

(2016) 07 KAR CK 0001
In the Karnataka High Court
Case No : Writ Appeal No. 850 of 2016

State of Karnataka

APPELLANT

Vs

Jagadev Biradar

RESPONDENT

Date of Decision : 01-07-2016

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 3(1)
Motor Vehicles Act, 1988 — Section 39, 47

Citation : (2016) 4 AirKarR 38 : (2016) ILRKarnataka 4036 : (2016) 6 KantLJ 12

Hon'ble Judges : Jayant Patel and Mrs. B.V. Nagarathna, JJ.

Bench : Division Bench

Advocate : A.S. Ponnanna, Addl. Advocate General with K.M. Shivayogi Swamy, Addl. Govt. Advocate, for the Appellants; Keshav R. Agnihotri, Advocate, for the Respondent; A.S. Ponnanna, AAG with K.M. Shivayogi Swami, AGA, for the Appellants; Jayakumar S. Kumar Advocat

Final Decision : Dismissed

Judgement

Nagarathna, J.—The State and other authorities have preferred these writ appeals assailing order dated 10/03/2016, passed in Writ Petition No. 28063/2015 (Reported in AIR 2016 Kar 83) and connected matters. By that order, the learned single Judge of this Court has held that Explanation - 2 to Section 3 of Karnataka Motor Vehicles Taxation Act, 1957 (hereinafter, referred to as "the Act", for the sake of brevity) inserted by the Karnataka Motor Vehicles Taxation (Amendment) Act, 2014 (hereinafter referred to as "the Amendment Act, 2014") is unconstitutional and ultra vires the Constitution. Consequently, the demand raised on the respondent-petitioners were quashed. In order to arrive at the said conclusion, learned single Judge held that, the Amendment Act, 2014 had not removed the basis of the decision in Mahesh C. Gandhi v. D.C. for Transport, Belgaum [2005 (5) KLJ 362]: (2005 AIR Kant HCR 2140) (Mahesh Gandhi). It is further held that payment of lifetime tax continues to be dependent on registration or re-registration under Sections 40 and 47 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "MV Act, 1988", for short), as the case

may be.

Background Facts:

2. Briefly stated, the facts are that respondent-petitioners had challenged the constitutionality of Explanation - 2 to Section 3 of the Amendment Act, 2014 and had sought other incidental reliefs. The respondents in all these appeals, are permanent residents of Pune, Maharashtra State; Trissur, Kerala State and in Kerala State respectively. The common grievance of the respondents was that their vehicles were intercepted in the State of Karnataka, the documents of the vehicles were seized and a demand was made to pay lifetime tax to the Karnataka State exchequer under the provisions of the Act having regard to Explanation-2 to Section 3 of the Act. Contending that they had registered their vehicles under Section 40 of MV Act, 1988 in their respective States and that the said registration was effective and valid throughout India and as they had paid lifetime tax, on registration of their vehicles in their respective States, they were not bound to pay lifetime tax in the State of Karnataka. They challenged the demand made and also the vires of Explanation-2 to Section 3 of the Act.

3. Before the learned single Judge, the State defended the levy under Section 3(1) of Act read with Explanation-2 thereof. The State contended that it had legislative competence to pass the impugned amendment and that the amendment was made having regard to the dictum of this Court in the case of Mahesh Gandhi (2005 AIR - Kant HCR 2140). That on account of the amendment made to the said Act by insertion of Explanation - 2 to Section 3(1) of the said Act, the ratio of the said judgment as well as its basis were removed and hence, the amendment was valid and consequently the demand was in accordance with the amended provision. As already noted, the learned single Judge while allowing the writ petitions filed by the respondents herein in the aforesaid terms, held that the demand for payment of lifetime tax on the vehicles of the respondents was illegal. Hence, the State has preferred these writ appeals.

Submissions:

4. We have heard Sri. A.S. Ponnanna, learned Additional Advocate General along with Sri. Shivayogiswamy, learned Additional Government Advocate on behalf of the appellant-State and Sri. Jayakumar S. Patil, learned Senior Advocate for Sri. Karan Jospeh, as well as other advocates for respondents and perused the material on record.

5. Learned Additional Advocate General, Sri. Ponnanna, while drawing our attention to the provisions of Section 3 of the Act as well as Sections 46 and 47 of MV Act, 1988 contended that the payment of lifetime tax in respect of a motor vehicle has no nexus to the registration of the vehicle. He also contended that, MV Act, 1988 does not deal with taxation of motor vehicles and that the State is empowered to levy tax on motor vehicles plying in the State of Karnataka irrespective of the place of its registration. That, there is no repugnancy between the State Act and the Central Act and Article 254 of the Constitution is not

applicable in the present case. Elaborating the aforesaid contentions, Sri. Ponnanna submitted that, registration of the Motor vehicle cannot be the basis of levy of motor vehicle tax. That, Explanation - 2 to Section 3(1) of the Act was inserted on account of the decision of this Court in Mahesh Gandhi's case (2005 AIR - Kant HCR 2140). That the State Legislature was empowered to amend the Act in order to insert Explanation - 2 to Section 3(1) of the Act so as to take away the basis of the decision in Mahesh Gandhi's case. He therefore, contended that, when the payment of tax on motor vehicles was dehors registration of the vehicle, the learned Single Judge could not have held otherwise. He further submitted that the learned single Judge was not right in holding that Explanation - 2 to Section 3(1) of the Act had not taken away the basis in the Judgment in Mahesh Gandhi. Relying on certain decisions, Sri. Ponnanna, contended that judgment of the learned single Judge may be set aside and the demand made by the State on respondents be upheld by allowing the appeals.

6. Per contra, learned senior counsel appearing for the respondents supported the impugned order and drew our attention to Sections 46 and 47 of MV Act, 1988 and also, relevant provisions of the Act. While reading the above provisions in juxtaposition to each other, learned senior counsel contended that the condition precedent for levy of tax on motor vehicles was registration of the vehicles. Therefore, Section 3 of Act, which is the charging section would come into play only after the registration of motor vehicles and hence, the registration of the motor vehicle is a sine qua non for levy of tax on the vehicle. He submitted that, if the incidence of tax on the motor vehicle is on the entry of the vehicle to the State of Karnataka, then the petitioners have no case. But, the levy of tax on motor vehicles being registration of the vehicle, he contended that, the State was not right in contending that registration has no nexus to the levy of tax on the motor vehicle. In this regard, learned senior counsel drew our attention to Part-A5 of the schedule to the Act, wherein registration of a new vehicle is the basis for levy of lifetime tax, i.e., in Category A and in Category B, levy of lifetime tax is on a vehicle which is already registered and on the basis of its age from the month of registration. He contended that the aforesaid basis of levy of tax on motor vehicles have remained the same even after the decision in Mahesh Gandhi's case. Only Explanation - 2 to Section 3(1) of Act has been inserted, which has not removed the basis of the said decision and is, therefore, invalid.

7. He next contended that, when the charging section has remained the same by insertion of Explanation - 2, the scope of the charging section could not be enlarged. In this regard, he brought to our notice that in Mahesh Gandhi's case, this Court had held that, levy of tax on a vehicle not falling within the scope of Section 3(2) of Act, would not fall within the scope of Section 3(1) of the Act as it stood. In order to levy tax on motor vehicles, registered outside the State, which falls outside the scope of section 3(2) of the Act, Explanation - 2 to section 3(1) was added. But, the insertion of Ex planation - 2 to Section 3(1) of the Act does not in any way affect Section 3(1) of the Act, which is the charging section. He

further contended that the basis of judgment in Mahesh Gandhi has not been removed as the charging section cannot be applied to motor vehicles registered outside the State of Karnataka and not falling within the scope of Section 3(2) of the Act in the form of an Explanation. He therefore, contended that the view of the learned single Judge in the impugned judgment that the status of Section 3 remains the same as in Mahesh Gandhi case, despite insertion of Explanation - 2, is correct.

8. He next contended that, in respect of vehicles registered outside Karnataka and not falling within the scope of section 3(2) of the Act, the proportionality of tax is exorbitant. That Section 3(2) of the Act, which begins with a non-obstante clause deals with a case where, the motor vehicle plies in the State of Karnataka for a period not exceeding 30 days, in which event, the rate of tax to be paid is specified in Part-B of the schedule. But, for a period exceeding 31 days, the impugned Explanation - 2 if found to be valid would apply and that the said Explanation is unreasonable in nature. Placing reliance on the Judgment of the Hon'ble Supreme Court in the case of Govind Saran Ganga Saran v. Commissioner of Sales Tax [1985 (Supp.) SCC 205] : (AIR 1985 SC 1041), which has been followed in Commissioner, Central Excise and Customs, Kerala v. Larsen and Toubro Ltd., [(2016) 1 SCC 170]: (AIR 2016 SC 3600), he next contended that, the four essential characteristics of a taxing provision are absent in Explanation - 2 to Section 3(1) of the Act and therefore, for that reason also, the provision is bad and it is invalid. He, therefore, contended that learned single Judge is right in allowing the writ petition and granting the relief to respondent-petitioners and there is no merit in the appeal filed by the State, which may be dismissed.

9. Both sides have relied upon certain judicial precedent in support of their contentions which shall be adverted to later.

10. In reply, learned Additional Advocate General contended that, the apprehensions of the respondents regarding the proportionality of tax or the payment of lifetime tax repeatedly as and when they enter the State is misplaced as the Act provides for refund of lifetime tax in case the respondents or persons similarly situated as the respondents enter Karnataka State several times and remain in the State for short durations. He contended that even otherwise, once lifetime tax is paid by owners of motor vehicles registered outside the State of Karnataka if they remain in the State for more than 31 days and if lifetime tax is paid in the State of Karnataka also, then the-said payment would be valid for all times to come. Also, the owners of motor vehicles could seek refund of tax under the provisions of the Act, if they move out of Karnataka State after a short stay in this State.

11. He further contended that the form of a provision cannot have a bearing on its substantive aspects. He contended that no doubt Section 3(1) is the charging section but, Explanation - 2 to Section 3(1) in no way is de hors the charging section. The insertion of Explanation - 2 to section 3(1) consequent to the

decision of this Court in Mahesh Gandhi is only for the purpose of explaining the contents of the charging section in Section 3(1) of the Act pertaining to the levy of the tax on vehicles registered outside the State. He therefore, contended that there is no merit in the submissions made on behalf of the respondents and that the writ appeals may be allowed.

Points for consideration:

12. Having heard learned counsel for respective parties and on perusal of the material on record, following points would arise for our consideration:

1. Whether registration of a motor vehicle is the basis for payment of tax under Section 3(1) of the Act?

2. Whether insertion of Explanation - 2 to Section 3(1) of the Act by the impugned amendment has removed the basis of the Judgment of this Court in Mahesh Gandhi? (Mahesh Gandhi v. Deputy Commissioner for Transport, Belgaum [2005(5) KLJ 362]): (2005 AIR Kant HCR 2140)?

3. What order?

13. It is not in dispute that the vehicles of the respondents have all been registered outside Karnataka State and they were intercepted while they were plying within the State. It is also not in dispute that the demand for payment of lifetime tax on the respondents has been made under Section 3(1) of the Act.

Legal Framework:

14. Before venturing to answer the points for consideration, it would be relevant to advert to the legal framework as under:

Though it is the contention of the State that registration of a vehicle is not the basis of levy of tax under Section of Act nevertheless, reference is made to the provisions regarding registration of motor vehicles under MV Act, 1988, as it is the contention of the respondents that registration under the said Act is the basis for levy of tax under Section 3(1) of the Act.

MV Act, 1988:

The relevant provisions of MV Act, 1988 are as under:

Section 2 is the definition clause and Section 2(28) defines motor vehicles as under:

"2. Definitions.-In this Act, unless the context otherwise requires,-

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(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running

upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding "twenty-five cubic centimetres;"

Chapter - VI of the said Act deals with registration of motor vehicles. Section 39 speaks of necessity for registration, while section 40 deals with the place of registration. They read as under:

"39. Necessity for registration.-No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

40. Registration, where to be made. Subject to the provisions of section 42, section 43 and section 60, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept."

Section 41 prescribes the procedure for registration and Section 43 deals with temporary registration. They are reproduced as under:

"41. Registration, how to be made.- An application by or on behalf of the owner of a motor vehicle for registration shall be in such form and shall be accompanied by such documents, particulars and information and shall be made within such period as may be prescribed by the Central Government.

Provided that where a motor vehicle is jointly owned by more persons than one, the application shall be made by one of them on behalf of all the owners and such applicant shall be deemed to be the owner of the motor vehicle for the purposes of this Act.

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

(3) The registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in such form and containing such particulars and information and in such manner as may be prescribed by the Central Government.

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

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

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

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

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

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

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

(11) If the owner fails to make an application under sub-section (1), or, as the case may be, under sub-section (8) within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the owner to pay, in lieu of any action that may be taken against him under section 177, such amount not exceeding one hundred rupees as may be prescribed under sub-section (13):

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

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

(13) For the purposes of sub-section (11), the State Government may prescribe different amounts having regard to the period of delay on the part of the owner in making an application under sub-section (1) or sub-section (8).

(14) An application for the issue of a duplicate certificate of registration shall be made to the last registering authority in such form, containing such particulars

and information along with such fee as may be prescribed by the Central Government.

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43. Temporary registration.- (1) Notwithstanding anything contained in section 40 the owner of a motor vehicle may apply to any registering authority or other prescribed authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration and a temporary registration mark.

(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable:

Provided that where a motor vehicle so registered is a chassis to which a body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or any unforeseen circumstances beyond the control of the owner, the period may, on payment of such fees, if any, as may be prescribed, be extended by such further period or periods as the registering authority or other prescribed authority, as the case may be, may allow.

(3) In a case where the motor vehicle is held under hire-purchase agreement, lease or hypothecation, the registering authority or other prescribed authority shall issue a temporary certificate of registration of such vehicle, which shall incorporate legible and prominently the full name and address of the person with whom such agreement has been entered into by the owner."

Section 46 of the said Act speaks of effectiveness in India of registration in the following terms:

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

Assignment of new registration mark on removal to another State is dealt with in Section 47 of the said Act and the same reads as under:

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

Provided that an application under this subsection shall be accompanied -

i by the no objection certificate obtained under section 48, or

ii in a case where no such certificate has been obtained, by -

(a) The receipt obtained under sub-section (2) of section 48; or

(b) the postal acknowledgment received by the owner of the vehicle if he has sent an application in this behalf by registered post acknowledgment due to the registering authority referred to in section 48, together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted:

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

(2) The registering authority, to which application is made under sub-section (1), shall after making such verification, as it thinks fit, of the returns, if any, received under section 62, assign the vehicle a registration mark as specified in sub-section (6) of section 41 to be displayed and shown thereafter on the vehicle and shall enter the mark upon the certificate of registration before returning it to the applicant and shall, in communication with the registering authority by whom the vehicle was previously registered, arrange for the transfer of the registration of the vehicle from the records of that registering authority to its own records.

(3) Where a motor vehicle is held under a hire-purchase or lease or hypothecation agreement, the registering authority shall, after assigning the vehicle a registration mark under sub-section (2), inform the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the hire-purchase or lease or hypothecation agreement (by sending to such person a notice by registered post acknowledgment due at the address of such person entered in the certificate of registration the fact of assignment of the said registration mark).

(4) A State Government may make rules under section 65 requiring the owner of a motor vehicle not registered within the State, which is brought into or is for the time being in the State, to furnish to the prescribed authority in the State such information with respect to the motor vehicle and its registration as may be prescribed.

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

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

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

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

Section 49 deals with change of residence or place of business while Section 50 deals with transfer of ownership.

Other provisions of the said Chapter deal with suspension of registration; cancellation of registration; special provisions in regard to registration of transport vehicles, trailers; maintenance of State registers of motor vehicles. The power to make rules with regard to registration of vehicles is given to the Central Government under Section 64 and to the State Government under Section 65 respectively of the MV Act, 1988.

Taxation Act under consideration:

15. While the MV Act, 1988 is a Central Act, made under List III or concurrent List of the Seventh Schedule of the Constitution, the taxation Act, which is under consideration has been legislated under List II or State List and has received presidential assent on 13/11/1957. The object of the said Act is to consolidate and amend the law relating to levy of tax on motor vehicles in the State of Karnataka.

Section 2 is the definition clause, which defines "registered owner" and "taxation card" as under:

"2. Definitions.-(1) In this Act, unless the context otherwise requires,-

XXX

(f) "Registered owner" means the person in whose name a motor vehicle is registered under the Motor Vehicles Act, 1939 (Central Act IV of 1939);

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(h) "Taxation card" means a taxation card issued under Section 5 and includes a fresh taxation card issued in place of the original taxation card under sub-section (2) of Section 6;"

Section 3 is the charging section. It reads as under:

"3. Levy of tax.-(1) A tax at the rates specified in Part A of the Schedule shall be levied on all motor vehicles suitable for use on roads.

Provided that in the case of a motor cycle (including motor scooter and cycle with attachment for propelling the same by mechanical power) other than those

owned by Central Government employees or Defence personnel or employees of public sector undertakings owned by Government of India including Nationalised Banks which are brought with them to the State of Karnataka on transfer for which lifetime tax, or tax quarterly or annually, as the case may be, has already been paid in other States or union territories the tax shall be levied at the rates specified in Part A1 of the Schedule;

Provided further that in the case of tractors, trailers and power tiller trailer,-"

(a) owned by agriculturists and whose main source of income is from agriculture;

(b) owned by agricultural Co-operative Societies including Vyavasaya Seva Sahakari Sangha Niyamitha, Raitha Seva Sahakari Sangha Niyamitha, Sericulture-cum-Farmers Co-operative Societies, Large Sized Co-operative Societies, Co-operative Agricultural Banks, Small Sized Co-operative Societies, Agricultural Credit Societies, Multipurpose Cooperative Credit Societies, Doddapramanada Prathamika Pathina Sahakari Sangha, Primary Co-operative Agriculture and Rural Development Bank and Services Co-operative Societies; and

(c) not falling under clauses (a) and (b) above but used exclusively for carrying out such agricultural operations as may be prescribed, the tax shall be levied at the rates specified in Part A2 of the Schedule.

Provided also that in case of Vintage car and Classic car, the tax shall be levied at the rates specified in Part A3 of the Schedule.

Provided also that:

(a) in case of three wheelers including auto-rickshaws used for transportation of goods not exceeding 1500 kgs. in weight laden and vehicles permitted to carry three passengers (excluding driver) either used for hire or reward or not, the tax shall be levied at the rates specified in Part A-4 of the Schedule.

(aa) in case of goods vehicles having gross vehicle weight exceeding 1.500 kgs but not exceeding 5,500 kgs in weight laden, whether used for hire or reward or not, tax shall be levied at the rates specified in Part A6 of the Schedule.

(b) in case of motor cars including jeeps (other than those owned by the Central Government employees or defence personnel) or employees of public sector undertakings owned by Government of India including Nationalised Banks, which are brought with them to the State of Karnataka on transfer for which lifetime tax, or tax quarterly or annually, as the case may be, has already been paid in other States or union territories and omnibuses and private service vehicles having floor area not exceeding five square meters, tax shall be levied at the rate specified in part "A-5" of the Schedule.

(c) In case of Construction Equipment Vehicles (as defined in clause (ca) of Rule 2 of the Central Motor Vehicles Rules, 1989) and vehicles fitted with air compressor and generators tax shall be levied at the rate specified in Part A-7 of the Schedule.

(d) in the case of Motor Cabs the cost of which exceeds Rupees ten lakhs, "other than those registered outside the State and covered with a permit issued under sub-section (9) of Section 88 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988)" shall be inserted. Tax shall be levied at the rates specified in Part-A8 of the schedule.

Provided also that in respect of Motor Vehicles owned by companies or industrial undertakings either on lease or agreement or arrangement of any kind whatsoever and operated under a Private Service Vehicle Permit by any other person on behalf of such companies or industrial undertakings, tax shall be levied at the rates specified for contract carriages in Part A of the Schedule.

Explanation 1.-A motor vehicle of which the certificate of registration is current shall, for the purposes of this Act, be deemed to be a vehicle suitable for use on roads.

Note.-For the purpose of the above Explanation the certificate of registration shall, notwithstanding anything contained in Section 38 of the Motor Vehicles Act, 1939 (Central Act IV of 1939), be deemed to be current even if the certificate of fitness is not effective provided such certificate of fitness has not been cancelled.

Explanation 2.-In respect of motor vehicles registered outside the State of Karnataka and which are in the State for a period exceeding thirty days, notwithstanding anything contained in the provisions of the Motor Vehicles Act, 1988 (Central Act 59 of 1988), and in any order or direction contained in any judgment or order of any Court, tax shall be levied as specified in Parts A1, A2, A4, A5, A6, A7 & A8 as the case may be".

(2) Notwithstanding anything contained in sub-section (1), or Section 4 taxes at the rates specified in Part B of the schedule shall be levied on motor vehicles suitable for use on roads, which are in the State for periods shorter than a quarter, but not exceeding thirty days.

(3) In the case of motor vehicles in respect of which any reciprocal arrangement relating to taxation has been entered into between the Government of Karnataka 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 tax leviable under any such arrangement shall not exceed the tax leviable under the Schedule:

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

(4) x x x

(5) Notwithstanding anything contained in sub-sections (1) to (4), a tax at the rate specified in Part "E" of the Schedule shall be levied on all motor vehicles

including chassis, requiring temporary registration.

It is noted that the Explanation has been renumbered as Explanation - 1 and Explanation - 2 has been inserted to Section 3(1) by Amendment Act, 2014 and has come into effect from 01/03/2014 after receiving assent of the Governor on 28/02/2014, which reads as under:

"2. Amendment of section 3:- In the Karnataka Motor Vehicles Taxation Act, 1957 (Karnataka Act 35 of 1957) (hereinafter referred to as the principal Act), in section 3, in sub-section (1), in the fourth proviso,-

(iii) the explanation shall be renumbered as Explanation -1 and after Explanation - I as so renumbered, the following shall be inserted, namely:-

"Explanation-2:- In respect of motor vehicles registered outside the State of Karnataka and which are in the State for a period exceeding thirty days, notwithstanding anything contained in the provisions of the Motor Vehicles Act, 1988 (Central Act 59 of 1988), and in any order or direction contained in any judgment or order of any Court, tax shall be levied as specified in Parts A1, A2, A4, A5, A6, A7 and A8 as the case may be" and x x x."

Section 3-A of the Act deals with levy of cess, while section 3-B pertains to levy of Green Tax. Section 4 deals with payment of tax. Section 5 deals with issuance of taxation card. Section 6 pertains to declaration to be made by the owner of person having possession of the vehicles. Refund of tax is dealt in Section 7. Section 11 speaks about power of officer of Police or the Motor Vehicles Department to stop a motor vehicle. Section 13 speaks about the arrears of tax leviable as arrears of land revenue, while Section 16 speaks about exemption from or reduction of tax. The power to make rules is enunciated in Section 22 of the Act.

The schedule to the Act has several parts. Part-A pertains to Section 3(1) of the Act Part-A5 deals with levy of lifetime tax on Motor cars, Jeeps, Omnibuses and Private Service Vehicles under Section 3(1) of the Act which is relevant for the purpose of the case and is extracted as under:

"PART A5

[See Section 3(1)]

Lifetime tax for Motor cars, Jeeps, Omnibuses and Private Service Vehicles

SL No.

Class of vehicles

Motor cars, Jeeps, Omnibuses and Private Service Vehicles having floor area upto 5 Sq. Mtrs, cost of which does not exceed Rs. 5 Lakhs

Motor cars, Jeeps, Omni Buses and Private Service Vehicles having floor area upto 5 Sq. Mtrs, cost of which exceeds Rs. 5 Lakhs but not exceeding Rs. 10Lakhs

Motor cars, Jeeps, Omni Buses and Private Service Vehicles having floor area upto 5 Sq. Mtrs, cost of which exceeds Rs. 10 Lakhs but not exceeding Rs. 20 Lakhs

Motor cars, Jeeps, Omni Buses and Private Service Vehicles having floor area upto 5 Sq. Mtrs, cost of which exceeds Rs. 20 Lakhs

Motor cars, vans run on Electricity

(1)

(2)

(3)

(4)

(5)

(6)

(7)

A

At the time of Registration of New Vehicle

13% of cost of the Vehicle

14% of the cost of the Vehicle

17% of the cost of the Vehicle

18% of the cost of the Vehicle

4% of the cost of the Vehicle

B

If the vehicle is already registered and its age from the month of Registration is;

Percentage of the lifetime Tax levied under Clause A

Percentage of the lifetime Tax levied under Clause A

Percentage of the lifetime Tax levied under Clause A

Percentage of the lifetime Tax levied under Clause A

Percentage of the lifetime Tax levied under Clause A

1

Not more than 2 years

93.00%

93.00%

93.00%

93.00%

93.00%

2

More than 2 years but not more than 3 years

87.00%

87.00%

87.00%

87.00%

87.00%

(1)

(2)

(3)

(4)

(5)

(6)

(7)

3

More than 3 years but not more than 4 years

81%W81%

81.00%

81.00%

81.00%

4

More than 4 years but not more than 5 years

75.00%

75.00%

75.00%

75.00%

75.00%

5

More than 5 years but not more than 6 years

69.00%

69.00%

69.00%

69.00%

69.00%

6

More than 6 years but not more than 7 years

64.00%

64.00%

64.00%

64.00%

64.00%

7

More than 7 years but not more than 8 years

59.00%

59.00%

59.00%

59.00%

59.00%

8

More than 8 years but not more than 9 years

54.00%

54.00%

54.00%

54.00%

54.00%

9

More than 9 years but not more than 10 years

49.00%

49.00%

49.00%

49.00%

49.00%

10

More than 10 years but not more than 11 years

45.00%

45.00%

45.00%

45.00%

45.00%

11

More than 11 years but not more than 12 years

41.00%

41.00%

41.00%

41.00%

41.00%

(1)

(2)

(3)

(4)

(5)

(6)

(7)

12

More than 12 years but not more than 13 years

37.00%

37.00%

37.00%

37.00%

37.00%

13

More than 13 years but not more than 14 years

33.00%

33.00%

33.00%

33.00%

33.00%

14

More than 14 years but not more than 15 years

29.00%

29.00%

29.00%

29.00%

29.00%

15

More than 15 years

25.00%

25.00%

25.00%

25.00%

25.00%

Notes:

1. In respect of vehicles for which lifetime tax was due prior to the 1st day of April, 2010, but has not been paid, such tax shall be collected at the rates prevailing prior to such day along with the penalty due, if any.

2. Purchase Invoice shall be produced in respect of vehicles which are registered on or after 1st day of April, 2007.

3. Cost of the vehicle in relation to a motor vehicle means.-

(a) In respect of a vehicle manufactured in India, cost of the vehicle as per the purchase invoice issued either by the manufacturer or by the dealer of the vehicle including the excise duty, sales tax, surcharge or cess, entry tax etc., as payable in the State of Karnataka; and

(b) In respect of an imported motor vehicle, irrespective of its place of manufacture, the total cost incurred in importing the vehicle, that is to say, the value of the motor vehicle as endorsed in the Bill of Entry or such other document and assessed as such under the Customs Act, 1962, together with the Customs Duty levied, freight charges incurred and other taxes levied thereupon including additional duty/penalty levied if any, by the Customs Department or any other Department."

Part-B of the schedule deals with Section 3(2) of the Act, with which we are not concerned, but relevant in order to distinguish it from Part-A5 of the Act. The relevant portion is extracted as under:

The relevant portion of Part-B of Section 3(2) of Karnataka Motor Vehicles Taxation Act, 1957 reads as under:-

"PART-B

[See Section 3(2)]

Item No.

Classes of vehicles

For period not exceeding 7 days at a time

For period exceeding 7 days but not exceeding 31days

1

2

3

4

XXX

Rs.

Rs.

16

Motor Cars including imported cars whether owned by companies or not, Campers Van not used for hire or reward and Motor Vehicles other than those liable to tax under the foregoing provisions of this Schedule, in weight unladen-

(a) For every 1,000 Kgs. or part thereof

75-00

200-00

(b)

Additional tax payable in respect of such vehicles used for drawing trailers.

For every 1,000 Kgs. or part thereof

10/01/00

30-00

XXX"

Part-C gives refund table pertaining to section 7(3) of the Act. Part-D is omitted as Section 3(4) is omitted. Part-E deals with tax payable on all motor vehicles including chassis, requiring temporary registration under Section 3(5) of the Act.

Re: Point No. 1:

1. Whether registration of a motor vehicle is the basis for payment of tax under Section 3(1) of the Act?

Mahesh Gandhi's case:

16. Before answering Point No. 1, it would be useful to refer to Mahesh Gandhi's case (2005 AIR Kant HCR 2140) as the said decision lies at the substratum of the present controversy. In that case, the petitioner was the owner of a Diesel car registered at Panaji in the State of Goa. He claimed to have paid lifetime tax in that State for the vehicle. He was asked to pay lifetime tax in the State of Karnataka under the provisions of the Act. Being aggrieved by the demand, he filed an appeal before the Deputy Commissioner of Transport and being unsuccessful in that appeal he had preferred the writ petition before this Court. One of the undisputed facts in that case was that the vehicle was intercepted at Hubli within Karnataka State and the demand for payment of lifetime tax was made on 23/01/2001 on the premise that the vehicle was plying on the roads in the State since 10/03/ 2000 intermittently, when the petitioner therein was travelling between Panaji and Hubli etc. In that case, one of the contentions raised was that, the vehicle was plying in the State of Karnataka for a period less than twelve months and that it was neither compulsory nor obligatory on the part of the petitioner therein to register the vehicle in the State of Karnataka under Section 47 of MV Act, 1988. That the vehicle had already been registered in the State of Goa and lifetime tax had been paid thereon and therefore, the petitioner could not have been obliged to pay tax once again in the State. That the liability for payment of tax would arise only when the vehicle is registered in the State of Karnataka or becomes compulsorily registerable in the State of Karnataka; such an event not having happened, the petitioner therein was not liable to pay tax. The said submission was countered on behalf of the State with reference to Section 3(2) of the Act, which provides for short term tax for short

term use of the vehicle on the roads of State of Karnataka. But, the vehicle in that case was plying on the roads in Karnataka for more than 30 days and was outside the purview of Section 3(2) of the Act. Hence, the tax was payable under Section 3(1) of the Act. This Court considered the question as to whether the charging section enabled the State to levy lifetime tax in respect of vehicles registered outside the State and having entered the State of Karnataka was found to be in the State for a period less than twelve months. While considering the said question this Court held that, Section 3(1) of the Act which is the charging section is not complete without the schedule as it is under the schedule that the rate and the manner in which the tax is levied is indicated. The Schedule is in several parts namely, Parts A, A1, A1, A4, A5 and all these parts are with reference to levy of tax on vehicles under Section 3(1) of the Act. Part-B of the schedule gives details of levy of tax in respect of vehicles for period less than seven days at a time and between seven to thirty one days. In that case it was held that levy was to be considered under Part-A5 of the Schedule to the Act. With reference to Part-A5, it was noted that the payment of lifetime tax was on the basis of two categories namely, Group-A and Group-B. At Paragraphs 23 to 25 of the judgment, the object and purpose of Group-A and Group-B was explained in the following words:

"23. A perusal of the scheme of levy of lifetime tax in Part A5 indicates that the levy of lifetime tax is linked to registration of the vehicle. Registration necessarily should be in the State of Karnataka, inasmuch as, levy of tax is only in respect of vehicles registered here and at the point of registration i.e., as and when a vehicle is sought to be registered within the State of Karnataka, levy for payment of lifetime tax in respect of such a vehicle arises and in terms of the amount stipulated to the class of vehicle as in Part A5 of the Schedule to the Act. Even in respect of vehicle classified in Category B of Part A5, the registration should be in the State of Karnataka, in which event, while no further registration is contemplated, tax as provided in respect of such vehicles has to be paid and in respect of vehicles which are not registered in the State of Karnataka as and when the need arises for registration in the State of Karnataka, the liability for payment of lifetime tax as provided in Category B arises.

24. Insofar as vehicles registered outside the State of Karnataka are concerned, as they are not vehicles registered in the State of Karnataka, the liability for payment of lifetime tax cannot be fastened automatically unless either by a voluntary act on the part of the owner of a vehicle or by compulsion in law the vehicle becomes liable to be registered within the State of Karnataka. Even in respect of such vehicle which had been registered elsewhere, then also the liability for payment of lifetime tax under the Act arises at such time of registration. It is here that the provisions of Section 47 of the Motor Vehicles Act, 1988 comes into play.

25. While under Section 47(1) of the MV Act, if the owner of a registered vehicle in one State keeps such vehicle in another State for a period exceeding 12

months, he is compelled to apply to the registering authority in whose jurisdiction such vehicle is kept, for assigning a new registration mark and in the manner prescribed under the rule and is also obliged to furnish the particulars as provided for, subsection (4) of Section 47 enables the State Government to frame rules for furnishing of such information with regard to the vehicle by the owner of the vehicle to the registering authority as is provided for under the rule. Non-registration results in other penal consequences as provided under subsection (5) and in terms of Section 177 of the MV Act etc."

This Court then considered the question as to whether the vehicle registered in another State and which admittedly was plying within the State of Karnataka for a period less than twelve months is also liable to pay lifetime tax under the Act. After referring to Article 265 of the Constitution of India and considering the charging Section 3 of the Act, this Court held as under:

28. It is a fundamental principle of taxation that a charging section is always construed strictly and in terms of the language; that the subject is taxed by express terms and not by intendment or implication i.e.; that the levy of tax should be spelt out clearly in respect of a particular person, commodity or event. If a conjoint reading of Section 3(1) of the Act with Part A5 achieves this, the matter ends. If it is not, then levy is not justified. It is for such purpose, learned Government Advocate draws attention of the Court to sub-section (2) of Section 3 of the Act pointing out that the vehicle in question was in the State of Karnataka for a duration of more than 31 days; that when the levy is not covered under Section 3(2) of the Act, it is necessarily covered under Section 3(1) of the Act and as in Part A5.

29. If the levy is not covered under Section 3(2) of the Act, it does not automatically imply it is under Section 3(1) and does not necessarily mean that it should be taxed only under Section 3(1) of the Act, unless language of Section 3 (1) of the Act so provides for it. The decision relied upon by the learned Government Advocate is in the context of levy being not under Section 3(2) of the Act and therefore is justified under Section 3(1) of the Act. The question was not examined in the context of the scope of the charging section, namely, Section 3 (1) of the Act read with Part A5 of the Schedule to the Act.

30. On a plain and proper understanding of Part A5 read with Section 3(1) of the Act, it becomes obvious that lifetime tax is collected at the time of registration and at the point of registration and even assuming that a vehicle which is liable to be registered is not so registered, the charging section can be construed as one applicable to a situation where registration is not sought for, but it had become liable for registration from that point of time. If under the law, a vehicle which is already registered in some other State is brought into this State and there is no obligation or compulsion under the law on the part of the owner of such vehicle to get the vehicle registered in the State of Karnataka, then the question of levy of lifetime tax on such a vehicle under Part A5 of the Schedule to the Act does not arise. If any other provision of the Act enables levy and

collection, it may be done, but definitely not where it is not so provided, particularly, under Part A5 of the Schedule to the Act.

31. While the State Government has undoubtedly the competence to levy tax on vehicles suitable for use on roads so long as such vehicles are using the roads within the State, in terms of Entry 57 of List II of Seventh Schedule to the Constitution of India and the levy of lifetime tax of the vehicle has also been upheld by the Supreme Court, such levy can only be in accordance with the provisions of the Act and not independent or at variance of the provisions of the Act. It is here the charging section assumes importance. Unless the charging section provides for levy of any tax in a particular situation of the nature, as in the present case, the levy and demand is not made good. So far as the registration of the motor vehicles is concerned, it is governed by the Motor Vehicles Act, 1988, and Section 47 of the MV Act deals with the situation where the vehicles registered in one State are taken to another State and are stationed or remained in the other State for a period exceeding 12 months. In such a situation, the registration in the other State becomes compulsory. This is a Central Act and the source of power can be traced to Entry 35 of the Concurrent List. Therefore, insofar as the registration of motor vehicles is concerned, it is an aspect regulated by the Central Act viz., MV Act, and a vehicle registered in one State, if it has to be compulsorily registered in another State, it should be within the other State for a period exceeding 12 months. Significance of such registration is due to the reason that levy of lifetime tax under the Act on such vehicles, as one owned by the petitioner herein, is linked to the registration of the vehicles. Part A5 of the Schedule to the Act indicates that levy is at the time of registration of new vehicle. Though in category B of Part A5, even vehicles already registered are also roped in for levy of lifetime tax, it should be understood only as in respect of vehicles mentioned in Category A, in the sense at the time of registration of new vehicles and vehicles already registered. The registration in both situations should be necessarily within the State, as otherwise, if the registration is outside the State, the question of levy of tax under the Act does not arise in respect of such vehicles, unless there is an express provision under the Act to charge lifetime tax for such vehicles also. The registration of motor vehicles being an aspect regulated by the Central Act and which cannot be regulated by the State Act, the scheme of the Taxation Act is so made as to subject to levy of lifetime tax only on such vehicles which are registered in the State of Karnataka.

32. If such is the scheme and intendment of the Act and in the present situation, where the vehicle of the petitioner was registered outside the State of Karnataka and was within the State for a duration not exceeding 12 months, it cannot be said that the charging section comes into play for levying lifetime tax on such vehicle. I am of the view that under the charging section - Section 3(1) of the Act read with Part A5 of the Schedule-there is no scope for levying of lifetime tax in the State of Karnataka in respect of the vehicles already registered outside this State and paying or having paid tax therein, unless such vehicle is found in

the State of Karnataka for a period exceeding 12 months. As observed earlier, if the vehicle itself is voluntarily got registered in the State of Karnataka, in the sense the owner of the vehicle applies for registration in the State of Karnataka, automatically the liability for payment of life time tax becomes operative and such tax can be collected on such vehicles."

This Court held that the levy of lifetime tax was not sustainable and was beyond the scope of charging section when Section 47 of the MV Act, 1988 did not apply. The demand was quashed and the writ petition was allowed.

17. The quintessence of the aforesaid ruling is that, under Section 3(1) of the Act, which is the charging section read with Part-A5 of the Schedule there is no scope for levy of lifetime tax in the State of Karnataka in respect of vehicles already registered outside the State and have paid tax therein, unless such vehicle remains in the State of Karnataka for a period exceeding twelve months. When such a owner applies for registration in the State of Karnataka or if such a vehicle is registered in the State of Karnataka under Section 47 of the MV Act, 1988, automatically liability for payment of lifetime tax becomes operative and such tax can be collected on such a vehicle. On considering section 3(1) of the Act, read with Part-A5 of the Schedule this Court held that, registration of the vehicle is a sine qua non for payment of lifetime tax. That could be under two circumstances: one, at the time of registration of a new vehicle which implies that the new vehicle is registered in the State of Karnataka which has been termed as Group-A, the second is, Group-B i.e., in respect of vehicles already registered, which implies that such vehicles are registered outside the State of Karnataka in which event the payment of lifetime tax would depend upon the age of the vehicle from the month of registration. If the two classes of vehicles in Group-A and Group-B are considered conjointly it becomes clear that, the said groups are mutually exclusive and there is no overlapping between them. For instance, if a vehicle is registered as a new vehicle in the State of Karnataka then, what is mentioned in Group-B would not apply. Conversely, if the vehicle is already registered outside the State of Karnataka and the payment of lifetime tax arises in the State of Karnataka, then, it is under Group-B and not Group-A. There is no difficulty in applying Section 3(1) of the Act to Group-A vehicle i.e. payment of lifetime tax at the time of registration of new vehicle in the State of Karnataka. Insofar as Group-B is concerned, the vehicle is already registered outside Karnataka and the question as to levy of tax under Section 3(1) of the Act on such a vehicle is the subject matter of controversy in this case.

18. It was further held that Section 3(2) of the Act begins with a non-obstante clause and it states that notwithstanding anything contained in sub-section (1) of Section 3 or Section 4, tax at the rates specified in Part-B of the schedule shall be levied on motor vehicles suitable for use on roads which are in the State for a period not exceeding 30 days. Part-B of the Schedule categorically gives two time periods: for a period not exceeding seven days at a time for a period exceeding seven days but not exceeding thirty one days. But, if a vehicle

registered outside Karnataka plies on the roads of Karnataka for a period exceeding thirty one days, in the absence of there being any specific provision in that regard the contention of the State in Mahesh Gandhi (2005 AIR Kant HCR 2140) was that tax was leviable under Section 3(1) of the Act. The said contention was not accepted by this Court in Mahesh Gandhi's case as Section 3(1) specifically dealt with levy of lifetime tax under Part-A of the Schedule only where the registration of the vehicle took place within the State of Karnataka, which is under Section 47 of the MV Act, 1988. Thus, it was held that if the vehicle was not registered in the State of Karnataka and was plying on the roads of Karnataka for a period exceeding thirty days then in that case Section 3(1) of the Act was not applicable. This was because there was no provision under the Act with regard to payment of lifetime tax for a period of exceeding thirty days for such a vehicle which is not registered in the State of Karnataka.

19. This court, therefore, held that registration of a vehicle from outside Karnataka within the State of Karnataka would arise only when circumstances mentioned in Section 47 of the MV Act, 1988 applied i.e., when a motor vehicle registered in one State has remained in another State for a period exceeding twelve months then, it was obligatory on the part of the owner of the vehicle to apply to the registering authority within whose jurisdiction the vehicle was for assignment of new registration mark. It was thus, held in that case that for a period between 31 days upto 12 months, the State could not levy lifetime tax in respect of a vehicle registered outside Karnataka and plying on the roads of Karnataka under Section 3(1) of the Act. Therefore, this Court struck down the levy of lifetime tax in the said case. Thus, registration of the vehicle was held to be a sine qua non for levy of the lifetime tax under the provisions of the Act.

20. To counter the said dictum, learned Additional Advocate General contended that, registration of the vehicle under Section 47 of the Act was not a sine qua non for the levy of lifetime tax on vehicles registered outside the State of Karnataka and plying within the State for a period exceeding thirty days. He contended that, under Section 46 of the MV Act, 1988 a motor vehicle registered in any State was not required to be registered elsewhere in India and a certificate of registration issued or in force under the said Act in respect of such vehicle was effective throughout India. He contended that irrespective as to whether a vehicle registered outside the State of Karnataka was registered in the State of Karnataka or not under Section 47 of the Act of the MV Act, lifetime tax on the vehicle was leviable under Section 3(1) of the Act now read with Explanation - 2 thereto. Learned Additional Advocate General therefore contended that, de hors Section 47 of the MV Act, 1988, lifetime tax was leviable on such a vehicle once the vehicle was plying on the roads of Karnataka beyond the period of thirty one days. It was not necessary to read Section 47 of the MV Act, 1988 into the provisions of the taxation Act under consideration for the purpose of levy of tax under Section 3(1) of the Act. If that was so, then under Section 3(2) of the Act also, there could be no levy of tax for a period up to 31 days.

21. But the contention of learned senior counsel for the respondents is that, registration of a vehicle is a sine qua non for the levy of lifetime tax and so long as a vehicle which is registered outside the State of Karnataka is not required to be registered within the State of Karnataka, the levy of lifetime tax on such a vehicle would not arise. In other words, reliance was placed on Section 47 of the MV Act, 1988 to contend that registration of a vehicle, which is registered outside Karnataka is mandatory within the State of Karnataka only under the circumstances provided under Section 47 of the MV Act, 1988 i.e., say if the vehicle is plying within the State of Karnataka for a period of twelve months in which event, a re-registration under Section 47 of the MV Act, 1988 is mandatory. If the provision of Section 47 of the said Act is not applicable, then, no lifetime tax can be levied on a vehicle coming from outside the State of Karnataka into Karnataka. In other words, the contention is that, for a period between thirty one days and 12 months, there can be no levy of lifetime tax in the State of Karnataka under Section 3(1) of the Act. In his reply, learned Additional Advocate General placed reliance on insertion of Explanation - 2 to Section 3(1) of the Act.

22. We have given our thoughtful consideration to the aforesaid submissions. Under Section 39 of the MV Act, 1988, which is a central enactment, necessity of registration is stipulated. Unless a motor vehicle is registered, it cannot ply in any public place. The proviso states that if a vehicle is in possession of a dealer, then, subject to such conditions as may be prescribed by the Central Government, the necessity of registration does not arise. Therefore, the obligation to register a new vehicle would arise when it is purchased from a dealer. Once a vehicle is registered in any State it would not be necessary to register it elsewhere in India and a certificate of registration issued or in force in respect of such vehicle shall be effective throughout India. This is stated in Section 46 of the said Act, but that section is subject to Section 47 of the said Act. Section 47 categorically states that if a motor vehicle registered in one State has been kept in another State for a period exceeding twelve months, the owner of the vehicle shall apply to the registering authority within whose jurisdiction the vehicle then is, for assignment of a new registration mark and shall present a certificate of registration to that registering authority. The registering authority shall after verification assign the vehicle a registration mark as assigned in sub-section (6) of section 41 to be displayed and shown thereafter in the vehicle and shall enter the mark upon registration of the vehicle before returning it to the applicant and shall, in communication with the registering authority by whom the vehicle was previously registered, arrange for transfer of the registration of the vehicle from the records of that registering authority to its own records. Sub-section (4) of Section 47 states that the State Government may make rules under Section 65 of the said Act with regard to registration of the motor vehicles under Section 47 of the MV Act, 1988. Any breach of sub-section (1) of Section 47 of the said Act would entail penalty under Section 177 of the said Act. Section 49 of the said Act deals with the specific case regarding change of residence or

place of business with which we are not concerned in the present case. Section 50 deals with transfer of ownership which is not relevant for this case. The aforesaid provisions which are in a Central enactment are applicable throughout India. Per force, they are to be borne in mind by considering the provisions of the taxation Act, which is a State enactment. The reasons for saying so are not far to see.

23. This is because, reference to the requirement of registration of a motor vehicle and certificate of registration under the provisions of the MV Act, 1988 is found in the taxation Act, which is under consideration. Section 3(1) of the Act states that tax at the rates specified in Part-A of the schedule shall be levied for all motor vehicles suitable for use on roads. The only Explanation to Section 3(1) of the Act which is now numbered as Explanation-1 under the Amendment Act states that the motor vehicle of which certificate of registration is current shall, for the purposes of the Act, be deemed to be a vehicle suitable for use on roads. A Note appended to the Explanation states that for the purpose of the Explanation, the certificate of registration shall, notwithstanding anything contained in Section 38 of the MV Act, 1939 (dealing with certificate of fitness of transport vehicles), be deemed to be current even if the certificate of fitness is not effective, provided such certificate of fitness has not been cancelled. On a conjoint reading of Section 3(1) of the Act read with the said Explanation it becomes clear that, the levy of tax under section 3(1) of the Act is only on a motor vehicle which is suitable for use on roads and by a fiction under the said Explanation it is stated that a motor vehicle which has a certificate of registration which is current is deemed to be a vehicle suitable for use on roads. The Note appended to the Explanation further clarifies that the certificate of registration shall be current even if the certificate of fitness of the vehicle is not effective, provided that such certificate of fitness has not been cancelled. Thus, under the taxation Act, under consideration, a vehicle in order to be suitable to ply on roads in the State of Karnataka, must be registered and possess a certificate of registration which is current in which case it would be subject to levy of lifetime tax. Thus, the State Legislature has applied the device of referring to the Motor Vehicles Act, 1939 now substituted by MV Act, 1988 for the purpose of levy of tax under Section 3(1) of the Act, which is the charging section. Hence, it becomes clear that registration of a motor vehicle is a sine qua non for the levy of tax under the provisions of the Act. In fact, such a position becomes clearer on a reading of Section 2 of the Amendment Act, 2014.

Explanation -2 categorically refers to a motor vehicle registered outside State for the purpose of levy of tax as specified in inter alia Part-A5 of the schedule, which is on the basis of registration of a vehicle within the State of Karnataka, which is under Section 47 of the MV Act, 1988.

24. Thus, under Section 3(1) of the Act, registration of the vehicle, whether within the State of Karnataka under Section 39 or in respect of a vehicle registered outside the State of Karnataka, which is registered in the State of

Karnataka under Section 47 of the MV Act, 1988, is the basis of the levy of tax. It may be that even in respect of a vehicle registered in the State of Karnataka plying within the State for a period not exceeding thirty one days, Part-A would apply. The reason being that under Section 43 of the MV Act, 1988 the owner of a motor vehicle may apply to the prescribed authority in the State to have the vehicle temporarily registered in the prescribed manner and for the issuance of a temporary certificate of registration and temporary registration mark, which is valid only for a period not exceeding one month and shall not be renewable. Thus, under the aforesaid contingency, also, Section 3(1) of the Act would apply read with Part-A of the Schedule. Thus, in all cases, where Part-A5 of the Schedule applies, which is expressly referred to in Section 3(1) of the Act, registration of the vehicle is the basis for levy of tax under the Act. Learned Addl. Advocate General however contended that if registration is the basis for levy of tax under Section 3(1) of the Act in respect of a vehicle from outside Karnataka, then it would be so under Section 3(2) of the Act also. We however, refrain from responding to the said contention as the controversy in the instant case arises under Section 3(1) of the Act and not under Section 3(2) of the Act and Point No. 1 also concerns only to Section 3(1) of the Act. Therefore, Point No. 1 is answered by holding that registration of a motor vehicle in the State of Karnataka under Section 39 or Section 47 of the M V Act, 1988, as the case may be, is a sine qua non for the levy of tax under Section 3(1) of the Act. This has been so held by the Hon''ble Supreme Court in the case of State of Karnataka v. K. Gopalakrishna Shenoy 1(1987) 3 SCC 655] : (AIR 1987 SC 1911), to which we shall advert to later.

Re: Point No. 2:

2. Whether insertion of Explanation - 2 to Section 3(1) of the Act by the impugned amendment has removed the basis of the Judgment of this court in Mahesh Gandhi? (Mahesh Gandhi v. Deputy Commissioner for Transport, Belgaum [2005(5) KLJ 362]): (2005 AIR Kant HCR 2140)?

25. In the case of Mahesh Gandhi, this court observed that levy of lifetime tax under the Act was linked to registration of vehicles, which aspect we have reiterated while answering Point No. 1. That the levy of tax in Part-A5 of the Schedule to the Act also clearly indicates that registration of vehicles is a must in the State of Karnataka. In that, there are two categories, the first is, with regard to registration of new vehicles in the State of Karnataka and the second is, in respect of vehicles already registered outside the State of Karnataka and registered in this State under Section 47 of the MV Act, 1988. Thus, for the purpose of levy of tax by the State Government, in respect of vehicles registered outside the State, registration of such a vehicle in the State, in terms of Section 47 of MV Act, 1988 is necessary. Under that section requirement of registration is only when such a vehicle remains in the State for a period exceeding twelve months. In such a case, Group-B of Part-A5 of the schedule would apply. The percentage of lifetime tax to be levied would depend upon the date of initial

registration outside the State.

26. Subsequent to the dictum of this court in Mahesh Gandhi, the State found that insofar as vehicles registered outside the State of Karnataka but plying within the State would be subjected to tax in Part-B of the schedule under Section 3(2) of the Act where the vehicle is plying for a period not exceeding seven days at a time or for a period exceeding seven days but not exceeding thirty one days. However, where such a vehicle is plying for a period exceeding thirty one days, there was no specific provision in Section 3 of the Act. Therefore, it was contended by the State that for such a contingency, Section 3(1) would apply. This court did not accept such a contention and held that there is no scope for levying lifetime tax in the State of Karnataka in respect of vehicles already registered outside the State unless such a vehicle is found in the State of Karnataka for a period exceeding twelve months, in which event, registration of such a vehicle would have to be made under Section 47 of the MV Act, 1988 as a condition precedent for the levy. Thus, for a period from thirty first day till completion of twelve months such a vehicle could not be subject to a levy under the Act was the observation of this court. In an attempt to get over the dictum of this court in Mahesh Gandhi, the State Legislature amended the Act, in order to inter alia incorporate Explanation-2 to Section 3(1) of the Act, which has been extracted supra.

A provision in the form of an explanation to a charging section in a taxation statute-whether valid?

27. Before answering Point No. 2, it is necessary to consider an incidental contention raised by the respondents to the effect that the charging section cannot be in the form of an Explanation. To recapitulate, Explanation-2 is added to Section 3(1) of the Act. It is noted that the said Explanation-2 deals with motor vehicles registered outside the State of Karnataka and which are plying in the state for a period exceeding thirty days. Further, by way of a non-obstante clause, Explanation-2 contains that notwithstanding anything contained in the provisions of the MV Act, 1988 and order or direction contained in any judgment or order, tax shall be levied as specified in Parts-A1, A2, A4, A5, A6, A7 and A8, as the case may be. According to the State by insertion of Explanation - 2, the judgment in Mahesh Gandhi has been abrogated and that the levy of lifetime tax in terms of Explanation - 2 has no nexus with Section 47 of the MV Act, 1988. Also, the charging section can be appended with an Explanation, which has been the case by the Amendment Act, 2014.

28. Generally, an Explanation is at times appended to a section to explain the meaning of words contained in the section. In Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661], it was held that an Explanation can even confer a taxing power. An Explanation may be added to include something within or to exclude something from the ambit of the main enactment or the connotation of some word occurring in it. Even a negative Explanation which excludes certain types or category from the ambit of the enactment may have the effect of

showing a category, leaving aside the excepted types, is included within it. An Explanation, normally, should be so read as to harmonise with and clear up any ambiguity in the main section and should not be construed as to widen the ambit of the section. But, if on a true reading of an Explanation it would widen the scope of the main section, effect must be given to it vide, *M/s. Hiralal Ratan Lal v. The Sales Tax Officer, Section III, Kanpur and another* [AIR 1973 SC 1034] and *M/s. Aphali Pharmaceuticals Ltd. v. State of Maharashtra* [AIR 1989 SC 2227]. It is also possible that an Explanation may have been added in a declaratory form to retrospectively clarify a doubtful point in law and to serve as a proviso to the main section or *ex abundanti cautela* to allay groundless apprehensions (Source - Principles of Statutory Interpretation - Ninth Edition - Reprint 2005 - By Justice GP.Singh],

29. In *M/s. Hiralal Rattanlal v. State of U.P.* [(1973) 1 SCC 216] : (AIR 1973 SC 1034), the Hon"ble Supreme Court had occasion to consider Explanation II to Section - 3D and Section 7 of the U.P. Sales Tax (Amendment and Validation) Act, 1970. It was held that if on a true reading of an explanation, it appears that it has widened the scope of the main section, effect must be given to the legislative intent notwithstanding the fact that the Legislature named that provision as an explanation. In all these matters, the courts have to find out the true intention of the Legislature. The Hon"ble Court, also, observed that though Explanation-II therein, was not happily worded but the intention of the Legislature was clear and unambiguous.

30. In *S. Sundaram Pillai v. Attabiraman* [(1985)1 SCC 591]: (AIR 1985 SC 582, Para 52), the Hon"ble Supreme Court was considering Explanation to proviso to Section 10(2) of T. N. Buildings (Lease and Rent Control) Act, 1960. After referring to several works of jurists on interpretation of statutes and decisions of this court, at Para 53, it has been summarised as under:

"53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-

- (a) to explain the meaning and intendment of the Act itself,
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and
- (e) it cannot, however, take away a statutory right with which any person under

a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

31. On the basis of the aforesaid discussion, in our view, the amendment made to the Act by insertion of Explanation - 2 to Section 3(1) of the Act is only to clarify what has been stated in Section 3(1) of the Act and the said clarification pursuant to the dictum of this court in Mahesh Gandhi's case in the form of an Explanation per se cannot be held to be illegal. Therefore, the form of the amendment to Section 3(1) of the Act, which is in the form of Explanation - 2 is not invalid. However, the substance or contents of Explanation - 2 would be considered next in order to test its validity. Therefore, the contention of the senior counsel for the respondents that an explanation to a charging section cannot be read as part and parcel of a charging section is not correct. On the other hand, on a combined reading of Section 3(1), which is the charging section together with the Explanations particularly, Explanation - 2 clearly brings out the intention of the Legislature to tax a motor vehicle registered outside Karnataka and, which is in the State for a period exceeding thirty days under Section 3(1) of the Act, the validity of which shall be now considered.

Re: Validity of Explanation - 2 to Section 3(1) of the Act:

32. After answering the contention of the respondents regarding the form of the amendment namely, as an Explanation - 2 to Section 3(1) of the Act, the main contention as to the legality of Explanation - 2 introduced by Amendment Act, 2014 in light of the judgment of this court in Mahesh Gandhi (2005 AIR Kant HCR 2140) would have to be considered, which is enunciated as Point No. 2.

33. As already noted, the object and purpose of insertion of Explanation - 2 to Section 3(1) of the Act was with an intention to remove the basis of the judgment of this court in Mahesh Gandhi. The question is as to whether the impugned Explanation - 2 has done so or not. Before considering the said question, it would be useful to refer to a decision of the Hon'ble Supreme Court in the case of Indian Alluminium Company Co. v. State of Kerala [AIR 1996 SC 1431], wherein the principles regarding the abrogation of a judgment of a court of law by a subsequent legislation has been summarised in the following manner:

"56. From a resume of the above decisions the following principles would emerge:

(1) The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transaction and require the court to give effect to them;

(2) The Constitution delineated delicate balance in the exercise of the sovereign power by the Legislature, Executive and Judiciary;

(3) In a democracy governed by rule of law, the Legislature exercises the power under Articles 245 and 246 and other companion Articles read with the entries in the respective Lists in the Seventh Schedule to make the law which includes power to amend the law.

(4) Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free-play in their joints so that the march of social progress and order remain unimpeded. The smooth balance built with delicacy must always maintained;

(5) In its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made;

(6) The Court, therefore, need to carefully scan the law to find out: (a) whether the vice pointed out by the Court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the Legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.

(7) The Court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the Legislature. Therefore, they are not the encroachment on judicial power.

(8) In exercising legislative power, the Legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the Court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The Legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the Legislature is competent to recover the invalid tax validating such a tax or removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the Court or the direction given for recovery thereof.

(9) The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the Legislature must have competence to do the same."

In that case, Section 11 of the Kerala Electricity Surcharge (Levy and Collection)

Act, 1989 arose for consideration and it was held that it was a valid piece of legislation and not an incursion on judicial power as the effect of Section 11 was to validate illegal collection of tax under an invalid law.

34. In *Hindustan Gum and Chemicals Ltd. v. State of Haryana* [(1985) 4 SCC 124]: (AIR 1985 SC 168), the Hon'ble Supreme Court held that it is permissible for a competent legislature to overcome the effect of a decision of a court, setting aside the imposition of a tax by passing a suitable Legislation, amending the relevant provisions of the statute concerned with retrospective effect, thus taking away the basis on which the decision of the court has been rendered and by inactive and appropriate provision validating the levy and collection of tax made before the decision in question was rendered. In that decision, reliance was placed on *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality* [AIR 1970 SC 192], a Constitution Bench decision of the Hon'ble Supreme Court, which has laid down the requirements which a validating law should satisfy in order to validate the levy and collection of a tax which has been declared earlier by a court as illegal, the relevant portion of the said judgments read as under:

"When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by reenacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the reenacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the Legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity

of a validating law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax."

35. Further, in the following decisions, Hon''ble Supreme Court has held that the amendments made to the respective Acts subsequent to the decision of the court were valid and therefore, were upheld:-

(a) In *State of Orissa v. Oriental Paper Mills Ltd.* [AIR 1961 SC 1438], the insertion of Section 14A by way of an amendment to Orissa Sales Tax Act subsequent to the decision of the Hon''ble Supreme Court in *State of Bombay v. United Motors India Ltd.* [AIR 1953 SC 252], was upheld.

(b) In *M/s. Misrilal Jain v. State of Orissa* [AIR 1977 SC 1686], the Hon''ble Supreme Court declared Orissa Taxation (on Goods Carried by Roads or Inland Waterways] Act, 1962 as invalid, since it did not cover the defect from which the Orissa Taxation (on Goods Carried by Roads or Inland Waterways] Act 7 of 1959 had suffered. It was further held that the State was not entitled to recover any tax. The subsequent Act 8 of 1968 was upheld as the vice from which the earlier enactment suffered was cured by due compliance with the legal or constitutional requirements.

(c) In *M/s.Tirath Ram Rajindra Nath, Lucknow v. State of U.P.* [AIR 1973 SC 405], the Hon''ble Supreme Court held that there is a distinction between encroachment on the judicial power and nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the legislature but the latter is within its permissible limits. In that case, the U.P. Sales Tax (Amendment and Validation) Act, 1970 was upheld by the Hon''ble Supreme Court.

(d) In *Govt, of A.P. v. Hindustan Machine Tools Ltd.* [AIR 1975 SC 2037], *I.N.Saksena v. State of M.P.* [AIR 1976 SC 2250], *Central Coal Fields Ltd, v. Bhubaneswar Singh* [AIR 1984 SC 1733] and several other decisions (he Hon''ble Supreme Court has upheld the amendments made to the respective Acts subsequent to the decision of a court of law thereby removing the basis of the judgment.

(e) In *State of Himachal Pradesh v. Narain Singh* [(2009) 13 SCC 1651 : (AIR 2009 SC (Supp) 2541), the Hon''ble Supreme Court has held that Himachal Pradesh Land Revenue (Amendment and Valuation) Act, 1996 was sound as it removed the defect of the previous law. Hence, the amendment was not invalid just because, it nullified some provisions of the earlier Act. It was also held that the amendment was necessitated in the interest of land revenue, land settlement and for the purpose of updating the same.

A legislature cannot directly overrule a judicial decision. But when a competent

legislature retrospectively removes the substratum or foundation of a judgment to make the decision ineffective, the said exercise is a valid legislative exercise provided it does not transgress any other constitutional limitation. Such legislative device which removes the vice in previous legislation is not considered an encroachment on judicial power. The power of the sovereign legislature to legislate within its field, both prospectively and retrospectively cannot be questioned. It would be permissible for the legislature to remove a defect in earlier legislation. This defect can be removed both retrospectively and prospectively by legislative action and the previous actions can be validated. But where there is a mere validation without the defect being legislatively removed the legislative action will amount to overruling the judgment by a legislative fiat and that will be invalid.

36. But there are a line of cases where the Hon"ble Supreme Court has not upheld the subsequent enactment or an amendment made to an Act pursuant to the judgment of a Court as the same had not removed the basis of the said judgment. A few of those cases could be referred to as hereunder:

(a) In *Madan Mohan Pathak v. Union of India* [AIR 1978 SC 803], on the basis of a settlement, bonus became payable by the Life Insurance Corporation (LIC) to its Class III and Class IV employees in a writ petition, the Calcutta High Court had issued a mandamus directing payment of bonus as provided in the settlement. During the pendency of appeal, LIC (Modification of Settlement) Act, 1976 was enacted denying bonus payable to the employees. The appeal was withdrawn. The validity of the 1976 Act was challenged before the Hon"ble Supreme Court. A Bench of seven Hon"ble Judges held that 1976 Act was void and a direction to obey the mandamus by implementing or enforcing payment of bonus in terms of the settlement was issued. Later, after several developments in the LIC of India v. D.J. Bahadur [AIR 1980 SC 2181], the Hon"ble Supreme Court held that the entire attempt of the Union Government was to avoid compliance of the mandamus issued by the Calcutta High Court. It directed the LIC to give effect to the terms of the settlement of 1974, relating to bonus until superseded by a fresh settlement and industrial award or relevant legislation and therefore, it was declared invalid. Subsequently, the LIC (Amendment) Act, 1981 was enacted having retrospective effect in respect of certain provisions. The same was challenged under Article 32 of the Constitution before the Hon"ble Supreme Court. It was held that the amendment did not have the effect of nullifying the writ of mandamus issued by the Calcutta High Court and the directions issued in D. J. Bahadur's case were not neutralized.

(b) In *D. Cawasji & Co., Mysore v. State of Mysore* (AIR 1984 SC 1780), this High Court in a writ petition had held that the State Government did not have the power under Section 19 of the Sales Tax Act to collect Sales Tax and Excise Duty, which were not a part of the selling price. Mandamus for refund was issued. An appeal filed before the Hon"ble Supreme Court was withdrawn and the Sales Tax (Amendment) Act, was enacted enhancing Sales Tax from original 6% to 45%

with retrospective effect. The Hon'ble Supreme Court struck down the amendment so far as it related to retrospectivity, pointing out that the lacuna pointed out by the court was not cured and the judgment could not be nullified by a legislative amendment.

(c) In *Re-Cauvery Water Disputes Tribunal* (1992 AIR SCW 119): (AIR 1992 SC 522), the facts were that the Inter-State Water Disputes Tribunal had directed Karnataka State, by an interim order to release water to Tamil Nadu but the Governor of Karnataka passed Cauvery Basin Irrigation Protection Ordinance, 1991 nullifying the Tribunal's order. The Hon'ble Supreme Court held that the ordinance amounted to interference with the judicial power of the Tribunal and it was declared unconstitutional.

(d) In *S. R. Bhagawat v. State of Mysore* [1995 AIR SCW 3918] : (AIR 1996 SC 188), the controversy related to Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973. A Division Bench of this court had granted financial benefits to Government Servants but the aforesaid Act was passed denying financial benefits as directed by the Division Bench. The Act was challenged under Article 32 of the Constitution before the Hon'ble Supreme Court which held that a writ of mandamus or directions which had become final could not be nullified empowering the State to review such judgment and orders. The provisions of the impugned Act were held ultra vires the State Legislature.

37. While applying the aforesaid decisions to the present case, it is observed that Explanation - 2 to Section 3(1) of the Act has been inserted subsequent to the dictum of this court in the case of *Mahesh Gandhi* (2005 AIR Kant HCR 2140). While considering the validity of the said Explanation, it is necessary to first distinguish Section 3(1) from Section 3(2) of the Act. As already noted. Section 3(1) deals with levy of tax on all motor vehicles suitable for roads. Explanation - 1 of Section 3(1) gives the meaning of the expression "vehicle suitable for use on roads" by a deeming provision or a fiction and we have reiterated while answering Point No. 1 that registration of a motor vehicle in the State of Karnataka under Section 39 or Section 47 of the MV Act, 1988 is a sine qua non for levy of tax under Section 3(1) of the Act. But sub-section (2) of Section 3 of the Act begins with a non-obstante clause. It states that notwithstanding anything contained in sub-section (1) of Section 3 or Section 4, taxes at the rates specified in Part-B of the schedule can be levied on motor vehicles suitable for use on roads which are in the State for a period not exceeding 30 days. Thus, while Section 3(1) has to be read along with Part-A of the schedule, Section 3(2) has to be read along with Part-B of the schedule. While Part-A of the schedule refers to registration of a motor vehicle in Group-A or Group-B, which is under Section 39 or Section 47 of the MV Act, 1988 respectively, Part-B of the schedule does not refer to registration under those sections in the State of Karnataka. Part-B refers to, two time frames namely, period not exceeding seven days at a time and period exceeding seven days but not exceeding 31 days. But Part-A of the schedule which is under Section 3(1) of the Act refers to registration of the

vehicle and the tax is on an ad valorem basis while in Part-B of the schedule, the amount of tax levied is fixed. Therefore, in Mahesh Gandhi's case, this court held that where the vehicles are registered outside Karnataka State, if Section 3(2) is not applicable, then automatically, Section 3(1) would not be applicable unless the vehicles are registered in the State of Karnataka i.e., under Section 39 or Section 47 of MV Act, 1988. Registration in the State of Karnataka of such vehicles from outside Karnataka would arise only under the conditions mentioned in Section 47 of MV Act, 1988 i.e., when such a vehicle is within the State of Karnataka for a period exceeding twelve months. Hence, it was held that for the period from 31 days up to 12 months, the State could not levy tax under Section 3(1) of the Act. In order to have an enabling provision under the Act, Explanation - 2 has been inserted which also expressly refers to vehicles registered outside the Karnataka. As already noted, an Explanation to a charging section is a legislative device which can be adopted in order to clarify the charging section. Therefore, the insertion of Explanation-2 per se is not invalid or illegal. But what makes Explanation - 2 to Section 3(1) of the Act vulnerable is the fact that the said explanation is in blatant violation of (i) the provisions of the MV Act, 1988, which is a Central enactment and (ii) the judgment of this court in Mahesh Gandhi. Therefore, in our view, it is not a valid piece of legislation for the following reasons.

38. Firstly, the MV Act, 1988 is a Central enactment made under Article 246(2) of the Constitution under Entry 35 of List III or concurrent List of the Seventh Schedule of the Constitution (hereinafter, referred to as "the Seventh Schedule" for the sake of convenience).

Article 246 reads as under:

"246. Subject-matter of laws made by Parliament and by the Legislatures of States.-(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory" of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

Under Article 246(2) of the Constitution, notwithstanding anything in Clause (3), Parliament, and, subject to Clause (1), the Legislature of any State also has power to make laws with respect to any of the matters enumerated in List-III or the Concurrent List of the Seventh Schedule. Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State with respect to any matter enumerated in List-11 of the Seventh Schedule called State List. This is stated in Article 246(3). As per Article 246(4), Parliament has power to make laws with respect to any matter or any part of the territory of India, not included in a State notwithstanding such matter being a matter enumerated in the State List. Thus, the supremacy of laws made by the Parliament under List-I & List-III is enunciated in Article 246 of the Constitution. Hence, the State Legislature while passing any law in respect of any subject enumerated in the State List cannot do so in total disregard of a Central Law. This becomes evident on a reading of Clause (3) of Article 246 of the Constitution. Also clause (1) of Article 246 states that notwithstanding anything in clauses (2) and (3) parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the VII Schedule (Union List).

The power to legislate which is stated in Article 246 have to be read with the various Entries in the three lists of the VII Schedule, which are the fields of legislation which define the respective areas of legislative competence of the Union and State Legislatures. While interpreting these entries, they should be viewed not in a narrow or a myopic manner but by giving the widest scope with regard to their meaning particularly, when the vires of a provision of a statute is assailed. In such circumstances, a liberal construction must be given to the entry by looking at the substance of the legislation and not its mere form. However, while interpreting the Entries in the case of an apparent conflict, every attempt must be made by the Court to harmonise or reconcile them. Where there is an apparent overlapping between two Entries, the Doctrine of pith and substance is applied to find out the true character of enactment and the entry within which it would fall. The Doctrine of pith and substance in short means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. Also, in a situation where there is overlapping, the Doctrine has to be applied to determine to which entry a piece of legislation could be related. If there is any trenching on the field reserved to another legislature, the same would be of no consequence. In order to examine the true character of enactment or a provision thereof, due regard must be had to the enactment as a whole and to its scope and objects. It is said that the question of invasion into another legislative territory has to be determined by substance and not by degree.

39. In order apply the aforesaid principles the two entries relevant for the case could be extracted as under:

Entry 57 List II:

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

and

Entry 35 List II:

Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied."

Therefore, Explanation-2 cannot be in total disregard of the MV Act, 1988 which is a central enactment though made under concurrent List. Under Section 3(1) of the Act registration of the vehicle under Section 39 or Section 47 of the MV Act, 1988 as the case may be, is a condition precedent, which is evident from the Explanation-1 and the Note appended thereto, which has also been the interpretation by this Court in the case of Mahesh Gandhi (2005 AIR Kant HCR 2140), which means that a vehicle registered outside the State of Karnataka plying within the State has to be registered if it remains within the State for a period exceeding twelve months under Section 47 of the MV Act, 1988. But by the Explanation, the Legislature in total disregard of Section 47 of the MV Act, 1988 intends to tax a vehicle registered outside the State of Karnataka even if it remains within the State for a period exceeding thirty one days and up to twelve months without there being any requirement of registration as contemplated under Section 47 of the MV Act, 1988. That is not permissible having regard to Article 246 (3) of the Constitution and Section 47 of the MV Act, 1988.

It may be that the taxation Act is passed under Entry 57 List II, which is subject to Entry 35 of List III of the Seventh Schedule. But even on a reading of Entry 57 List II, it becomes clear that the said entry refers to vehicles suitable for use on roads, which expression used in Explanation - 1 to Section 3(1) of the Act has been interpreted by us while considering Point No. 1 above.

In *Bolani Ores Ltd. v. State of Orissa* [(1974) 2 SCC 777] : (AIR 1975 SC 17), the Hon"ble Supreme Court held as under:

"While Entry 57 of list II is solely concerned with taxes on vehicles whether mechanically propelled or not, Entry 35 deals with also the principles on which taxes on such vehicles are to be levied. Taxes on vehicles connote the liability to pay taxes at the rates at which the taxes are to be levied. On the other hand, the expression "principles of taxation" denotes rules of guidance in the matter of taxation."

Therefore, it is reiterated that vehicle becomes suitable for use on roads only when it has a certificate of registration which is current. A motor vehicle registered outside the State of Karnataka, would require registration under Section 47 of the MV Act, 1988 within this State if it remains in the State period exceeding twelve months if tax under Section 3(1) of the Act is to be levied by

the State Government. Thus, Explanation-2 to Section 3(1) of the Act cannot be in disregard of Section 47 of the MV Act, 1988 and hence, the non-obstante clause in the said explanation is of no consequence and is in fact ultra vires the Constitution as it is violative of Article 246(3) of the Constitution and thus unconstitutional. For this reason, Explanation-2 is liable to be struck down.

40. In this context, reference could be made to *State of Karnataka v. K.Gopalakrishna Shenoy* [(1987) 3 SCC 655] : (AIR 1987 SC 1911), wherein, the Hon'ble Supreme Court while considering Section 3(1) of the Act held that one factor which has to be borne in mind while interpreting Section 3(1) and its explanation (now Explanation-1) is the meaning to be given to the words "suitable for use on roads" occurring in them as otherwise, a misconception would arise. These very words occur in Entry 57 in the State List. The words "suitable for use on roads" in the said entry has been construed in *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan* (AIR 1962 SC 1406), to describe the kinds of vehicles and not their condition. They exclude from the entry farm machinery, aeroplanes, railways etc., which though mechanically propelled are not suitable for use on roads. The inclusion of trams using tracks which may be on roads or off them makes the distinction still more apparent. Therefore, the same meaning was given to those words occurring in Section 3(1) and the explanation also. The Hon'ble Supreme Court held that Section 3(1) confers a right upon the State to levy a tax on all motor vehicles which are suitably designed for use on roads and prescribed rates without reference to the roadworthy condition of the vehicle or otherwise. On the deeming provision in Explanation - 1 to Section 3(1) of the Act, the Hon'ble Supreme Court further held as under:

"The Explanation to Section 3(1) contains a deeming provision and its effect is that as long as the Certificate of Registration of a motor vehicle is current, it must be deemed to be a vehicle suitable for use on the roads. The inevitable consequence of the Explanation would be that the owner or a person having control or possession of a motor vehicle is statutorily obliged to pay the tax in advance for the motor vehicle as long as the Certificate of Registration is current irrespective of the condition of the vehicle for use on the roads and irrespective of whether the vehicle had a certificate of fitness with concurrent validity or not. The Act, however, takes care to see that the owner of a motor vehicle or a person having possession or control of it is not penalised by payment of tax in advance for a vehicle which had not been actually used during the whole of a period or part of a period for which tax had been paid by him. The legislative provision in this behalf is to be found in Section 7 of the Taxation Act."

41. The Hon'ble Supreme Court in the context of a vehicle possessing a certificate fitness and the liability to pay tax under the Act held as under:

"The scheme of the Taxation Act is such that the tax due on a motor vehicle has got to be paid in terms of Section 3 at the prescribed rate and in advance and the liability to pay tax continues as long as the Certificate of Registration is

current but if it so happens that in spite of the Certificate of Registration being current, the vehicle had not actually been put to use for the whole of the period or a continuous part thereof, not being less than one calendar month, the person paying the tax should apply to the prescribed authority and obtain a refund of the tax for the appropriate period after satisfying the authorities about the truth and genuineness of his claim. Sections 3 and 4 are absolute in their terms and the liability to pay the tax in advance is not dependent upon the vehicle being covered by a certificate of fitness or not. Even if the vehicle was not in a roadworthy condition and could not be put to use on the roads without the necessary repairs being carried out, the owner or person having possession or control of a vehicle is enjoined to pay the tax on the vehicle and then seek a refund. Perhaps in exceptional cases where the vehicle has met with a major accident or where it is in need of such extensive repairs that it would be impossible to put the vehicle to use or where the Transport Authorities themselves prohibit the use of the vehicle due to its defective condition and cancel the certificate of fitness or suspend it, the person concerned may surrender the Certificate of Registration and other documents like permit etc., and seek the permission of the Transport Authorities to waive the payment of tax on the ground that no proof of non-user was necessary and as such payment of tax on the one hand and an automatic application for refund on the other would be a needless ritualistic formality and if the permission sought for is granted, he need not pay the tax. In all other cases the only course left open is for the person concerned to pay the tax in advance and thereafter apply to the authorities and obtain refund of tax after proving that the vehicle was not fit for use on the roads and has in fact not been made use of. The principle underlying the Taxation Act is that every motor vehicle issued a Certificate of Registration is to be deemed a potential user of the roads all through the time the Certificate of Registration is current and therefore liable to pay tax under Section 3(1) read with Section 4. If however, the vehicle had not made use of the roads because it could not be put on the roads due to repairs, even though the Certificate of Registration was current, the owner or person concerned has to seek for and obtain refund of the tax paid in advance after satisfying the authorities about the truth of his claim. It is not for the Transport Authorities to justify the demand for tax by proving that the vehicle is in a fit condition and can be put to use on the roads or that it had plied on the roads without payment of tax. It would be absolutely impossible for the State to keep monitoring all the vehicles and prove that each and every registered vehicle is in a fit condition and would be making use of the roads and is therefore liable to pay the tax. For that reason, the State has made the payment of tax compulsory on every registered vehicle and that too in advance and has at the same time provided for the grant of refund of tax whenever the person paying the tax has not made use of the roads by plying the vehicle and substantiates his claim by proper proof. Any view to the contrary would defeat the purpose and intent of the Taxation Act and would also afford scope and opportunity for some of the persons liable to pay the tax to ply the vehicle unlawfully without payment of tax and later on justify their non-payment

by setting up a plea that the vehicle was a repair for a continuous period of over a month or the whole of a quarter, half-year or year as they choose to claim."

Further, in the context of Section 22 and Section 38 of MV Act, 1939 read with Section 3(1) of the Act, it was held that the legal fiction created by Section 38 of the MV Act, 1939 is only for the purpose of Section 22 of that Act and cannot be extended to the taxation Act. This is also clear from Explanation-1 to Section 3(1) of the Act as it uses the words "for the purposes of this Act".

42. Secondly, Explanation-2 to Section 3(1) states that irrespective of any order or direction contained in any judgment or order of any court, tax shall be levied as specified in Parts A1, A2, A4, A5, A6, A7 and A8, as the case may be, in respect of motor vehicles registered outside Karnataka and which are within the State for a period exceeding thirty days. When the judgment of this court in Mahesh Gandhi : (2005 AIR - Kant HCR 2140) has categorically ruled that registration of a vehicle coming from outside the State, under Section 47 of MV Act, 1988, is a condition precedent for the levy of tax under Section 3(1) of the Act, it means that for a period up to twelve months there can be no levy of tax on such a vehicle under Section 3(1) of the Act read with Part-A of the Schedule. By a mere non obstante clause, the basis of the judgment in Mahesh Gandhi cannot be removed. It is reiterated that the non obstante clause is with regard to two aspects; one, with regard to the provision of MV Act, 1988 which would more particularly, refer to Section 47 of the Act and two, with regard to the judgment of this court in Mahesh Gandhi's case. The State Legislature may have contemplated that by such a legislative device i.e., by insertion of a non obstante clause in Explanation - 2 a disconnect could be achieved between (i) registration of a vehicle coming from outside the State under Section 47 of the M V Act, 1988 being the basis for levy of tax under Section 3(1) of the Act and (ii) levy of lifetime tax for a period when the vehicle remains within the State exceeding thirty one days and up to twelve months. As already noted, the same is impermissible in view of Article 246(3) of the Constitution.

43. Thirdly, when Section 3(1) of the Act has been interpreted in light of Section 47 of MV Act, 1988 in Mahesh Gandhi's case, holding that lifetime tax cannot be levied under Section 3(1) read with Part-A of the schedule for the period from thirty one days up to twelve months in respect of a vehicle coming from outside the State, which remains in the State of Karnataka, by insertion of the Explanation-2 to Section 3(1) of the Act, the power to tax cannot be conferred as Explanation - 2 is contrary to Section 47 of MV Act, 1988. If Explanation - 2 has to be read as part and parcel of Section 3(1) then necessarily it must also be in consonance with Section 47 of MV Act, 1988. For this reason also, it is held that Explanation- 2 has not taken away the basis of judgment in Mahesh Gandhi. Of course, we hasten to add that we are not referring to the form in which the amendment has been made to Section 3(1) of the Act as we have already deliberated on that aspect of the matter in the earlier part of the judgment but on a consideration of the contents and substance of Explanation-2 in light of

Section 47 of M V Act, 1988. We therefore, hold that any amendment made to Section 3(1) of the Act must be in consonance with the provisions of MV Act, 1988 or any other Central Act, having relevance having regard to Article 246 of the Constitution. Hence, the Explanation - 2 to Section 3(1) of the Act being contrary Section 47 of the MV Act, 1988 is not valid.

44. In the circumstances, Explanation - 2 to Section 3(1) of the Act, is struck down. It is further held that the basis of the judgment in Mahesh Gandhi not having been removed by Explanation-2, the same is contrary to the dictum in that judgment and hence, ultra vires the judicial precedent laid down by this court in Mahesh Gandhi.

45. However on an application of Section 47 of M V Act, 1988 to a Motor Vehicle which is plying in the State of Karnataka and which has been registered in the State under the aforesaid Section, tax under Section 3(1) of the Act is leviable. Thus, a vehicle which is registered outside the state and re-registered in this State under Section 47 of M V Act, 1988, Section 3(1) would apply and lifetime tax is leviable and not otherwise. This is also because Section 3(1) specifically includes Part-A of the schedule, which would also include Part-A5 Group-B. Therefore, for the period exceeding 31 days till 12 months, Section 3(1) does not apply. In the circumstances, we hold Point No. 2 in favour of the respondents and against the State.

46. In view of the above reasoning, we do not find it necessary to go into the question of reasonableness of the levy inasmuch as Section 3(1) read with Explanation-2, which seeks to impose lifetime tax on a vehicle which is registered outside the State of Karnataka and plying within the State for a period exceeding thirty one days and up to twelve months, has been held illegal and ultra vires Section 47 of MV Act, 1988. Also, the aspect regarding proportionality of the levy and as to whether Section 3(1) read with Explanations has the four essential components for a taxing provision as enunciated by the Hon"ble Supreme Court in the case of Govinda Saran Ganga Saran v. Commissioner of Sales Tax and others [1985 (supp) SCC 205] : (AIR 1985 SC 1041), followed in Commissioner Central Excise and Customs Kerala v. Larsen & Toubro Ltd., [(2016) 1 SCC 170] : (AIR 2016 SC 3600) would not call for our ruling. For the sake of reference, the four essential components of a taxing provision according to the Hon"ble Supreme Court are the following:

"The components which enter into the concept of a tax are: (1) the character of the imposition known by its nature which prescribes the taxable event attracting the levy; (2) a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax; (3) the rate at which the tax is imposed; (4) the measure or value to which the rate will be applied for computing the tax liability. Any uncertainty or vagueness in the legislative scheme defining any of these components of the levy will be fatal to its validity."

47. For the aforesaid reasons the issue of refund with regard to tax collected for

the period exceeding 31 days up to twelve months would also not arise. There is no other contention raised.

48. In view of our answers to the points raised herein, we confirm the judgment of the learned single Judge and these appeals are liable to be dismissed.

49. Summary of conclusions:

(a) It is held that registration of motor vehicle under Section 39 or Section 47 of the MV Act, 1988, as the case may be, is sine qua non for levy of tax under Section 3(1) of the Act. This is because, Explanation - 1 r/w the note appended to Section 3(1) categorically refers to a vehicle possessing a certificate of registration, which is current, for the purpose of levy of tax under Section 3(1) of the Act by a deeming provision or a fiction.

(b) In view of the aforesaid conclusion, it is held that for the period from 31 days up to 12 months, as registration of a vehicle coming from outside Karnataka is not required under Section 47 of the MV Act, there can be no levy of lifetime tax for the aforesaid period under Section 3(1) of the Act.

(c) Since the aforesaid conclusions are in consonance with the dictum of this court in case of Mahesh C. Gandhi v. D.C. for Transport, Belgaum [2005 (5) KIJ 362]: (2005 AIR - Kant HCR 2140), it is held that the said dictum as well as the judgment of the learned single Judge would not call for any interference in these appeals.

(d) It is held that Explanation - 2 to Section 3(1) of the Act is not per se illegal merely because of its form. It is held that a provision in an enactment can be clarified by means of an explanation.

(e) However, Explanation - 2 to Section 3(1) of the Act is ultra vires Section 47 of MV Act, 1988 which is a Central enactment made under Entry 35 of List - III (Concurrent List), in view of Clause 3 of Article 246 of the Constitution.

(f) It is further held that Explanation - 2 to Section 3(1) of the Act has not taken away the basis of the judgment of this court in Mahesh Gandhi and therefore, a vehicle which is registered outside the State of Karnataka and plying on the State roads for a period from 31 days up to 12 months cannot be subjected to tax under the Act. This is because the insertion of a non obstante clause contained in the said Explanation - 2 cannot achieve an object contrary to the dictum of this court in Mahesh Gandhi, which is in consonance with Section 47 of the MV Act, 1988, which is a Central enactment.

(g) Hence, Explanation - 2 to Section 3(1) of the Act is held to be ultra vires Article 246 (3) of the Constitution and also Section 47 of MV Act, 1988 and hence, it is struck down. Therefore, any vehicle coming from outside Karnataka, which is registered in the State of Karnataka as per Section 47 of MV Act, 1988 is liable to pay tax under Section 3(1) of the Act r/w Schedule A5 Group-B.

50. In the result, the writ appeals are dismissed.

51. Parties to bear their respective costs.