REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2446 OF 2007

Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala **.....Appellant**

Versus

M/s K.T.C. Automobiles **.....Respondent**

J U D G M E N T

SHIVA KIRTI SINGH, J.

1. The Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala has preferred this appeal against judgment and order dated 20.3.2006 passed by the High Court of Kerala in MFA No. 1000 of 2002. The High Court exercising an appellate power allowed the appeal filed by M/s K.T.C. Automobiles, the respondent herein and set aside the original order passed by the Intelligence Officer under Section 45A of the Kerala General Sales Tax Act (for brevity 'KGST Act') imposing a penalty of Rs.86 lakhs upon the respondent dealer for the alleged non-maintenance of complete and true accounts during the period 1.4.1999 to 31.3.2000. The High Court also set aside the suo-motu order of Commissioner of Commercial Taxes dated 12.8.2002 passed under section 37 of the KGST Act whereby the Commissioner had set aside appellate order of the Deputy

Commissioner dated 8.1.2002 and had restored the order of the Intelligence Officer.

2. The undisputed facts disclose that the respondent is in the business of purchase and sale of Hyundai cars manufactured by Hyundai Motors Limited, Chennai. As a dealer of said cars, both at Kozhikode (Calicut), Kerala where their head office is located and also at Mahe within the Union Territory of Pondicherry where they have a branch office, they are registered dealer and an assessee under the KGST Act, the Pondicherry Sales Tax Act as well as the Central Sales Tax Act. The dispute relates to assessment year 1999-2000. Its genesis is ingrained in the inspection of head office of the respondent on 1.6.2000 by the Intelligence Officer, IB, Kozhikode. After obtaining office copies of the sale invoices of M/s K.T.C. Automobiles, Mahe (branch office) for the relevant period as well as some additional period and also cash receipt books, cash book etc. maintained in the head office, he issued a show cause notice dated 10.8.2000 proposing to levy Rs.1 crore by way of penalty under Section 45A by the KGST Act on the alleged premise that the respondent had wrongly shown 263 number of cars as sold from its Mahe Branch, wrongly arranged for registration under the Motor Vehicles Act at Mahe and wrongly collected and remitted tax for those transactions under the provisions of Pondicherry Sales Tax Act. According to

the Intelligence Officer, the sales were concluded at Kozhikode and hence the vehicles should have been registered within the State of Kerala. Therefore, by showing the sales at Mahe the respondent had failed to maintain true and complete accounts as an assessee under the KGST Act and had evaded payment of tax to the tune of Rs.86 lakhs and odd during the relevant period. The respondent submitted a detailed reply and denied the allegations and raised various objections to the proposed levy of penalty. The Intelligence Officer by his order dated 30.3.2001 stuck to his views in the show cause notice but instead of Rs.1 crore, he imposed a penalty of Rs.86 lakhs only.

3. The respondent appealed against that order. Their appeal was allowed by the Deputy Commissioner by a detailed order dated 8.1.2002 which has been noted and examined with meticulous care by the High Court in paragraphs 9 to 11 of the impugned judgment and later approved. Against the appellate order in favour of assessee, the Commissioner of Commercial Taxes initiated a suo-motu proceeding in exercise of power under Section 37 of the KGST Act and passed a final order on 12.8.2002 setting aside the appellate order and restoring the original order of penalty passed by the Intelligence officer. Against this suo-motu order the respondent preferred Miscellaneous First Appeal before the High Court of Kerala

which was numbered as MFA No. 1000 of 2002 and ultimately allowed by the impugned order dated 20.3.2006.

4. Mr. K. Radhakrishnan, learned senior advocate for the appellant made detailed oral submissions on facts as well as law. The same has been supplemented by way of written submissions also. The submission on behalf of appellant is that the order imposing penalty is based upon proper appreciation of all the facts and circumstances noted by the Intelligence Officer in the show cause notice as well as in his final order. According to submissions, there was no other conclusion possible except to hold that the respondent dealer had created colorable device to evade sales tax in Kerala by adopting questionable means such as providing incorrect addresses of buyers for the purpose of facilitating registration of the motor vehicles at Mahe. According to Mr. Radhkrishnan, the sales transactions stood concluded in Kozhikode, Kerala and hence the respondent should not have given any facilities to residents of Kerala in getting motor vehicles registered at Mahe. By adoption of such means, the respondent had derived advantage of paying sales tax in Pondicherry where the rate was lower and evaded payment of lawful tax under the KGST Act in Kerala.

5. To elaborate and support the aforesaid factual stance, the learned senior counsel has highlighted some facts which have

been duly noticed by the authorities under the KGST Act as well as the High Court. He highlighted that in the "customer booking registration and necessary fitting instructions" issued from main office at Kozhikode the respondent gave an unwarranted option to the customers of registering the vehicle at Mahe. It was contended on behalf of appellant that such option was not for lawful purposes of promoting sales at Mahe but an offer to facilitate registration of cars at Mahe against the provisions of Motor Vehicles Act and the Rules which require registration at the place of residence or place of business of the owner of the vehicle. Some allegations were highlighted to contend that in some purchase orders the buyers had given Kerala addresses but the respondent as a dealer raised sale invoices showing Mahe addresses which were fictitious. This was alleged to be a deliberate act on the part of dealer to escape tax liability in Kerala. It was also highlighted that same cash receipt book in the head office at Kozhikode was at times used for issuance of cash receipts for transactions where the sale and registration was shown at Mahe. Letters of few buyers allegedly supported the allegation that sometimes even the delivery of the vehicle was given at Kozhikode although it was registered at Mahe.

6. A legal issue was raised on behalf of the appellant that as per Explanation under Section 45 of the KGST Act, the burden is

on the assessee to show that penalty is not liable to be imposed on him. It is submitted that the respondent had failed to discharge such burden imposed by law. Reliance was placed upon Sections 39 and 40 of the Motor Vehicles Act along with Rules 46 and 47 of the Rules framed under the said Act, in support of the contention that in law the obligation to register a motor vehicle is on the owner and that necessarily implies that registration under the Motor Vehicles Act is a post-sale event. In support of this proposition reliance was placed upon a judgment of Bombay High Court in the case of **Additional Commissioner of Sales Tax v. Sehgal Autoriders Pvt. Ltd**., 2011 SCC OnLine Bom 872 = 43 VST 398 (Bom) and also upon a judgment of this Court in **Association of Registration Plates v. Union of India**, (2004) 5 SCC 364. Paragraph 28 of this judgment is as follows:

> "28. Section 2(21-A) defines "manufacturer' and it means a person who is engaged in the manufacture of motor vehicles. Section 2(28) defines "motor vehicles" or "vehicle" and it means any mechanically propelled vehicle adapted for sue upon roads. A motor vehicle manufactured by a manufacturer is sold without a registration plate. Thereafter the dealer sells the motor vehicle to a customer again without the registration plate. This position will be clear from the proviso to Section 39 of the Act which says that nothing in the section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government. Section 41 also points to the same position as it enjoins an application on behalf of the owner of a motor vehicle for its registration. The question of issuing a certificate

> of registration and assigning it a registration mark arises only after sale of a motor vehicle. Therefore, until the motor vehicle has been sold to a person by a dealer, the registering authority would not come into the picture and there is no occasion for assigning it a registration mark....."

7. The aforesaid issue need not detain us any further in view of cited judgments and combined reading of Section 39 and 41 of the Motor Vehicles Act, 1988. Section 41 in particular leaves no manner of doubt that application for registration of a motor vehicle is required to be made by or on behalf of the owner in the prescribed form along with prescribed fee within a specified period. The registering authority after being satisfied with all statutory compliances, has a corresponding duty to issue a certificate of registration in the form prescribed by the Central Government. But even after accepting the proposition that registration of a motor vehicle is a post-sale event, the question as to when the property in a motor vehicle actually passes to the buyer remains to be examined in the light of provisions of Motor Vehicles Act and the Rules framed there under as well as the other relevant provisions of law. According to submissions advanced on behalf of appellant, for deciding the issue as to when and where sale takes place in respect of motor vehicle bought by a buyer from a dealer, the relevant provisions of law are in Article 286(2) of the Constitution of India, Section 4(2) Central Sales Tax Act, 1956 and Sections 4, 19 and 20 of the

Sale of Goods Act, 1930. For the sake of clarity those provisions are extracted below:

> **"Article 286(2) of the Constitution of India –** Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1)."
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> "**Section 4(2) Central Sales Tax Act, 1956 –** A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State –
> (a) in the case of specific or ascertained goods, at the time the contract of sale is made; and
>
> (b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.
>
> **"Sale of Goods Act, 1930-**
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> **Section 4 - Sale and agreement to sell**
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> (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.
>
> (2) A contract of sale may be absolute or conditional.
>
> (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Section 19 - Property passes when intended to pass

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the Rules contained in sections 20 to 24 are Rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Section 20 - Specific goods in a deliverable state

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed."

8. Before evaluating the impact of aforesaid legal provisions relied upon on behalf of the appellant, it would be appropriate to notice the arguments advanced and the stand adopted by Mr. K. Prasaran, learned senior advocate for the respondent. According to him, the situs of first sale of a motor vehicle by a

dealer is only at the place of registration of the vehicle by the authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act. This submission is founded upon a hypothesis that until the vehicle is registered in accordance with the provisions in Chapter IV of the Motor Vehicles Act read with the Central Motor Vehicles Rules, it continues to have the character of an unascertained good. In other words, till the engine number, chassis number is ascertained by the registering authority on physical verification of the vehicle and entered into the prescribed form for showing registration, the vehicle cannot be identified as one belonging to the purchaser. Only upon valid registration, as per submissions, the vehicle is appropriated to the purchaser. In support of this proposition, Mr. Prasaran also referred to Section 4 of the Central Sales Tax Act already noted earlier. He also referred to Section 2(xxi) of the KGST Act which defines sale to include every transfer of the property in goods by one person to another in the course of trade or business except transactions of a mortgage, hypothecation, charge or pledge. Particular emphasis was laid on explanation 4(a)(ii) to this definition of 'Sale'. This explanation is more or less similar in intent and meaning as Section 4(2) of the Central Sales Tax Act, 1956 extracted earlier. It conveys that for the purposes of KGST Act, the sale or purchase of unascertained or future goods shall

be deemed, if the goods are within the State at the time of their appropriation to the contract of sale or purchase. Reliance was also placed on Paragraph 8 of the judgment of this Court in **Tata Engineering and Locomotive Co. Ltd. v. Assistant Commissioner of Commercial Taxes** (1970) 1 SCC 622, which reads as under:-

> "…There had been many instances where the vehicles had been actually delivered from the stockyards prior to the issue of the allocation letter. The vehicles delivered to the dealer from the stockyard were accounted for against the allocation over the period. It was the stockyard incharge who appropriated the required number of vehicles to the contract of sale out of the stocks available with him and put down the vehicle engine and chassis number in the delivery challan. This was done after a delivery order had been addressed by the sales office at Bombay to the stockyard in-charge for delivery of stated number of vehicles of specified model to a particular dealer. Till such appropriation of vehicles through specification of the engine and chassis numbers, it was always open to the company to "allot any vehicle to any purchaser or to transfer the vehicles from the stockyard in one State to a stock-yard in another State."" (emphasis supplied)

9. According to the respondent the fact that the vehicles in question were registered at Mahe, irrefutably leads to the conclusion of their being produced before the Registering Authority at Mahe prior to registration, as per requirement of Section 44 of the Motor Vehicles Act. It was pointed out that Chapter III of the Central Motor Vehicles Rules deals with

registration of motor vehicles and as per Rule 33, a dealer is exempted from the necessity of registration even though in possession of a motor vehicle, if it obtains a Trade Certificate from the Registering Authority of the area where he carries on his business. Form 16 under Rule 34 is a form of application for grant or renewal of Trade Certificate whereas Form 17 contains the form of Trade Certificate. These forms show that only general information as to class of motor vehicle is noted for the purpose of Trade Certificate and not specific particulars of any vehicle such as engine number or chassis number. Rule 40 places restrictions on use of Trade Certificate by specifying that it shall be used only by the person to whom it is issued. The exceptions indicated in this Rule also do not permit use by a purchaser of a vehicle. Rule 41 enumerates the purposes for which motor vehicle with Trade Certificate may be used. A perusal of the purposes reveals that it is permissible for a dealer only who is holder of a Trade Certificate to use a vehicle with Trade Certificate for test, repair etc. including for proceeding to and from any place for its registration. Rule 42 prohibits the holder of a Trade Certificate from delivering a motor vehicle to a purchaser without registration, whether temporary or permanent.

10. On behalf of respondent, reliance was placed upon a judgment of Bombay High Court dated 17.1.2014 in First Appeal No. 166 of 2009 (entitled **The New India Assurance Co. Ltd.** vs. **Clancy Arcanjia Dias**). That judgment shows that a temporary registration number was obtained by the manufacturer of Mahindera Jeep at Nasik where the vehicle was manufactured and the manufacturer had also insured the vehicle during its transit by road from Nasik to Goa. After the vehicle was handed over to dealer at Goa, as per records, it was covered by a valid Trade Certificate and also insurance cover in respect of vehicles with the dealer. It was held that since the road accident leading to claim for compensation happened before the jeep was delivered to the purchaser, the liability to pay the compensation was upon the appellant, which had issued the cover note for vehicles held by the dealer under the valid Trade Certificate.

11. On facts it has been submitted on behalf of the respondent that the allegation by the Intelligence Officer that the assessee has not maintained proper accounts for justifying imposition of penalty, is based upon a wrong assumption that sales of 263 cars leading to their registration at Mahe were actually sales in Kerala.

12. According to respondent, when the entire facts, relevant documents and alleged evidence were before the authorities as

well as the High Court, the burden of proof under Section 45A of the KGST Act loses its significance. The appeal to the High Court under Section 40 of the KGST Act is a statutory appeal on questions of law as well as fact and hence, the finding of facts returned by the High Court by confirming the findings of the Appellate Authority, the Deputy Commissioner need no interference by this Court. According to the respondent, the Deputy Commissioner and the High Court have come to a concurrent finding that the materials do not lead to any conclusive proof that the vehicles in question had been sold at Kozhikode in Kerala. According to both the authorities, the materials, at best, raise only some suspicion which can never take the place of proof which is necessary for imposition of penalty upon the assessee.

13. From the above submissions and counter submissions of the parties as well as relevant statutory provisions in the Motor Vehicles Act, 1988, Central Motor Vehicles Rules, 1989, Section 4(ii) of Central Sales Tax Act, 1956, Sections 4, 19 and 20 of the Sales of Goods Act and relevant provisions of the KGST Act and Rules noticed earlier, we find no difficulty in accepting the submissions advanced on behalf of the appellant that the application of registration is by law required to be made by or on behalf of the owner whose name is to be mentioned in the

registration form along with relevant particulars of the vehicle such as engine number and chassis number and hence, registration of a motor vehicle is a post-sale event.

14. But this legal proposition does not take the appellant far. It must be carefully seen as to when the properties, particularly possession of a motor vehicle passes or can pass legally to the purchaser, authorizing him to apply for registration. Only after obtaining valid registration under the Motor Vehicles Act, the purchaser gets entitled to use the vehicle in public places. Under the scheme of Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989 the dealer cannot permit the purchaser to use the motor vehicle and thus enjoy its possession unless and until a temporary or permanent registration is obtained by him. Only thereafter, the vehicle can safely be said to be no more under possession of the dealer. Clearly, mere mentioning of engine number and chassis number of a motor vehicle in the invoice of sale does not entitle the intending purchaser to appropriate all the goods, i.e. the motor vehicle till its possession is or can be lawfully handed over to him by the dealer without violating the statutory provisions governing motor vehicles. Such transfer of possession can take place only when the vehicle reaches the place where the registering authority will be obliged to inspect for the purpose of finding out whether it is

a roadworthy and register-able motor vehicle and whether its identification marks tally with those given in the sale invoice and the application for registration. The possession can lawfully be handed over to the purchaser at this juncture because law requires the purchaser as an "owner" to make an application for registration but at the same time the law also prohibits use of the motor vehicle by the owner until it is duly registered by the Registering Authority. Hence, in order to satisfy the requirement of law noticed above, the dealer can deliver possession and owner can take possession and present the vehicle for registration only when it reaches the office of Registering Authority. With the handing over of the possession of a specific motor vehicle just prior to registration, the dealer completes the agreement of sale rendering it a perfected sale. The purchaser as an "owner" under the Motor Vehicles Act is thereafter obliged to obtain certificate of registration which alone entitles him to enjoy the possession of the vehicle in practical terms by enjoying the right to use the vehicle at public places, after meeting the other statutory obligations of Insurance etc. Hence, technically though the registration of a motor vehicle is a post-sale event, the event of sale is closely linked in time with the event of registration. Neither the manufacturer nor the dealer of a motor vehicle can permit the intended purchaser having an agreement

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

15. Article 286(2) of the Constitution of India empowers the Parliament to formulate by making law, the principles for determining when a sale or purchase of goods takes place in the context of clause (1). As per Section 4(2) of the Central Sales Tax Act, in the case of specific or ascertained goods the sale or purchase is deemed to have taken place inside the State where the goods happened to be at the time of making a contract of sale. However, in the case of unascertained or future goods, the sale or purchase shall be deemed to have taken place in a State where the goods happened to be at the time of their appropriation by the seller or buyer, as the case may be. Although on behalf of the respondent, it has been vehemently urged that motor vehicles remain unascertained goods till their engine number or chassis number is entered in the certificate of registration, this proposition does not merit acceptance because

the sale invoice itself must disclose such particulars as engine number and chassis number so that as an owner, the purchaser may apply for registration of a specific vehicle in his name. But as discussed earlier, on account of statutory provisions governing motor vehicles, the intending owner or buyer of a motor vehicle cannot ascertain the particulars of the vehicle for appropriating it to the contract of sale till its possession is handed over to him after observing the requirement of Motor Vehicles Act and Rules. Such possession can be given only at the registering office immediately preceding the registration. Thereafter only the goods can stand ascertained when the owner can actually verify the engine number and chassis number of the vehicle of which he gets possession. Then he can fill up those particulars claiming them to be true to his knowledge and seek registration of the vehicle in his name in accordance with law. Because of such legal position, prior to getting possession of a motor vehicle, the intending purchaser/owner does not have claim over any ascertained motor vehicle. Apropos the above, there can be no difficulty in holding that a motor vehicle remains in the category of unascertained or future goods till its appropriation to the contact of sale by the seller is occasioned by handing over its possession at or near the office of registration authority in a deliverable and registrable state. Only after

getting certificate of registration the owner becomes entitled to enjoy the benefits of possession and can obtain required certificate of insurance in his name and meet other requirements of law to use the motor vehicle at any public place.

16. In the light of legal formulations discussed and noticed above, we find that in law, the motor vehicles in question could come into the category of ascertained goods and could get appropriated to the contract of sale at the registration office at Mahe where admittedly all were registered in accordance with Motor Vehicles Act and Rules. The aforesaid view, in the context of motor vehicles gets support from sub-section (4) of Section 4 of the Sale of Goods Act. It contemplates that an agreement to sell fructifies and becomes a sale when the conditions are fulfilled subject to which the properties of the goods is to be transferred. In case of motor vehicles the possession can be handed over, as noticed earlier, only at or near the office of registering authority, normally at the time of registration. In case there is a major accident when the dealer is taking the motor vehicle to the registration office and vehicle can no longer be ascertained or declared fit for registration, clearly the conditions for transfer of property in the goods do not get satisfied or fulfilled. Section 18 of the Sale of Goods Act postulates that when a contract for sale is in respect of

unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained. Even when the contract for sale is in respect of specific or ascertained goods, the property in such goods is transferred to the buyer only at such time as the parties intend. The intention of the parties in this regard is to be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case. Even if the motor vehicles were to be treated as specific and ascertained goods at the time when the sale invoice with all the specific particulars may be issued, according to Section 21 of the Sale of Goods Act, in case of such a contract for sale also, when the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof. In the light of circumstances governing motor vehicles which may safely be gathered even from the Motor Vehicles Act and the Rules, it is obvious that the seller or the manufacturer/dealer is bound to transport the motor vehicle to the office of registering authority and only when it reaches there safe and sound, in accordance with the statutory provisions governing motor vehicles it can be said to be in a deliverable state and only then the property in such a motor vehicle can

pass to the buyer once he has been given notice that the motor vehicle is fit and ready for his lawful possession and registration.

17. In view of discussions made earlier, there is no need to again traverse the factual matrix, which led the Deputy Commissioner and the High Court to decide the controversy in favour of the respondent. However, since we have gone through the judgment of the High Court carefully, we are in agreement with the contention advanced on behalf of the respondent that the allegations and facts made or noted by the Intelligence Officer no doubt create some doubts but they do not lead to a conclusive inference that the sales under controversy had taken place at Kozhikode, Kerala. To the contrary, in view of propositions of law discussed hereinbefore, the judgment of the High Court gets reinforced and deserves affirmation. We order accordingly. As a result, the Civil Appeal is found to be sans merits and is dismissed as such. In the facts of the case there shall be no order as to costs.

.....J.
[DIPAK MISRA]

.....J.
[SHIVA KIRTI SINGH]

New Delhi.
January 29, 2016.