for non-payment of tax when the Act and Rules do not contemplate any such exclusion either expressly or by implication.

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17. The result of the above discussion is that in respect of a vehicle detained under S. 11 for non-payment of tax,

(a) a claim for exemption under S. 5 would lie for the period of detention, if the condition of previous intimation of intention not to use or to keep for use is complied with in accordance with the section read with R.10 by filing Form G; and

(b) a claim for refund of tax paid, for the period during which the vehicle was detained under S. 11 would lie,

notwithstanding the fact that the detention is for nonpayment of tax. We

therefore affirm the decisions in W.A. Nos. 82/86 and 1429/02 and overrule the decision in W.A. No. 1861/2004.

4. The aforesaid decision of the Full Bench came up for consideration before a Division Bench of this Court in W.A. No. 20/2008, which is now before us for consideration, pursuant to a reference made by a Full Bench, to which the Division Bench referred the said case. A perusal of the facts in the writ appeal would reveal that the writ petitioner therein had purchased a vehicle on 22.07.2004, while it was in the garage. Before he took possession of the vehicle from the garage, the police authorities recovered the vehicle from the garage on 27.09.2004. From Police custody, the vehicle was released by the RDO to the Financier of the vehicle and the writ petitioner never obtained possession of the vehicle. Motor vehicle tax due on the vehicle for the period from 01.10.2004 to 31.03.2007 was, however, demanded from the writ petitioner and when he was served with a notice under the Revenue Recovery Act, he challenged the same through the writ petition claiming exemption from tax in terms of SRO 878/1975. A single judge dismissed the writ petition holding that a claim for exemption could only be maintained through the procedure under Section 5 of the Act, by filing the necessary Form G as stipulated in Rule 10 of the Rules. In holding so, reliance was placed on the Full Bench decision in *Abdurahiman's case* (Supra). In the appeal preferred by the writ petitioner, the Division Bench was of the view that, insofar as the claim of the writ petitioner for exemption was under Section 22 of the Act read with SRO 878/1975, there was no requirement to follow the procedural requirements of Section 5 read with Rule 10. It was observed as follows in paragraph 3 of the judgment (which is reported as *Jomon Vs. Tahsildar*, .

"3. We feel appellant's case is not one covered by S. 5 or R.10 and so much so, Form G has no application. In the first place, S. 5 provides for exemption for period for which a motor vehicle is not intended to be used or kept for use on road. The exemption referred to therein applies to motor vehicles, which but for the claim of exemption on account of non-user, would be liable for payment of tax. The mandatory procedure contained therein is filing of advance intimation in Form G prescribed under R.10 which is issued under S. 5 of the Act. On the other hand, S. 22 of the Act authorises Government to grant exemption or reduction in the rate of tax or modification in regard to tax liability with prospective or retrospective effect. It is expressly provided in the Section that exemption can be granted to any person or class of persons, or in respect of any motor vehicle or class of motor vehicles, or in respect of any motor vehicle or class of motor vehicles using a specified route. What is clear from this Section is that Government enjoys power to waive tax which is otherwise payable under the statute, and such waiver can be made even retrospectively. There is nothing to indicate in S. 22 that the person claiming exemption has to comply with any procedure or file any form for availing the benefit of notification. Necessarily exemption has to be claimed in accordance with the procedure or formalities contained in the Notification issued by the Government under which claim is

made. The exemption claimed by the appellant under Cl.27 of the Notification S.R.O. 878/75 is for motor vehicles held in the custody of the Police or other authorities for offences other than non-payment of tax for the period during which such vehicles are in such custody. The ingredients to prove the claim of exemption are self-evident in the notification itself. In other words, any person claiming exemption on furnishing proof of taking over custody of the vehicle by the Police or authorities shall be entitled to exemption from payment of tax for the period during which the vehicle was in the custody of such authority. In other words, he has to prove with documents, period of detention i.e. the date on which the vehicle was taken into custody and the date on which vehicle was released, for claiming exemption under this clause of the Notification. Form G prescribed under R.10 does not call for any of the details that is required to be proved to claim exemption under the Notification. We are of the view that the procedure prescribed under R.10 i.e. filing of advance intimation is consciously not brought within the scope of S. 22 because Section authorises Government to give even retrospective exemption and exemption for vehicles operating on the road, whereas the exemption under S. 5 is only for non-user of the vehicle for any specific period. We are, therefore, of the view that the concept of exemption for non-user visualised under S. 5 and the exemption which involves even waiver of tax for the past, present or future visualised under S. 22 are entirely different. The Full Bench has not considered the scope of the Sections. On the other hand, the decision implies that in all cases of exemption claimed under the statute, Form G is required, which to our mind will defeat the very purpose of S. 22. In fact we notice from the judgment that the Full Bench was of the view that exemption should not be denied for the period during which vehicle was in the custody of Police or other authorities, whether it be for non-payment of tax or for any other offence punishable under any law. After holding so, unfortunately the Full Bench has insisted upon the requirement of Form G which is impossible of performance by the parties. This would virtually deny the benefit otherwise available to the parties under the statute. In our view, the details called for in Form G also cannot be furnished by a person whose vehicle is taken over by the Police because he does not know where the Police is going to garage the vehicle. Further, he cannot declare the period for which the vehicle is likely to be in Police custody, probable date on which the vehicle will be again put to use etc. Here again, we notice that the Full Bench has not considered the details called for in Form G, which if furnished by the person whose vehicle is taken into custody by Police, can be only vague and not specific. We do not know whether such a Form G furnished can be acted upon by a Regional Transport Authority or whether such an application deserves to be only dismissed as vague and wanting in specific particulars. We, therefore, feel the Full Bench decision requires reconsideration and for considering reference to a still larger Bench, we refer this Writ Appeal to Full Bench."

5. The Full Bench, to which the matter was so referred, was of the view that the matter required consideration by a larger bench of five judges and it is thus that

a reference was made by order dated 30.11.2011 of the Full Bench, and the matter is now before us. The extracted portion of the Division Bench judgment above forms part of the reference order of the Full Bench.

6. Before, we proceed to analyse the provisions of the Act and Rules, we must also notice the facts in the other writ petitions that have been referred to the larger bench along with W.A. No. 20/2008. In W.P.(C). Nos. 29555/2009, 5664/2013 and 7597/2013, demands were made against the petitioners for motor vehicles tax dues for the period during which the vehicles were in police custody, pursuant to a seizure of the vehicles in connection with alleged illegal transportation of river sand in contravention of the provisions of the Kerala River Bank Protection and Regulation of Removal of Sand Act. The demand notices are impugned in the respective writ petitions, where there is also a prayer for a declaration that the petitioners are entitled to get an exemption from payment of motor vehicles tax for the period when the vehicle was in the custody of the police. In W.P.(C). No. 24912/2010, however, the vehicle belonging to the writ petitioner was seized for non-payment of tax under the Act and the petitioner was served with demand notices for motor vehicles tax for the period from 01.04.2003 to 31.03.2004 and 01.04.2007 to 31.03.2008, during which the vehicle was under custody for the said offence. Although the petitioner maintains that he had filed the necessary G forms for the said period, the respondents dispute this.

7. We have heard Sri. Babu S. Nair and Sri. Shoby K. Francis, the learned counsel appearing on behalf of the writ petitioners as well as Sri. Sebastian Champapilly, the learned Government Pleader appearing for the State Government. We have also considered the statutory provisions as well as the judgments of the Full Bench.

8. An analysis of the provisions of the Act and Rules would reveal that the charge of motor vehicles tax is on every motor vehicle that is used or kept for use in the State. By a deeming provision under Section 3(3), a registered owner of, or any person having possession or control of a motor vehicle, is deemed to use or keep such vehicle for use in the State, except during any period for which no tax is payable under Section 5(1) of the Act. As per Section 4 of the Act, the tax due under the Act is to be paid in advance by the registered owner or person having possession or control of the vehicle for a quarter or a year, as the case may be. An exemption from payment of motor vehicles tax under the Act can be obtained either in terms of Section 5 of the Act or in terms of Section 22 thereof. The two provisions operate in different areas, that is to say, the situations covered by the express terms of Notification SRO 878/1975 are automatically covered by the exemption granted by the Government in exercise of its powers under Section 22 of the Act, whereas those cases that are not covered by the terms of the said notification, or under any other notification issued by the State Government, will have to be dealt with in terms of Section 5 of the Act. In the former category of cases, the exemption granted by the State Government can be in respect of a

past, present or future tax liability, and the conditions to be satisfied for availing the exemption are only those that are specified in the notification issued by the Government. In the latter category of cases, however, the exemption is in respect of non-user of the vehicle for a specific period and the procedure contemplated under Rule 10 of the Rules will have to be followed as a pre-condition for the grant of exemption. In both category of cases, however, the registered owner of the vehicle can opt to pay the tax demanded, and then claim a refund of the tax so paid, by establishing that the vehicle in question was not used in the State on account of it being detained in police custody. Section 6 of the Act, read with Rule 15 of the Rules, describes the modus of claiming refund of the tax so paid.

9. In the light of the above discussion, it can be seen that there is, in fact, no conflict between the views taken by the Full Bench in Abdurahiman's case (Supra) and the referring Full Bench in Jomon's case (Supra), inasmuch as while the former bench was concerned with cases where the detention of the vehicle in police custody was for non-payment of tax under the Act, the latter bench was concerned with a case where the detention of the vehicle in police custody was for an offence other than nonpayment of tax under the Act. We do not, however, agree with the observations of the Full Bench in Jomon's case (Supra), that would suggest that even in a case where the vehicle is in police custody for non-payment of tax due under the Act, the person claiming exemption need not follow the procedure of filing Form G as it would be impossible of performance. We are of the view that the provisions granting exemption in a taxing statute have to be strictly construed and, if a person is not able to comply with the statutory conditions for claiming exemption from tax, it is a clear indication of the fact that the statute never intended to grant an exemption in such cases. We, therefore, answer the reference in the following manner;

(i) In cases where the vehicle is held in the custody of the police or other authorities for non-payment of tax due under the Act, a claim for exemption from payment of tax for the period during which the vehicle is in such custody can be made only in terms of Section 5 of the Act, read with Rule 10 of the Rules. In such cases, the claim for exemption will have to be preferred through the filing of an application in Form G as mandated under Rule 10 of the Rules;

(ii) In cases where the vehicle is held in the custody of the police or other authorities for offences other than nonpayment of tax due under the Act, a claim for exemption from payment of tax for the period during which the vehicle is in such custody can be made in terms of Section 22 of the Act, read with Clause 27 of SRO 878/1975. In such cases, there will be no need to file an application in Form G, as mandated under Rule 10 of the Rules;

(iii) In either event, it will be open to an assessee under the Act to pay the tax demanded and seek a refund of the same, in terms of Section 6 of the Act read with Rule 15 of the Rules, by establishing that the vehicle in question was not used in the State on account of it being in the custody of the police or other

authorities.

Based on our answer to the issues referred to this Bench, we allow Writ Appeal No. 20/2008 and Writ Petition Nos. 29555/2009, 5664/2013 and 7597/2013 by declaring that the writ petitioners therein will not be liable to pay motor vehicles tax for the vehicles concerned, for the period during which the vehicles were in the custody of the police or other authorities for offences other than non-payment of tax due under the Act. The demand notices issued to the writ petitioners in the said cases are consequently quashed. As far as Writ Petition No. 24912/2010 is concerned, however, we note that the vehicle belonging to the writ petitioner was seized for non-payment of tax under the Act and the petitioner was served with demand notices for motor vehicles tax for the period from 01.04.2003 to 31.03.2004 and 01.04.2007 to 31.03.2008, during which the vehicle was under custody for the said offence. Although the petitioner maintains that he had filed the necessary G forms for the said period, the respondents dispute the said submission. Under the said circumstances, we deem it appropriate to relegate the petitioner to the appellate remedy under the Act, against Ext.P2 order that is impugned by him in the writ petition. If the petitioner files an appeal against Ext.P2 order, within a period of two weeks from the date of receipt of a copy of this judgment, the appellate authority shall consider the same on merits, based on the law laid down in this judgment, and after verifying the factual particulars as regards the filing of G Forms by the petitioner for the period in question.