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STATE OF TAMIL NADU

v.

M. KRISHNAPPAN AND ORS.

MARCH 18, 2005

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[S.N. VARIAVA, DR. AR. LAKSHMANAN AND S.H. KAPADIA, JJ.]

*Motor Vehicles :*

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*Tamil Nadu Motor Vehicles Taxation Act, 1974 (As amended by Act 27/98)—Sections 4(1-A)(a), 2 and 3 r/w Schedule III, Part-I .*

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*Levy of "life time tax" in lump sum in advance on motor vehicles registered on and after 1-7-1998—On basis of new index of "weight-cum-value" of the vehicle—Validity—Held, the new index maintains a nexus with the essential character of the levy, hence, does not make the levy lose its regulatory and compensatory character—State competent to levy the tax under Entry 57, List II of the Seventh Schedule to the Constitution—Constitution of India, 1950—VII Schedule—List II, Entry 57.*

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*Levy of "life time tax" on motor vehicles registered on and after 1-7-1998 on basis of "weight-cum-value" of the vehicle—Imposition of higher tax on vehicles owned by "others" vis-a-vis the vehicles owned by "individuals" in Part-I of the Third Schedule—Challenge to—Held, the impost does not violate Article 14 of the Constitution—Levy of life-time tax is based on rational and reasonable classification founded on intelligible differentia—Constitution of India, 1950—Article 14.*

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By the Amending Act 27 of 1998, Section 4(1-A)(a) came to be inserted in the Tamil Nadu Motor Vehicles Taxation Act, 1974 which imposed a one time payment of "life time tax" in advance on motor vehicles registered on and after 1.7.1998, the date on which the said amending Act came into force. The tax was made leviable on the basis of "weight-cum-value" of the vehicle. The impost was challenged as unconstitutional, discriminatory and arbitrary besides being inconsistent with the scheme of 1974 Act. The High Court held that by introducing 'value' as an index, the tax has ceased to be compensatory and consequently the levy fell

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outside Entry 57 of List II of the Seventh Schedule to the Constitution, which in turn attracted Article 265 of the Constitution resulting in levy and collection of tax without the authority of law. Hence the present appeals by the State. A

Allowing the appeals, the Court, B

**HELD : 1.** The impugned levy of life time tax is based on rational and reasonable classification founded on an intelligible differentia having a rational relation to the object of the levy. It is also not discriminatory, arbitrary or unreasonable so as to violate Article 14 of the Constitution. [1127-C; 1125-F] C

*Anas v. State of Kerala, (1999) 3 KLT 147, approved.*

**2.** The State maintains old roads and makes new ones. These roads are at the disposal of those who use motor vehicles either for private purpose or for trade or commerce. The State has to find funds for making new roads and for maintenance of those that are in existence. The impugned tax is regulatory and compensatory in nature in the sense that it is imposed to meet the increasing costs of maintenance and upkeep and to that extent it is not plenary. [1123-F-G] D

*Automobile Transport (Rajasthan) Ltd. etc. v. State of Rajasthan and Ors., AIR (1962) SC 1406, referred to.* E

**3.** The "life time tax" is a one time payment spread over the economic life of the vehicle. The said tax is based on time, use and maintenance of the roads. Any standard, which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy. The index of "weight-cum-value" maintains the nexus with the essential character of the levy in question and, therefore, the High Court erred in holding that by introduction of the value of the vehicle as a parameter, the levy ceases to be regulatory and compensatory in nature. [1124-B-C] F G

*Union of India and Ors. v. Bombay Tyre International Ltd., AIR (1984) SC 420, relied on.*

**4.1.** Throughout the Constitution, the legislative power relating to taxes and the legislative power relating to general subjects is treated H

A separately and is not subsumed under a general head. Entry 57 of List-II of the Seventh Schedule to the Constitution refers to taxes on vehicles suitable for use on roads. When the Constitution provides a field of legislation, it has to be read in the broadest possible terms. When the State is empowered to levy tax on the vehicle, it is empowered to levy tax on every aspect of the vehicle. [1124-D-E]

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4.2. Under the unamended 1974 Act, weight was the basis of the impugned levy as an annual tax. But with the introduction of a “life time tax”, the entire future projection spread over the economic life of the vehicle had to be taken into account along with other factors like fall in the value of the rupee, inflation, rising costs of the material, cross subsidy etc. and consequently, it was necessary to introduce the new index of “weight-cum-value” and factors like paying capacity of the owner. These factors have nexus with the use of the roads over a period of time and hence, the impugned levy fell within Entry 57 List-II of the Seventh Schedule to the Constitution. [1125-D-E]

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4.3. The levy in question being one time tax continues to be a part of regulatory measure. For administrative reasons, in the matter of collection of tax, one time payment of tax is administratively convenient and at the same time, it is also beneficial to the users of the vehicles who do not have to go to the office of the RTO every year to pay the annual taxes. It is also beneficial to the users of the motor vehicles, as they do not have to pay taxes at the increased rates from time to time over the economic life of vehicle as contemplated by section 3(2) of the Act. Moreover, weight alone may not provide a sufficient parameter/basis for imposition of “life time tax”. [1125-A-C]

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*Commissioner of Central Excise, Lucknow, U.P. v. Chhata Sugar Co. Ltd.*, [2004] 3 SCC 466 and *State of W.B. v. Kesoram Industries Ltd. and Ors.*, [2004] 10 SCC 201, referred to.

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5. There is no merit in the contention of the respondent that there is violation of Article 14 of the Constitution by imposing higher burden of tax on vehicles owned by “others” *vis-a-vis* the vehicles owned by the “individuals” in Part-I of the Third Schedule. Firstly, levy is a constitutional concept, whereas collection of a tax as well as incidence of tax comes within the statutory measure. The mode of collection or the incidence of tax cannot be the conclusive test to decide the nature of the levy. The nature of the levy is a concept different from the mode of

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collection of tax. Levy is a constitutional concept whereas mode of collection of tax is a statutory concept. They stand on different footings. Secondly, when an economic activity is to be valued, it is open to the law maker to take into account various factors including the paying capacity of the user, the value of the vehicle, the economic life of the vehicle etc. Lastly, in the present case, for the vehicles registered before 1.7.1998 the option between annual and one time tax is retained. [1126-C-F]

*Union of India and Ors. v. Bombay Tyre International Ltd.*, AIR (1984) SC 420, relied on.

*Municipal Corporation of the City of Ahmedabad and Ors. v. Jan Mohammed Usmanbhai and Anr.*, [1986] 3 SCC 20; *The State of Gujarat and Anr etc. v. Shri Ambica Mills Ltd., Ahmedabad and Anr etc.*, [1974] 4 SCC 656 and *State of Maharashtra and Ors. v. Madhukar Balkrishna Badiya and Ors.*, AIR (1988) SC 2062, referred to.

*Barclays Mercantile Business Finance Ltd. v. Mawson (Inspector of Taxes)*, [2005] 1 All ER 97, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1869-1880 of 2000

From the Judgment and Order dated 11.11.99 of the Madras High Court in W.P. Nos. 15139/98, 12296/98 and W.M.P. No. 18695/98, W.P. Nos. 11815, 19240, 18953, 19120, 14176, 17859/98, 7073, 5970/99 and W.M.P. No. 8628/99

A.K. Ganguli, Subramonium Prasad, Gopala Krishna R., Abhay Kumar and Jai Kishore, with him for the Appellant.

M.G. Ramachandran, K.V. Mohan, K.V. Balakrishnan and Ms. Taruna Singh Baghel for the Respondent.

The Judgment of the Court was delivered by

**KAPADIA, J.** The question which arises for determination in these civil appeals is - whether "life time tax" leviable in lump sum in advance for the life time of a motor vehicle (four wheeler) on the basis of the index of "weight-cum-value" ceases to be compensatory in nature as held by the impugned judgment of the Madras High Court dated 11.11.1999 in Writ Petition Nos. 11815, 15139 and others of 1999.

A At the outset, it may be stated that the impugned judgment covers twelve writ petitions filed in the Madras High Court, all of them seeking to challenge section 4(1-A)(a) read with Part-I Schedule-III to the Tamil Nadu Motor Vehicles Taxation Act, 1974 (hereinafter referred to as “the 1974 Act”), as amended.

B For the sake of convenience, we may mention the facts of the case in writ petition no. 15139 of 1998.

C M. Krishnappan, respondent herein challenged the provisions of section 4(1-A)(a) imposing life time tax on motor vehicles to be registered on and after 1.7.1998 being the date on which the amending Act 27 of 1998 came into force. By the said amending Act, section 3A as also the aforesaid section 4(1-A) (a)(b) came to be inserted in the said 1974 Act by which a dichotomy was created between the vehicles registered prior to 1.7.1998 (old vehicles) and the vehicles registered thereafter (new vehicles). In respect of the old vehicles, an option was given either to pay one time tax or an annual tax, but in the case of new vehicles no such option was provided for and consequently, it became compulsory to pay one time tax on and after 1.7.1998. At this stage, it may be stated that the respondent herein, M. Krishnappan, had purchased, on 23.9.1998, a passenger car “Tata Sumo”, on payment of Rs. 5,25,451, the unladen weight of which was 1700 kg. on which he was charged a one time tax of Rs. 20,540.

E The impost was accordingly challenged as unconstitutional, discriminatory, arbitrary and violative of article 14 of the Constitution, besides being inconsistent with the scheme of the 1974 Act. The main thrust of the challenge was that the levy of motor vehicle tax was compensatory in nature for the use of public road; that the wear and tear of such roads maintained by the State had relevance to the unladen weight of the vehicles and not to the value of the vehicle specified in part-I of the third schedule; that the value of the vehicle cannot constitute the basis for fixing the life time tax and that such value had no relevance with the maintenance of the roads and consequently the levy was arbitrary and unreasonable. The other incidental contentions were : that by insertion of section 4(1-A)(a) read with Part-I of Schedule-III to the Act, an inconsistency stood introduced in the said 1974 Act, as the pre-amended Act was based on the laden weight of the vehicle; that the said parameter continued to apply for vehicles registered before 1.7.1998; that the new index of “weight-cum-value” was made applicable only to new vehicles; that the said index had no relevance to the use and

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maintenance of the road; that the differentia between old and new vehicles had no nexus with the wear and tear of the roads; that there was no difference between the two types of vehicles in terms of user of the roads; and that, the State Legislature had committed a grave blunder in introducing section 4(1-A)(a) making it compulsory for the registered owners of the new motor vehicles to pay one time tax resulting in an unwarranted and unjustified increase in the payment of tax.

In the counter affidavit, filed on behalf of the State, the levy was sought to be justified on the ground that w.e.f. 1.4.1989, two-wheelers (non-transport) vehicles were made to pay "life time" tax at the time of its registration by inserting an amendment to section 4 of the Act, as section 4(1-A).

In view of the success of "life time tax" for two wheelers, the Government decided to introduce life time tax, without option, for four wheelers, like cars and jeeps. (See Statement of Objects and Reasons of the Amending Act 27/98). That, option given to the said old vehicles was continued and the classification between old and new cars in the payment of "life time tax" was based on an intelligible differentia, hence, there was no violation of article 14 of the Constitution.

By the impugned judgment, the High Court held that the impugned amending Act 27/98, which imposed the levy of life time tax based on the value of the vehicle registered on and after 1.7.1998 was inconsistent with the section 4(1-A)(b); that prior to the amending Act 27/98, the tax was levied only on laden weight and not on the value of the vehicle which had no nexus with the use of the roads; that by introducing the "value" as an index, the tax has ceased to be compensatory and consequently, the levy fell outside entry 57 of list-II of the seventh schedule to the Constitution, which in turn attracted article 265 of the Constitution resulting in levy and collection of tax without the authority of law.

Mr. A.K. Ganguly, learned senior advocate appearing on behalf of the State submitted that the concept of collection of one time tax incorporated in section 4(1-A)(a) read with schedule-III (part-I) of the 1974 Act has been upheld. In this connection, reliance was placed on the judgment of this Court in the case of *State of Maharashtra and Ors. v. Madhukar Balkrishna Badiya and Ors.*, reported in AIR (1988) SC 2062. It was urged that the index of "weight-cum-value" will not make the levy loose its regulatory and compensatory character. That, the mode of collection will not alter the nature

A of the levy under section 3 of the said 1974 Act. That, imposition of tax  
depending on the status of the owner or the nature of the vehicle will not alter  
the nature of the levy. It was urged that continuance of the option to pay the  
tax annually or on one time basis did not violate article 14. According to the  
learned counsel, the State Legislature was competent to tax the vehicles,  
B hence, the impugned impost fell under entry 57 list-II of the seventh schedule  
to the Constitution.

Mr. M.G. Ramachandran, learned advocate for the assessee submitted  
that collection of one time tax based on the value of the vehicle in the garb  
of regulation had no nexus with the use and maintenance of roads; that,  
C “value” had no connection with the costs or expenses of administration; that  
the impugned levy based on the status of the owner or the nature of the  
vehicle made the levy fall outside entry 57 list-II and the classification for the  
purposes of the said tax between the old and the new vehicles made the levy  
arbitrary, discriminatory and unreasonable under article 14 of the Constitution.  
D In the circumstances, it was submitted that no interference was called for  
with the impugned judgment.

Before proceeding to consider rival contentions, it is essential to discuss  
the statutory provisions of the 1974 Act, as amended. Section 2 is the definition  
section wherein the expressions “laden weight” and “life time tax” have been  
E defined. Section 3(1) *inter alia* provides that the said tax shall be levied on  
motor vehicles used in the State at the rates specified in the first schedule or  
in the second schedule or in the third schedule, as amended by Act 27/98.  
Under section 3(2), the Government is empowered by a notification to increase  
the rate of tax specified in the schedules from time to time, provided such  
increase, at a given, time shall not in the aggregate exceed fifty percent of  
F the rate specified in the respective schedule, as the case may be.

Section 4, as amended by Act 27/98, reads as under :-

“4. *Payment of Tax*

G (1) The tax levied under this Act shall subject to the provision of  
sub-section (1-A), be paid in the manner prescribed 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,  
on a licence to be taken out by him for that quarter, half-year or year,  
as the case may be.

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(1-A) Notwithstanding anything contained in sub-section (1), - A

(a) in respect of the motor vehicles specified in item (A) in Part-I of the Second Schedule and in Part-I of the Third Schedule, at the time of its registration, a life time tax shall be paid at the rates specified in item (A) in Part-I of the Second Schedule or in Part-I of the Third Schedule, as the case may be, on a licence to be taken out for the life time of such vehicles. B

(b) In respect of motor vehicles specified in item (B) in Part-I of the Second Schedule and in Part-II of the Third Schedule, the tax shall be paid either annually at the rates specified in the First Schedule or for the life time of such vehicles at the rate specified in item (B) in Part-I of the Second Schedule or in Part-II of the Third Schedule, as the case may be, on a licence to be taken out for such vehicles for that year or for the life time, as the case may be; and C

(bb) in respect of motor vehicles specified in Part-II of the Second Schedule, a life time tax shall be paid at the rate specified in Part-II of the Second Schedule. D

(c) in respect of motor vehicles specified in clauses 6 and 7 of the First Schedule, the tax shall be paid annually at the rates specified therein on a licence to be taken out for that year. E

*Explanation:* The tax for a half-yearly licence shall not exceed twice and the tax for an annual licence shall, not exceed four times the tax for a quarterly licence. The Government may, by notification, grant, subject to such condition as may be specified, a suitable rebate in case of half-yearly, annual and life-time licences. F

(1-B) Notwithstanding anything contained in sub-section (1), in the case of motor vehicles specified in class 5-A of the First Schedule, in respect of which permits are granted under the Motor Vehicles Act, 1988 (Central Act 59 of 1988) for a period of five years, the tax shall be paid at the rates specified in the First Schedule, for five years at a time, at the time of issue of such permits: G

Provided that in respect of the motor vehicles specified in class 5-A which are already covered by permits, the tax shall be paid annually till the renewal of such permits.

(1-C) Notwithstanding anything contained in sub-section (1), in the H



A case of motor vehicles specified in class I of the First Schedule in respect of which permits are granted under the Motor Vehicles Act, 1988 (Central Act 59 of 1988) for a period of five years, the tax under this Act may be paid by the registered owner or by any person having possession or control of the motor vehicle, at his option, at the rates specified in the First Schedule for five years at a time, at the time of issue of suit permit.

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(2) No motor vehicle shall be used or kept for use in the State of Tamil Nadu at any time unless a licence has been obtained.

C (3) Notwithstanding anything contained in sub-section (1), no person shall be liable to tax during any period on account of any taxable motor vehicle, if the tax due in respect of such vehicle for the same period has already been paid by some other person.

D (4) Where a life time tax has been paid in respect of a motor vehicle referred to in the Second Schedule or in the Third Schedule the registered owner or any other person having possession or control of such vehicle shall not be required to pay any additional tax either by way of increase or otherwise.”

E Similarly, by the amending Act 27/98, a new schedule was added as the Third Schedule (Part-I), which reads as under:-

"THIRD SCHEDULE PART - I AT THE TIME OF REGISTRATION OF NEW MOTOR VEHICLES						
Item	If the value of the vehicle is not more than Rs. 5 lakhs		If the value of the vehicle is more than Rs. 5 lakhs but lakhs not more than Rs. 10		If the value of the vehicle is more than Rs. 10 lakhs.	
	Individual	Others	Individual	Others	Individual	Others
(1)	(2) Rs.	(3) Rs.	(4) Rs.	(5) Rs.	(6) Rs.	(7) Rs.
(a) Weighing not more than 700 kgs. unladen..	8,210	16,420	12,320		16,420	32,840
(b) Weighing more than 700 kgs. but not more than 1, 500 kgs. unladen..	10,950	21,900	16,430	32,860	21,900	43,800
(c) Weighing more than 1, 500 kgs. but	13,290	27,380	20,540	41, 080	27,380	54,760

not more than 2, 000 kgs. unladen..						
(d) Weighing more than 2, 000 kgs. but not more than 3, 000 kgs. unladen..	15,060	30,120	22,590	45,180	30,120	60,240
(e) Weighing more than 3, 000 kgs. unladen in respect of which private transport vehicles permit is not required under Motor Vehicles Act.	17,110	34,220	25,670	51,340	34,220	68,440
<i>Explanation:</i> For the purpose of this Schedule, the word "Individual" means a person known by his proper name."						
A bare reading of the aforestated schedule shows the introduction of "weight-cum-value" index as the basis for						

payment of "life time tax"; that there is an in-built rationalization of the rates according to the status of the holder (paying capacity) and the nature of the vehicle (Indian and imported cars). Such a rationalization of rates conceptually has been accepted by the Court in the case of *Union of India and Ors. v. Bombay Tyre International Ltd.*, reported in AIR (1984) SC 420, in which it has been held that any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy.

In the case of *Automobile Transport (Rajasthan) Ltd. etc. v. State of Rajasthan and Ors.*, reported in AIR (1962) SC 1406, there was a challenge to section 4 of Rajasthan Motor Vehicles Taxation Act, 1951, under which the levy was charged at the rates specified in the schedule. Under schedule-II, taxes were fixed on day-to-day basis in respect of certain goods vehicles and in other cases, they were fixed on annual basis. These provisions were challenged as *ultra vires* articles 301 and 19(1)(g) of the Constitution.

On examination of the provisions of the Act, this Court held that if the statute fixes a charge for a convenience or service provided by the State and imposes it upon those who choose to avail themselves of such services or convenience, the imposition assumes the character of remuneration or consideration charged in respect of an advantage sought and received and, therefore, the tax was regulatory and compensatory in nature and consequently did not attract article 301 of the Constitution.

The short question which arises for consideration in the present case is - whether the High Court was right in holding that with the introduction of the concept of "value" as the basis of the tax, the impugned levy fell outside entry 57 of list-II of the seventh schedule to the Constitution.

It is well to remember that the State maintains old roads and makes new ones. These roads are at the disposal of those who use motor vehicles either for private purpose or for trade or commerce. India is a cost-push economy. It has high rate of inflation. The costs of maintenance as well as the costs of material used in the maintenance of the roads increases by the day. This naturally costs the State, which has to find funds for making new roads and for maintenance of those that are in existence. The impugned tax is regulatory and compensatory in nature in the sense that it is imposed to meet the increasing costs of maintenance and upkeep and to that extent it is not plenary. However, as stated above, the limited question is : whether the tax ceases to be compensatory and regulatory with the introduction of "weight-

A cum-value” index and whether the said index is contrary to the scheme of the said 1974 Act.

At the outset, it may be noted that depreciation is a function of time and maintenance. In the present case, we are concerned with the “life time tax” which is one time payment spread over the economic life of the vehicle.

B The said tax is based on time, use and maintenance of the roads. As stated in the judgment of this Court in *Bombay Tyre* (supra), any standard, which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy. Applying the said test to the present case, we hold that the index of “weight-cum-value” maintains the

C nexus with the essential character of the levy in question and, therefore, the High Court erred in holding that by introduction of the value of the vehicle as a parameter, the levy ceases to be regulatory and compensatory in nature. It is important to bear in mind that entry 57 of list-II of the seventh schedule to the Constitution refers to taxes on vehicles suitable for use on roads. Under the said entry, a field is provided to the State Legislature to impose the

D impugned tax in respect of every aspect of a vehicle. When the Constitution provides a field of legislation, it has to be read in the broadest possible terms. When the State is empowered to levy taxes on goods, it is empowered to levy such taxes on every aspect of such goods. Similarly, when the State is empowered to levy tax on the vehicle, it is empowered to levy tax on every

E aspect of the vehicle. Throughout the Constitution, the legislative power relating to taxes and the legislative power relating to general subjects is treated separately and is not subsumed under a general head. Applying the above tests to the present case, we are of the view that the High Court had erred in holding that on account of introduction of “weight-cum-value” index in the third schedule to the Act, the impugned tax had ceased to be regulatory

F and compensatory and consequently, the said levy fell outside entry 57 list-II.

In the case of *Commissioner of Central Excise, Lucknow, U.P. v. Chhata Sugar Co. Ltd.*, reported in [2004] 3 SCC 466, this Court has held that a regulating measure may also contain taxing provisions.

G In the case of *State of W.B. v. Kesoram Industries Ltd. and Ors.*, reported in [2004] 10 SCC 201, the Constitution Bench of this Court has held that a power to tax may be exercised for the purposes of regulating trade, industry, commerce or any other activity; the purpose of levying such an impost is the exercise of sovereign power to effectuate regulation though incidentally the

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levy may contribute to the revenue. A

In the present case, we are satisfied that the levy in question being one time tax continues to be a part of regulatory measure. For administrative reasons, in the matter of collection of tax, one time payment of tax is administratively convenient and at the same time, it is also beneficial to the users of the vehicles who do not have to go to the office of the RTO every year to pay the annual taxes. It is also beneficial to the users of the motor vehicles, as they do not have to pay taxes at the increased rates from time to time over the economic life of vehicle as contemplated by section 3(2) of the Act. Moreover, weight alone may not provide a sufficient parameter/basis for imposition of "life time tax". As an illustration, we may point out that the weight of the Honda CRV Car is 1500 kg. as against the weight of Tata Indigo GLX which weighs 1490 kg. and yet the cost of Honda CRV is Rs. 15,24,396 lacs whereas the price of Tata Indigo is 5.08, 651 lacs. Hence, weight index alone may not constitute the basis of "life time tax". B C

In the circumstances, we reiterate that introduction of "weight-cum-value" index will not make the levy non-regulatory/non-compensatory. Further, under the unamended 1974 Act, weight was the basis of the impugned levy as an annual tax. But with the introduction of a "life time tax", the entire future projection spread over the economic life of the vehicle had to be taken into account along with other factors like fall in the value of the rupee, inflation, rising costs of the material, cross subsidy etc. and consequently, it was necessary to introduce the new index of "weight-cum-value" and factors like paying capacity of the owner. In our view, these factors have nexus with the use of the roads over a period of time and hence, the impugned levy fell within entry 57 list-II of the seventh schedule to the Constitution. D E

We also do not find the impugned levy to be discriminatory, arbitrary or unreasonable so as to violate article 14 of the Constitution as held by the High Court. In the case of *Municipal Corporation of the City of Ahmedabad and Ors. v. Jan Mohammed Usmanbhai and Anr.*, reported in [1986] 3 SCC 20], this Court held that article 14 forbids class legislation and not reasonable classification and in order to pass the test of reasonable classification, the classification must be founded on an intelligible differentia which distinguishes persons or class of persons that are grouped together from the others left out of that group and that such differentia must have a rational relation to the object sought to be achieved by the statute in question. F G

In the case of *The State of Gujarat and Anr. etc. v. Shri Ambica Mills* H

A *Ltd., Ahmedabad and Anr. etc.*, reported in [1974] 4 SCC 656, this Court held that where size is an index, discrimination between large and small is permissible. Article 14 does not require that every regulatory statute should apply to each and everyone equally in the same business.

B Similarly, in the case of *Sate of Maharashtra v. Madhukar Balkrishna Badiya* (supra), this Court has held that taxing of a company owned vehicle at three times the rate payable by an individual owner did not make the enactment violative of article 14 as the Legislature had the power to distribute the tax burden in a flexible manner and the Court would not interfere with the same.

C There is no merit in the contention advanced on behalf of the respondent herein that there is violation of article 14 of the Constitution by imposing higher burden of tax on vehicles owned by "others" vis-a-vis the vehicles owned by the "individuals" in part-I of the third schedule. We do not find merit in this argument. *Firstly*, as held by this Court in the case of *Bombay*

D *Tyre* (supra), levy is a constitutional concept, whereas collection of a tax as well as incidence of tax comes within the statutory measure. The mode of collection or the incidence of tax cannot be the conclusive test to decide the nature of the levy. The nature of the levy is a concept different from the mode of collection of tax. Levy is a constitutional concept whereas mode of collection of tax is a statutory concept. They stand on different footings.

E Secondly, it is important to remember the words of *Lord Wilberforce*, quoted with approval by House of Lords in the case of *Barclays Mercantile Business Finance Ltd. v. Mawson (Inspector of Taxes)*, reported in [2005] 1 All ER 97 stating that "a tax is generally imposed by reference to economic activities or transactions which exist in the real world". When an economic activity is

F to be valued, it is open to the law maker to take into account various factors including the paying capacity of the user, the value of the vehicle, the economic life of the vehicle etc. Lastly, in the present case, for the vehicles registered before 1.7.1998 the option between annual and one time tax is retained.

G Before concluding, we may quote the observations of the Division Bench of the Kerala High Court in the case of *Anas v. State of Kerala*, reported in (1999) 3 KLT 147 [to which one of us, Dr. AR. Lakshmanan, J., was a party], which state as under :-

H "A taxing statute can be held to contravene Art. 14 of the Constitution only if it purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality. It is for the

Legislature to decide on what objects to levy what rate of tax and it is not for the Courts to consider whether some other objects should have been taxed or whether a different rate should have been prescribed for the tax. It is also to be noted that the Legislature is competent to classify persons or properties into different categories and tax them differently, and if the classification thus made is rational, the taxing statute cannot be challenged merely because different rates of taxation are prescribed for different categories of persons or objects.”

For the aforesaid reasons, there is no violation of article 14 of the Constitution. As stated above, the impugned levy of life time tax is based on rational and reasonable classification founded on an intelligible differentia having a rational relation to the object of the impugned levy.

Accordingly, the appeals filed by the State succeed, the impugned judgment and order of the High Court is set aside, with no order as to costs.

B.B.B.

Appeals allowed. D