Case No. 52

MADRAS HIGH COURT

2nd September, 1993/W.P.No.3926 of 1993.

A.R. Lakshmanan, J

M/s. Sundaram Finance Limited, 21, Patullos Road, Madras - 600 002, represented by its Executive Director C.N. Nammalwar..

Vs

1. The Regional Transport Officer, Madurai.
2. K.R. Soundarapandian.

Hirer under a H.P. agreement commits default - vehicle repossessed by the owner/financier - hirer had not paid motor vehicle tax during the period he was in possession - financier / owner can ask for issuance of fresh R.C. book - authority cannot insist on payment of M.V. Tax as a condition for issuing fresh R.C. - Section 51(5) of M.V.Act, 1988

Financier taking the vehicle from the place of repossession to the place of garage - permit not required- Rule 172 of the M.V. Rules

This writ petitioner, a hire purchase financing company filed this petition seeking a direction to the R.T.O., the 1st respondent, to issue a fresh Registration Certificate under S.51(5) of the Motor Vehicles Act in relation to the vehicle which the petitioner re-possessed in exercise of paramount right conferred under the hire purchase agreement. The petitioners alleged that in order to claim exemption of motor vehicles tax and the permit tax, the petitioner intimated the 1st respondent the fact of re-possession and also the stoppage of the vehicle and sent stoppage reports to the 1st respondent. The petitioner filed Form No.36 dated 19-3-1992 for cancellation of the Registration Certificate and for issue of a fresh Registration Certificate in the name of the petitioner company under S.51(5) of the Act. It was further alleged that the first respondent returned Form No.36 to the petitioner and refused to accept the application for issue of fresh Registration Certificate on the ground that the petitioner had to pay the composite tax. It was contended for the 1st respondent that under Ss.3, 4 and 8 of the Tamil Nadu Motor Vehicles Taxation

Act, 1974, the permit holder was liable to pay tax for the vehicles used actually or kept for use factually, and in the case of non-use of the vehicles, it should be properly intimated in time and permission has to be obtained for the entire period of stoppage or otherwise, the liability to pay the tax rests with the permit holders/the possessor of the vehicle, as the case may be. It was also submitted by the respondent that the financier, being the successor of the vehicle, had not obtained any permission after submitting the prescribed applications with the payment of prescribed fee but only intimated the fact of re-possession of the vehicle and the financiers have failed to fulfill the requirements of the law and the Rules made thereunder.

Held: S.51 of the Motor Vehicles Act does not stipulate any payment of tax as a pre-condition for issuing fresh Registration Certificate. Therefore, the impugned notice dated 3-2-1993, as rightly contended by the petitioner is outside the provisions of S. 51(5) of the Act.

Held: In the instant case, such non-use of the vehicle on road is intimated to the registering authority concerned and hence no tax is payable under the Tamil Nadu Motor Vehicles Taxation Act, 1974. Therefore, the registering - authority/1st respondent is bound to issue a fresh Certificate of Registration under S.51(5) of the Act, without insisting upon any tax being paid as demanded in its letter every time, in spite of the fact that it is informed that the vehicle has not been put on public road by the financier/petitioner at any point of time from the moment the vehicle is repossessed.

It may be noted that under Ss.50 and 51 of the Act, no condition is imposed for payment of tax before fresh Certificate of Registration is issued under S.51(5) of the Act. On the other hand, if the provisions of S.50 of the Act are noticed, the said provision relation to transfer of ownership of vehicle which contemplates a no-objection certificate being obtained under S.48 of the Act. S. 48(1) and (2) of the Act deals with grant of no-objection certificate for assigning a new registration mark to the vehicle or for entering the particulars of transfer of ownership in the Certificate of Registration. Therefore, from any point of view, the registering authority/1st respondent cannot impose any condition for payment of tax by the petitioner/financier. The impugned order of the first respondent is contrary, to the mandatory provisions of S.51(5) of the Act and therefore, there is no justification on the part of the 1st respondent to reject the application of the petitioner company for issue of a fresh Registration Certificate.

From the perusal of R. 172(6) of the Motor Vehicles Rules it would be noticed that the said Rule is intended to be complied with by the permit holder. There is no provision under the Act by which the financier could intimate the Registering Authority of non-use of the vehicle. Therefore, the manner of intimation in writing cannot be insisted upon in any particular form in the absence of such form not having been prescribed under the Rule or under the Motor Vehicle Taxation Act or Rules framed thereunder. Therefore, by reason of the intimation made by the petitioner as the financier, by writing letters to the Registering Authority about stoppage of the vehicle and by complying with the requirement of non-use of the vehicle on the road, the petitioner is not liable to pay tax when the vehicle is not used or put on road.

The person to whom the permit is granted is a holder of the permit or a permit-holder as the expression is used in the Act. The financier does not require a permit to take the vehicle from the place of re-possession to a place of its destination where the financier intended to keep the vehicle. But, if the financier intends to put the vehicle on road for use of transport vehicle, he shall require a permit under S.66(1) of the Act. In the instant case, the financier/petitioner only garaged the vehicle in its place of garage, viz., and the vehicle is not put to use as transport vehicle as contemplated under S.56(1) of the Act. So long as the financier/petitioner re-possessed the vehicle and intends to exercise the right to sell the same by the obtaining a fresh Certificate of Registration under S.51(5) of the Act, it cannot be called a permit holder or a holder of a permit, as the case may be.

With reference to the Tamil Nadu Motor Vehicles Taxation Act, 1974, it is an enactment to consolidate and amend the law relating to levy of tax on motor vehicles in the State of Tamil Nadu. Permit fee is not a tax levied under the Motor Vehicles Taxation Act, 1974. In relation to the payment of tax contemplated under S.3, S.4 would State that the tax would be paid by the registered owner or by any other person having possession or control of the motor vehicle, at his choice, either quarterly, half-yearly or annually, or a licence to be taken out by him for that quarter, half-year or year, as the case may be. Emphasis is laid on the person liable to pay tax. In the instant case, the moment the financier/petitioner re-possessed the vehicle, it intimated the registering authority that the vehicle has been kept at the destination by garaging it.

Ms. T.K. Seshadri for Petitioner.

Mr. V.R. Rajasekaran, Government Advocate for Respondents.

ORDER

1. The petitioner company is a public limited company incorporated under the provisions of the Indian Companies Act, 1913. It carries on business of hire purchase on vehicles, machinery, equipment and also leasing of machinery and equipment. It filed the above writ petition for the following relief: To issue a writ or certiorarified mandamus by calling for the record of the 1st respondent in No.105385/A4/93 dated 3-2-1993 and quash the same and further direct the 1st respondent to issue a fresh Registration Certificate under S.51(5) of the Motor Vehicles Act (hereinafter referred to as the Act) in relation to the vehicle TN 59 A0144 in favour of the petitioner company.

2. In the course of business, the petitioner was approached by the 2nd respondent during May, 1990, with a request to purchase a new Ashok Leyland Chassis from the dealers M/s. T.V. Sundaram Iyengar & Sons Ltd., Madurai, and let it on hire to the 2nd respondent (hirer) under hire purchase system. The petitioner and the 2nd respondent entered into a hire purchase agreement dated 22-5-1990 wherein one P.V. Kandaswami of Madurai, joined as a guarantor. The total hire purchase amount of Rs.4,00,993 is payable in 35 monthly instalments. The first instalment commenced on 22-6-1990 and the last instalment ended on 22-4-1993. The said dealer also raised invoice in the name of the petitioner company as owners of the vehicle showing the 2nd respondent only as a hirer. The fact of the said hire purchase agreement was also recorded in the Registration Certificate of the vehicle TN 59 A 01 14 by the Assistant Registering Authority, Madurai.

3. It is to be noticed that under the law of Contract and in terms of the hire purchase agreement, the petitioner is the absolute owner of the hire purchase vehicle till the entire amount under the contract is paid by the 2nd respondent and he exercises his option to purchase the vehicle in writing. Under Cl.III of the hire purchase agreement, the hirer should pay the monthly instalments on the due dates mentioned in the second schedule therein, whether previously demanded by the petitioner or not, failing which the petitioner is entitled to exercise its paramount right of re-possession of the vehicle by virtue of Condition No.9 of the said hire purchase agreement.

4. There hirer was irregular and committed default in paying the monthly instalments due from 22-4-1991. He failed to regularize the contract despite the petitioner company's several demands. As a result, the petitioner was constrained to re-possess the hire purchase vehicle on 17-2-1991 in exercise of the paramount right

conferred under the hire purchase agreement. The petitioner garaged the vehicle at M/s. Sundaram Motors, Vijayawada Further to re-possession, (vide Letter RC/1490/ 91, dt 19-12-1991 with a copy marked to the guarantor), the petitioner intimated that fact of re-possession to the hirer and also called upon him to settle the contract within ten days from the date of receipt of the letter. The hirer failed to comply with the demand of the petitioner despite the fact that the said letter was duly acknowledged by him. In order to claim exemption of motor vehicles tax and the permit tax, the petitioner in and by letter RC/1482/91 dated 18-12-1991, intimated the 1st respondent the fact of re-possession and also the stoppage of the vehicle. Since the vehicle was garaged within the jurisdiction of the regional Transport Officer, Vijayawada, a copy of the letter was also sent to him by way of information.

5. Ever since the date of re-possession, the petitioner sent stoppage reports to the 1st respondent with copies marked to the Regional Transport Officer. Vijayawada- vide stoppage reports RC/2064/92 dated 28-3-1992.. RC/0526/92 dated 26-6-1992, RC/0990/92 dated 22-9-1992 and RC/1595/92, dated, 22-12-1992. Further to the petitioner's letter, dated 18-12-1991, the 1st respondent in and by communication dated 13-2-1992, requested the Regional Transport Officer, Vijayawada, to cause necessary verification regarding the non-use of the vehicle and to send a physical verification report and also take action for cancellation of the permit under S.86 of the Act read with R,172(6) of the Tamil Nadu Motor Vehicles Rules, 1989 (hereinafter referred to as the Rules). As the hirer did not take any steps for settlement of the contract and to take back the vehicle, the petitioner filed Form No.36 dated 19-3-1992 for cancellation of the Registration Certificate and for issue a fresh Registration Certificate in the name of the petitioner company under S.51(5) of the Act.

6. It is further stated by the petitioner that the Deputy Transport Commissioner of Vijayawada verified the stoppage of the vehicle for the periods from 18-12-91 to 3-4-1992 and 1-4-1992 to 10-7-1992, confirming the non-use of the vehicle at the premises of M/s. Sundaram Motors, Vijayawada. According to the petitioner, even after the verification of stoppage of the vehicle, the 1st respondent expressed to the representatives of the petitioner company that he would be prepared to issue a fresh Registration Certificate on payment of the motor vehicles tax for the quarter ending 30-9-1992. Even though the vehicle does not attract the payment of tax for the said period in view of the stoppage reports, which was confirmed on verification by the Deputy transport Commissioner, Vijayawada, the petitioner, in order to expedite the process of issue of fresh Registration Certificate in its favour, paid the tax for the quarter ending 30-9-1992, According to the petitioner, even after payment of the

motor vehicles tax for the quarter ending 30-9-1992 at the insistence of the 1st respondent, he returned Form No.36 to the petitioner's Madurai office and refused to accept the application for issue of fresh Registration Certificate on the ground that the petitioner had to pay the composite tax. The petitioner company's Madurai Branch Office representatives met the 1st Respondent and clearly pointed out to him that the petitioner company was not liable to pay any tax in respect of the vehicle and pursuant to the discussions, the first respondent directed the petitioner to surrender the permit, which was also complied with. The petitioner filed another Form No.36 dated 26-8-1992 under cover of its letter SFM/706/92 and as there was no response from the 1st respondent, the petitioner sent a reminder on 10-11-1992.

7. While so, the first respondent sent a notice dated 9-11-1992 to the petitioner directing it to pay the motor vehicles tax for the quarter ending 31-12-1992 and also the permit tax for the period from 1-4-1992 so as to take steps for issue of fresh registration Certificate in the name of the petitioner company. The petitioner sent a reply dated 24-11-1992 to the 1st respondent clearly highlighting the provisions of law under which the petitioner is not obligated to pay the motor vehicles tax and also reminding him of the various stoppage reports sent by the petitioner claiming for exemption of tax. The 1st respondent sent a reply dated 16-12-1992 declining to consider the petitioner's representation dated 24-11-1992 stating that the petitioner had intimated only the re-possession of the vehicle and did not send any communication regarding stoppage of the vehicle. The petitioner was once again called upon to pay the tax already demanded by the first respondent in the earlier notice. The petitioner sent a reply dated 29-12-1992 clarifying the fallacy in the notice of the 1st respondent dated 16-12-1992 and once again requesting him to issue fresh Registration Certificate in favour of the petitioner company. In response, the 1st respondent returned Form No.36 under the impugned notice dated 3-2-1993, once again directing the petitioner to pay motor vehicles tax for the quarter ending 31-3-1993 and also the national permit tax for the period from 1-4-1992 and resubmit Form No.36. With these averments, the petitioner company has filed the writ petition for the relief mentioned above.

8. The 1st respondent filed a counter affidavit stating that the vehicle was repossessed by the petitioner on and from 17-12-1991 onwards, being the financiers of that said vehicle. The petitioner was directed by the 1st respondent to clear off the arrears of tax before consideration of the issuance of the Fresh Registration Certificate in its name. According to R,172(6) of the Rules, if a transport vehicle is stopped from service for more than 20 days, the same shall be intimated to the transport

authority concerned surrendering the records of the vehicle, and shall obtain permission for such stoppage period. According to Ss.3, 4, and 8 of the Tamil Nadu Motor Vehicles Taxation Act, 1974, the permit holder is liable to pay tax for the vehicles used actually or kept for use factually. In the case of non-use of the vehicles, it should be properly intimated in time and permission has to be obtained for the entire period of stoppage or otherwise the liability to pay that tax rests with the permit holder/the possessor of the vehicle, as the case may be. The financiers, being the successor of the vehicle, had not obtained any permission after submitting the prescribed applications with the payment of prescribed fee but only intimated that fact of re-possession of the vehicle. Thus, the financiers have also failed to fulfill the requirements of the law and the rules made thereunder. Thus, the liability to pay tax rests with the owner of the vehicle as well as the financier of the vehicle, being the successor of the vehicle.

9. The 1st respondent further submits in the counter affidavit that the demand of tax is just, proper and legal and in accordance with the provision of the Tamil Nadu Motor Vehicles Taxation Act, 1974, and the Rules made thereunder. The matter relating to the collections of motor vehicles tax is covered by the Tamil Nadu Motor Vehicles Taxation Act, 1974, and the Rules made thereunder and not the Motor Vehicles Act, 1988. The petitioner/financier intimated only the fact of re-possession of the vehicle and it has not applied for permission for the stoppage of the Vehicle and to get exemption of tax in the prescribed manner required under R.172 (6) of the Rules. As such, the liability to pay tax rests with financier, being the successor of the vehicle. Instead of complaining that the permit was not cancelled by the Regional Transport Authority, the financier may surrender the permit for cancellation. Thus, the petitioner/financier has failed to avail of the opportunity given in the Act for canceling the permit and thereby minimise their burden. But, actually the permit was cancelled by the 1st respondent with effect from 25-1-1993 in R.No.96355/92 and the cancellation of permit is given effect to. Even though the permit holder failed to apply for permission for stoppage of the vehicle and thereby getting exemption from payment of tax, the financier also failed to do so. Being the successor of the vehicle, is it also one of its duties to obtain such permission and wherever the assets go, the liabilities will also follow to successors. Applying this principle of natural justice, according to the 1st respondent, the demand of tax is perfectly in order and is in accordance with law.

10. I have heard Mr. T.K. Seshadri for the petitioner and Mr. V.R. Rajasekaran, Government Advocate for the 1st respondent. Their argument is considered as

under. Mr. T.K. Seshadri submits that under S.51(5) of the Act, the petitioner company filed Form No.36 for issuing the fresh Registration Certificate and that the said section contemplates that if the Registering Authority satisfies (i) that the hire purchase financier has taken possession of the vehicle owing to the default committed by the hirer under the provisions of the agreement; and (ii) that the registered owner refuses to deliver the Certificate of Registration or has absconded, after giving the registered owner an opportunity to make such representation as he may wish to make, by sending a notice by registered post with acknowledgement due at his address entered in the Certificate of Registration, the Registering Authority can cancel the existing Registration Certificate and issue the fresh Registration Certificate in favour of the hire purchase financier. S.51(5) of the Act reads as follows:

"51. Special provisions regarding motor vehicles subject to hire purchase agreement, etc." - (1)

(4) x x x

(5) Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle owing to the default of the registered owner under the provisions of the said agreement and that the owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may with to make (by sending to him a notice by registered post acknowledgment due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the agreement.

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such a person pays the prescribed fee;

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under the sub-section would have been in force."

11. The above section does not stipulate any payment of tax as a pre-condition

for issuing fresh Registration Certificate. Therefore, the impugned notice dated 3-2-1993, as rightly contended by Mr. T.K. Seshadri is outside the provisions of S.51(5) of the Act. The vehicle in this case was re-possessed on 17-12-1991. The intimation regarding re-possession and stoppage of the vehicle was given to the 1st respondent on 18-12-1991. The receipt of that letter was also admitted by the 1st respondent in his letter dated 13-12-1992 addressed to the Regional Transport Officer, Vijayawada. Continuation stoppage reports were also sent by the petitioner on 28-3-1992 and 26-6-1992. The stoppage of the vehicle was also confirmed by the Deputy Transport Commissioner, Vijayawada. Under R.172(6) of the Rules. The permit is liable to be suspended or cancelled after due notice to the permit holder, if the vehicle has not been used for a continuous period of more than ten days, unless prior permission was obtained. Having been informed about the stoppage of the vehicle as early as 18-1-2-1991, after the expiry of ten days, the 1st respondent ought to have taken steps for cancellation of the permit, which was also surrendered to him at his insistence of the first respondent had taken such a step for cancellation of the permit, the permit tax from 10-4-1992 would not have accrued.

12. Further the motor vehicle tax for the quarter ending 31-12-1992 is not leviable in view of continuity in stoppage of the vehicle since 17-12-1991, which fact was also reported to the 1st respondent on 18-12-1991 when the tax for the quarter ending 31-12-1991 was in force. S.3 of the Tamil Nadu Motor Vehicles Taxation Act casts duty to pay tax only in respect of the vehicle used or kept for use in the State of Tamil Nadu. In the instant case, during the period for which the tax was demanded, viz., 31-12-1992, the vehicle was neither used not kept for use, which fact was also notified to the 1st respondent, Therefore, I am agreement with the learned counsel for the petitioner that tax for the said quarter is not attracted.

13. In this context, the provisions of R.172(6) and 254 of the Rules can be usefully referred to.

"172. Transport vehicle-Permit condition

(1) to (5) x x

(6) It shall be a condition of the permit of every transport vehicle that the vehicle will be so maintained as to be available for the service for which the permit was granted for the entire period of currency of the permit and that the permit is liable to be suspended or cancelled, after due notice to permit holder if the vehicle has not been used for the purpose for which the permit was granted for a continuous period of more than ten days during the period for which the permit authorise the

use of the vehicle on the road, unless the holder of the permit had obtained in writing the prior permission of the Transport Authority to suspend the service of the vehicle for a specific period exceeding ten days:

Provided that no holder of a permit shall ordinarily be granted permission to suspend the service of the vehicle for a continuous period exceeding twenty days at time;

Provided further that the period may be extended by such further period or periods, as the Transport Authority thinks fit;

Provided also that the holder of a permit shall pay the fee prescribed in the Table under R.279.

254. Withdrawal of transport vehicle from service-report, - If the holder of a Stage Carriage or a contract carriage or goods carriage permit for whatever reasons withdraws the vehicle from the service authorised by permit and does not restore the vehicle to the service within a period of ten days, he shall forthwith report the fact, the reason therefore and the expected period of withdrawal to the Regional Transport Authority concerned and shall also submit a report to that authority immediately on restoration of the vehicle to the service. "

14. These two Rules are applicable only to the permit holders. The hire purchase financiers are not permit holders. Therefore, the demand for payment of permit tax, in the instant case by the 1st respondent, as rightly contended by Mr. T.K. Seshadri, learned counsel for the petitioner, is not sustainable.

15. A format is prescribed under R.255 of the Rules and stoppage report should be given as per the said format in order to avoid permit tax. In the instant case, stoppage reports containing the name of the registered owner, class of the vehicle, date from which the vehicle is stopped, place of garage, the last quarter for which that tax has been paid, etc., were sent to the 1st respondent. The vehicle was also not used during the period in question, for which the tax exemption is sought for, which was also confirmed by the Deputy Transport Commissioner, Vijayawada. 5.3 of the Tamil Nadu Motor Vehicles Taxation Act, 1974, levies tax on every motor vehicle used or kept for use in the State of Tamil Nadu at the rates specified for such vehicles in the First and Second Schedules thereunder. S.4 of the Act enjoins duty to pay the tax by the registered owner or by any other person having possession or control of the motor vehicle. By reading these two sections, it is clear that either the registered

owner or any other person having possession or control of the motor vehicle should pay the tax on every motor vehicle used or kept for use. In the first instance, it should be noted that the above Act contemplates the imposition of motor-vehicles tax only and not any fee payable on permit. Therefore, the demand of the 1st respondent with reference to permit tax is outside the scope of the said Act. Consequently, even assuming that the petitioner is roped in under S.4 of the said Act in view of its possession and control on the motor vehicle, the petitioner neither used the vehicle nor kept it for its use. To substantiate this submission, the stoppage of the vehicle at Vijayawada was confirmed by the Deputy Transport Commissioner, Vijayawada, and the several stoppage reports sent by the petitioner were not returned by the 1st respondent, and the vehicle continued to be under stoppage. In the instant case, the 1st respondent demanded tax for the quarter ending 31-12-1992 and permit tax from 10-4-1992. Since the vehicle is under stoppage for the said periods. I am of the view, that no, tax is eligible.

16. Mr. V.R. Rajasekaran, learned Government Advocate, submits that the financier/petitioner only intimated the fact of re-possession but has not applied for permission for stoppage of the vehicle to get exemption of tax under R.172(6) of the Rules. Under the said provision, it shall be a condition of the permit of every transport vehicle that the vehicle will be so maintained as to be available for the service for which the permit was granted for the entire period of currency of the permit and that the permit is liable to be suspended or cancelled after due notice to the permit holder if the vehicle has not been used for the purpose for which the permit was granted for a continuous period of more than ten days during the period for which the permit authorise the use of the vehicle on the road unless the holder of the permit had obtained in writing the prior permission of the Transport Authority to suspend the service of the vehicle for a specific period exceeding ten days. Provided that no holder of a permit shall ordinarily be granted permission to suspend the service of the vehicle for a continuous period exceeding 20 days at a time. Provided further that the period may be extended by such further period or periods as the Transport Authority thinks fit. Provided also that the holder of a permit shall pay the fee prescribed in the Table under R.279.

17. From the above Rule, it is clear that it is confined only to the person to whom the permit is given viz., the permit holder. It is impossible for the petitioner, who is the hire purchase financier, to use the vehicle on road inasmuch as no permit is issued in its name and therefore, it stand outside the purview of R.172(6) of the Rules. As the petitioner does not come under R.172(6) of the Rules, it is strange to ask it to obtain prior permission from the Transport Authority for stoppage of vehicle.

Thus, I am of the view, that the stand taken by the first respondent is not maintainable both in law on facts.

18. Mr. V.R. Rajasekaran, learned Government Advocate further contends that financier being successor of the vehicle, should pay the tax. I am unable to accept this contention for the reasons given infra. The term 'successor' really means the persons who succeeds the registered owner either on his death or transfer of the vehicle. Here, the question of transferring the vehicle in the name of the legal heir or the transferee is not involved. What is sought for is only cancellation of the existing registration Certificate and issue of a fresh Registration Certificate in favour of the petitioner. The petitioner is neither the legal heir nor the transferee of the 2nd respondent. Therefore, the petitioner cannot be termed as successor.

19. As regards the issue of a fresh Registration Certificate, the Regional Transport Officer should satisfy that the financier has taken possession of the vehicle owing to the default of the registered owner under the hire purchase agreement and that he refuses to deliver the Registration Certificate. Upon satisfaction of the above requirements and after giving opportunity to the hirer, the Regional Transport Officer should cancel the existing registration Certificate and issue the fresh Registration Certificate in favour of the financier. While canceling the existing Registration Certificate, the registered owner ceases to own the vehicle and under S.86(c) of the Act, the permit is liable to be cancelled. Therefore, no transfer of permit is involved while issuing fresh Registration Certificate in favour of the financier. The cancellation of the permit is an automatic process while issuing the fresh Registration Certificate, and for any amount due under the permit, the permit holder alone is liable. The financer is also not a successor as regards the permit also. In the instant case, the permit is liable to be cancelled soon after the expiry of ten days from the date of intimation viz., 18-12-1991. The application for issue of fresh Registration Certificate was applied on 19-3-1992. The 1st respondent ought to have taken steps for cancellation of permit at that time itself. Having failed to do so, it is not open to him now to contend that the financier should have surrendered the permit for cancellation.

20. The learned Government Advocate also referred to the decision of this Court in W.P. Nos. 19920 and 20476 of 1992. The judgments referred to in the counter by the 1st respondent are all concerned with permit holders who operated the vehicles. Therefore, in my view, they are not applicable to the instant case. The permit is always replaceable and it does not go with the vehicle. Under S.83 of the Act, with the permission of the authority, the holder of the permit may replace the

vehicle covered by the permit by another vehicle. It is only the permit holder or the transferee of the permit who is liable to pay the permit fee. When the permit is not going with the vehicle, it is incorrect on the part of the 1st respondent to demand permit fee while issuing the fresh Registration Certificate or from the transferee of the vehicle.

21. At the time of arguments, It was represented by the learned Government Advocate that the petitioner being in possession and control of the vehicle, becomes the permit holder and therefore it is liable to pay the permit tax also. As pointed out earlier, the Motor Vehicles Taxation Act does not deal with the amount payable under the permit. The can be replaced by another vehicle and It does not go along with the vehicle. When the provisions of the Motor Vehicles Taxation Act do not apply to the amount payable under the permit, it is incomprehensible as to how such payment is demanded from the petitioner, who is not a permit holder. Even assuming without conceding that the permit tax is payable only in respect of the vehicle used or kept for use, the period for which the permit tax is now demanded is contrary to the provisions of law as the vehicle has been under continuous stoppage for which stoppage report has also been given to the 1st respondent. The petitioner has also taken all reasonable steps, what a hire purchase financier is expected to take, and it cannot be directed to comply with certain directions which are not prescribed in law.

22. Though the petitioner is the owner of the vehicle under the hire purchase transaction for the purpose of the Act, the hirer who has registered himself as registered owner under the Act is liable for all taxes payable with reference to the vehicle. He is the person who is in control and possession of the vehicle. The financier's rights are recognised under the Act. Prior to the present Act, the Motor Vehicles Act, 1939, was in force and S.31-A of the old Act provides for the endorsement of the transaction of hire purchase in the Registration Certificate and also entitlement of the financier to seek for a fresh Registration Certificate in the even of the registered owner (hirer) not surrendering his Registration for issue of a fresh Registration Certificate. The Act also recognises the right of re-possession with reference to the vehicle which has the permit. S.66(3)(o) of the Act provides that the financier is not necessarily to hold the permit to take the vehicle from place of re-possession from the hirer to the place of garage. Therefore, the financier cannot be considered as a permit holder under Act. The permit holder is a distinct expression used under the Act and the person in whose name the permit is given with reference to the vehicle is the permit holder. Whenever certain compliances are to be made by the permit holder, it is the person in whose name the permit was granted, who alone can comply with it. The said provision cannot be insisted upon

the persons than a permit holder. In the counter affidavit, one of the contentions of the 1st respondent was that no stoppage intimation is given under R. 172(6) of the Rules. From a perusal of the said Rule, it would be noticed that the said Rule is intended to be complied with by the permit holder. There is no provision under the Act by which the financier could intimate to the Registering Authority of non use of the vehicle. Therefore, the manner of intimation in writing cannot be insisted upon in any particular form in the absence of such form not having been prescribed under the rules or under the Motor Vehicles Taxation Act or Rules framed thereunder. Therefore, the intimation made by the petitioner as the financier, by writing letter to the Registering Authority about stoppage of the vehicle and by complying with the requirement of non-use of the vehicle on the round, the petitioner is not liable to pay tax when the vehicle is not used or put on road.

23. S.2(30) of the Act defines 'owner' as a person in whose name a motor vehicle stands registered, and where such a person is a minor, the guardian of such minor, and in relation to a motor vehicle, which is the subject of a hire purchase agreement or an agreement of the lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement. S.2(31) of the Act defines 'permit' as a permit issued by a State or Regional transport Authority or an authority prescribed in this behalf under the Act authorising the use of a motor vehicle as a transport vehicle. S.51(1) of the Act provides that where an application for registration of a motor vehicle, which is held under a hire purchase, lease or hypothecation agreement, is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement. S.51(5) of the Act has already been extracted above. The first proviso has been complied with by the petitioner by paying the prescribed fee. The second proviso is not applicable to the petitioner at the vehicle re-possessed is a transport vehicle. S.66 of the Act provides for the necessity for permits. S.66(1), which is very important, contemplates that no owner of a motor vehicle could use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in manner in which the vehicle is being used. Therefore, even if the petitioner, who is the financier, wants to use vehicle on road, it shall have a valid permit under S.66(1) of the Act. The person to whom the permit is granted is a holder of the permit or a permit-holder as expressions used in the Act.

24. S.66(3)(0) of the Act would state that the provisions of sub-S(1) shall not

apply to any transport vehicle which is subject to a hire purchase, lease or hypothecation agreement and which owing to the default of the owner, has been taken possession by or on behalf of, the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination. Therefore, the financier does not require a permit to take the vehicle from place to place of re-possession to a place of its destination where the financier intended to keep the vehicle. But, if the financier intends to put the vehicle on for use of transport vehicle, he shall require to obtain permit under S.66(1) of the Act. In thee instant case, the financier/petitioner only garaged the vehicle in its place of garage, viz., M/s. Sundaram Motors, Vijayawada, and the vehicle is not put to use as transport vehicle as contemplated under S.66(1) of the Act.

25. S.86 of the Act contemplates the cancellation and suspension of permit. The Transport Authority which granted a permit, may cancel the permit or any suspend it for such period as it thinks fit, if the holder of the permit cases to own the vehicle covered by the permit. In the Instant case, the moment the petitioner/financier takes possession of the vehicle under the agreement and removed the same to its destination, pursuant to S.63(3)(o) of the Act, the permit issued under S.66(1) of the Act to the owner of the vehicle stands cancelled. So, the vehicle is without permit the moment the financier/petitioner re-possessed the vehicle under the agreement. The petitioner/financier only sells the vehicle and does not sell the permit is only with reference to the person who Intends to use the vehicle on road under S.66(1) of the Act. The financier/petitioner, therefore cannot be called a permit holder or a holder of permit with reference to the vehicle re-possessed pursuant to the hire purchase agreement, provided he intends to use the vehicle on road as transport vehicle and for that purpose, obtained the permit under S.66(1) of the Act. So long as the financier/petitioner repossessed the vehicle and intends to exercise the right to sell the same by obtaining a fresh certificate of Registration under S.55(1)of the Act, it cannot be called a permit holder or a holder of a permit, as the case may be.

26. With reference to the Tamil Nadu Motor Vehicles Taxation Act, 1974, it is an enactment to consolidate and amend the law relating to levy of tax on motor vehicles in the state of Tamil Nadu. S.2(7) of the said Act defines 'registered owner' as the person in whose name a motor vehicle is registered or deemed to be registered under the Act. S.2(8) defines 'tax' as tax leviable under this Act. S.3 is charging section providing for levy of tax, It would state that subject to the provisions of sub-S.(2), tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the First Schedule or, as the case may

be, in the Second Schedule. We are concerned with the First Schedule alone, which provides for levy of tax and that alone will be the tax that could be levied under the Tamil Nadu Motor Vehicles Taxation Act.

27. Permit fee is not a tax under the Tamil Nadu Motor Vehicles Taxation Act, 1974. In relation to the payment of contemplated under S.3, S.4 would state that the tax would be paid by the registered owner or by any other person having possession or control of the motor vehicle, at his choice, either quarterly, half-yearly or annually, or a licence to be taken out by him for that quarter, half-year or year, as the case may be. S.7 would contemplate that if the tax leviable in respect of any motor vehicle remains unpaid by any person liable for the payment thereof, and such person, before paying the tax, has transferred the ownership of such vehicle or has ceased to be in possession or control of such vehicle, the person to whom the ownership of the vehicle has been transferred or the person who is in possession or control of such vehicle, shall be liable to pay the said tax. The proviso further makes it clear that noting contained in this section shall be deemed to effect the liability to pay the said tax of the person who has transferred the ownership or has ceased to be in possession or control of such vehicle. Therefore, emphasis is laid on the person liable to pay tax. In the Instant case, the moment the financier/petitioner re-possessed the vehicle, it intimated the registering authority that the vehicle has been kept at the destination by garaging at Sundaram Motors, Vijayawada. The financier/petitioner also periodically intimated the registering authority about the non-use of the vehicle. The financier does not hold the permit and without the permit, the vehicle cannot be used on road. If the vehicle is not put on road, it does not suffer tax if such intimation of non-use is made to the registering authority as has been done in the instant case.

28. S.13 of the Motor Vehicles Taxation Act provides that where the vehicle has not been used on any public road during the whole of that quarter, half-year, year or life time or a continuous part thereof not being less than one month a refund of the tax at such rates as may, from time to time, be notified by the Government, shall be payable on an application made within such period as may be prescribed, and the vehicle is therefore not subject to tax if it is not used on any public road. In the instant case, such non-use of the vehicle on road is intimated to the registering authority concerned and hence, no tax is payable under the Tamil Nadu Motor Vehicles Taxation Act, 1974. Therefore, the registering authority/1st respondent is bound to issue a fresh Certificate of Registration under S.51(5) of the Act, without insisting upon any tax being paid as demanded in its letter every time, in spite of the fact that it is informed that the vehicle has not been put on public road by the financier/petitioner at any point of time from the amount the vehicle is re-possessed.

29. It may be noted that under Ss.50 and 51 of the Act, no condition is imposed for payment of tax before fresh Certificate or Registration is issued under S.51 of the Act. Reference to S.51(5) of the Act has already been made. On the other hand, if the provisions of S.50 of the Act are noticed, the said provision is in relation to transfer of ownership of vehicle. Which contemplates a no objection certificate being obtained under S.48 of the Act. S.48(1) and (2) of the Act deals with grant of no objection certificate for assigning a new registration mark to the vehicle or for entering the particular of transfer of ownership in the Certificate of Registration. Therefore, in my opinion, from any point of view, the registering authority/1st respondent cannot impose any condition for payment of tax by petitioner/financier.

30. The impugned order of the first respondent is contrary to the mandatory provisions of S.51(5) of the Act and therefore, there is no justification on the part of the 1st respondent to reject the application of the petitioner company for issue of a fresh Registration Certificate. The 1st respondent has failed to exercise his jurisdiction in granting fresh Registration Certificate under S.51(5) of the Act, The 1st respondent is, therefore, directed to issue a fresh Registration Certificate in respect of the subject hire purchase vehicle within four weeks from the date of receipt of a copy of this order either from this Court or on production of the same by the petitioner company so that it will sell the vehicle and appropriate the sale proceeds against the amount due and payable under the hire purchase agreement. In the instant case, the vehicle was re-possessed by the petitioner/financier on 17-12-1991 and since then it is in an idle condition exposed to vagaries of nature, thereby the vehicle is losing its value day be day. If the vehicle continues to be in such a condition, it will further lose its value and it will not fetch any reasonable price satisfying the claim of the petitioner. It is also against public interest inasmuch as if the vehicle is allowed to run after sale, it will result, it will result in payment of tax and other income to the Government.

31. For the foregoing reasons, the writ petition is allowed. However, there will be no order as to costs. Time for issuance of fresh Registration Certificate four weeks from the date of receipt of a copy of this order from this Court or on production of the same by the petitioner company whichever is earlier.