



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 27TH DAY OF NOVEMBER 2023 / 6TH AGRAHAYANA, 1945

WP(C) NO. 39311 OF 2023

PETITIONER/S:

DR.ANTONY DANIEL
AGED 57 YEARS
S/O.ANTONY JOSEPH, HOUSE NO. 11/1010 A, KALLUKULAM
ROAD, KOCHI, ERNAKULAM, PIN - 682002

BY ADV LIJU. M.P

RESPONDENT/S:

- 1 THE TRANSPORT COMMISSIONER
OFFICE OF THE TRANSPORT COMMISSIONER, 2ND FLOOR,
TRANS TOWERS, VAZHUTHAKKADU, THYCAUD P.O,
THIRUVANANTHAPURAM, PIN - 695014
- 2 THE JOINT REGIONAL TRANSPORT OFFICER
OFFICE OF THE JOINT REGIONAL TRANSPORT OFFICER,
MOTOR VEHICLES DEPARTMENT, TRIPUNITHURA,
ERNAKULAM, PIN - 682301
- 3 THE DEPUTY TAHSILDAR (RR)
OFFICE OF THE DEPUTY TAHSILDAR, KOCHI TALUK, FORT
KOCHI, ERNAKULAM, PIN - 682001

OTHER PRESENT:

Smt.JASMINE M.M.-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 27.11.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**J U D G M E N T**

The present writ petition has been filed seeking the following reliefs:

“i) issue a writ of certiorari or any other appropriate writ or order, set aside Ext.P1 and P2;

ii) issue a writ of mandamus or other appropriate writ or order or direction, declaring that 1st petitioner is not liable to pay the additional tax as demanded in Ext.P1 and P2 in the light of the provisions of '*Income Tax Act*' and the '*Kerala Motor Vehicles Taxation Act, 1976*' and Ext.P3 judgment of this Hon'ble Court.”

2. Learned counsel for the petitioner as well as the learned Government Pleader, fairly contended that the subject matter of the present writ petition is covered in favour of the petitioner, in view the judgment of this Court in **Paulose K.V. v. The Transport Commissioner** [WP(C) No.33235/2017 & connected cases dated 2.8.2023], wherein, this Court, after considering the submissions of both sides and the provisions of section 206C(1F) of the



Income Tax Act, 1961 and Section 2(e) of the Kerala Motor Vehicles Taxation Act, 1976, held as under :

“10. If TCS to be included in the purchase value, as contended by learned Government Pleader, Smt.Reshmita Ramachandran, then the provisions of Section 2(e) would run contrary to the sub-section (1) of Section 206C of the I.T.Act. The Court has to give harmonious construction between the Central Act and State enactment. The Legislature to avoid this anomaly in the definition clause of the purchase value under Section 2(e) of the Kerala Motor Vehicles Taxation Act, 1976 by way of Amendment by Finance Act, 2020, added proviso in Section 2(e) of the Kerala Act, specifically providing that TCS collected by the dealer would not include the purchase value of the vehicle. This Court is therefore, of the view that proviso has to be treated as clarificatory.

11. In view thereof, present writ petitions are allowed, and the inclusion of 1% TCS on the purchase value is set aside. The petitioners are required to pay the motor vehicle tax on the purchase value excluding the TCS collected by the dealer. The demand notices, Exts.P3 and P4 in W.P.(C)No.6910/2019 and Ext.P4 in W.P.(C)No.21609/2019 are set aside. The Assessing Authority may redetermine the tax, if it so required, in the light of the observations made hereinabove.”



In view of the above, the present writ petition is also allowed in terms of the judgment dated 2.8.2023 in **Paulose K.V.(supra)** [WP(C) No.33235/2017 and connected cases]. Hence, Exts.P1 and P2 demand notices impugned herein are hereby set aside and the assessing authority may redetermine the tax, if it so required, in the light of the observations made by this court in **Paulose K.V.(supra)**.

Pending interlocutory applications, if any, in the writ petition would stand dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE



WP (C) NO. 39311 OF 2023

APPENDIX OF WP (C) 39311/2023

PETITIONER EXHIBITS

- Exhibit-P1 TRUE COPY OF THE DEMAND NOTICE DATED
07.04.22 ISSUED FROM THE OFFICE OF 3RD
RESPONDENT ALONG WITH THE ENGLISH
TRANSLATION
- Exhibit-P2 TRUE COPY OF THE NOTICE DATED 05.08.2023
ISSUED BY 2ND RESPONDENT ALONG WITH THE
ENGLISH TRANSLATION
- Exhibit-P3 TRUE COPY OF THE JUDGMENT DATED 02.08.23
PASSED IN WP(C) NO.33235/2017 ON THE FILE
OF THIS HON'BLE COURT