IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20TH DAY OF SEPTEMBER 2006

PRESENT

THE HON'BLE MR. JUSTICE V. GOPALA GOWDA

AND

THE HON'BLE MR. JUSTICE C.R. KUMARASWAMY

WRIT APPEAL NO.359 OF 2006 [MVT-TAX]

BETWEEN :

1 THE LAKSHMI URBAN CO-OPERATIVE
CREDIT BANK LIMITED,
GAJENDRAGAD POST,
RON TALUKA, GADAG DISTRICT,
REPRESENTED BY ITS MANAGER
SRI N S INDI, AGED ABOUT 52 YRS
GADAG

... APPELLANT

(By Sri/Smt : SHALINI PATIL & H·B·V·PATIL - ADVOCATES)

AND :

1 REGIONAL TRANSPORT OFFICER
AND TAXATION AUTHORITY
GADAG

2 THE DEPUTY COMMISSIONER FOR
TRANSPORT, BELGAUM DIVISION
BELGAUM

3 SRI ASHOK M WALI
OCC: BUSINESS, R/O HIRE BAZAAR
GAJENDRAGAD POST,
RON TALUKA,
GADAG DISTRICT.

4 PANTHER INVESTIGATORS
D-21, LAXMI COMPLEX
P B NO 611, CLUB ROAD
HUBLI 29

... RESPONDENTS

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION No.1282/2006 DATED 2/2/2006.

THIS WRIT APPEAL COMING ON FOR PRELIMINARY HEARING BEFORE THIS COURT, THIS DAY, **GOPALA GOWDA, J.,** DELIVERED THE FOLLOWING:-

JUDGMENT

Heard the learned counsel for the appellant.

2. The correctness of the order dated 02.02.2006 passed by the learned single Judge in Writ Petition No. 1282 of 2006 (MVT-TAX) in affirming the orders dated 25.04.2005 and 03.12.2005 passed by the 2nd respondent in fastening the liability of Motor Vehicle Tax under Section 3 of the Karnataka Motor Vehicles Taxation Act 1957 r/w. relevant rules for the period from 01.01.1999 to 30.06.2005 amounting to Rs.1,36,730.00 in respect of the vehicle No. KA-26/1536, is questioned in this appeal by producing a copy of the Inward Mail Register extract as an additional

document along with the application-I.A. II of 2006 to evidence the fact that the appellant had sent a letter dated 16.11.1999 to the R.T.O. Office, Gadag, who is the first respondent herein intimating cancellation of Bank Hypothecation in respect of OPV.No.KA 26-1536 of Sri. A.M. Wali. Therefore, the appellant is no longer the owner of the vehicle in question in respect of the motor vehicle tax imposed by the 1st respondent, which is affirmed by the 2nd respondent as the same is vitiated both on account of erroneous reasoning and error in law.

3. It is an undisputed fact that the appellant-Bank is the financier and it has advanced loan to the 3rd respondent for purchasing the vehicle, to that effect, in the Registration Certification it was mentioned that the vehicle in question is hypothecated. Therefore, in terms of Section 2(30) of the Motor Vehicles Act 1988, the appellant-Bank becomes the owner of the vehicle in question. It is an undisputed fact that the vehicle was seized by the Bank and kept in its custody and availed the benefit under Section-16 of the

Motor Vehicle Taxation Act 1957 regarding the payment of vehicle tax of the vehicle in question for non-use of the same. The appellant-Bank has stated in the explanation offered to show cause notice issued by the 1st respondent demanding for payment of Motor Vehicle Tax due to the aforesaid period is that the hypothecation of the vehicle in favour of the appellant Bank was discharged and the vehicle was delivered to the 3rd respondent. Therefore, it is not liable to pay tax under the provisions of the Act to the 1st respondent. The 1st respondent after considering the explanation offered by the bank passed an order fastening the liability of motor vehicle tax liability upon it. The same has been questioned by the appellant-Bank by filing an appeal invoking its rights under Section 15 of the Act, by urging various legal contentions and also by producing relevant document. The 2nd respondent after hearing and considering the rival legal contentions urged in the memorandum of appeal, examined the findings and reasons recorded by the 1st respondent to find out whether fastening the tax liability upon the appellant-bank is correct or not.

The 2nd respondent is right in affirming the findings and reasons recorded by the 1st respondent by assigning valid and cogent reasons at Paras-5 and 6 of his order after referring to the relevant provisions of the Act, namely, Sections 3(1) and 4(1) of the Karnataka Motor Vehicle Taxation Act, 1957 and the decision rendered by this Court in Writ Petition No.2111/1990 on 11.09.1991 in the case of ***TAHSILDAR AND OTHERS –Vs.-MOHAMMED ANVAR AND ANOTHER*** and also the decision of the Hon'ble Supreme Court reported in ***AIR 1970 SC 1911.*** Further, in this regard, he has also referred to the Division Bench decision of this Court rendered in Writ Appeal No.125 of 1985 on 15.02.1985 in the case of ***R.T.O. AND OTHERS –Vs.- K.T. KADIRAPPA AND ANOTHER*** and also a decision reported in ***ILR 1991 KAR 3212*** in the case of ***JEROME CRASTA –Vs.- R.T.O.*** By recording his findings after referring to the above mentioned decisions, the 2nd respondent has dismissed the appeal in exercise of his appellate power and jurisdiction.

4. Both the orders passed by Repondents-1 and 2 were challenged in the writ petition by urging various legal contentions. The learned Single Judge after careful examination of the grounds urged in the writ petition has declined to interfere with the orders impugned therein, by accepting the concurrent findings recorded by the 2nd respondent. After examining the contentions urged by the Bank, the learned Single Judge has observed that the owner was a party before the Appellate Authority and as second respondent before the Deputy Commissioner for Transport, Belgaum and it is his case that the possession of the vehicle was not handed over to him. Respondents 1 and 2 having regard to the admitted fact that the vehicle has been removed from the notified place without permission of the 1st respondent, have held that there is violation of the notification issued under Section 16 of the Act and therefore it is held that the appellant-bank is liable to pay tax to the Department. Further, he has observed that it is well settled that a person who has taken possession of the vehicle is liable to pay tax in view of the provisions of Section 9(1) of

the Act and the contention that as the amount was re-paid to the appellant Bank, the vehicle had been handed over to the owner would only show that the vehicle has been removed from the notified place without permission of the 1st respondent. But the said contention has not been substantiated by it before the 2nd respondent by producing any valid evidence. Therefore, the learned Single Judge has concurred with the findings recorded by the Appellate Authority. The additional document produced before this court along with an application placing strong reliance upon its contention at Ink Page No.86, Sl.No.806 stating that on 16.11.1999 a letter was sent to R.T.O. Office, Gadag, intimating cancellation of Bank Hypothecation OPV No.KA 26-1536 of Sri. A.M. Wali and requested for deletion of the hypothecation in the R.C. Register. Under Section 21 of the Act, the Bank is required to send a letter by RPAD. The acknowledgement for having sent the letter regarding the above fact would be primary evidence. Other than that, any additional document produced would either be secondary evidence or the proof of acknowledgement. Therefore, there

is no need for us to consider the additional document produced before us along with an application is either as primary evidence or secondary evidence in terms of Section 65 of the Evidence Act. We are in respectful agreement with the findings and reasons recorded by the learned Single Judge, as he has rightly concurred with the findings of fact recorded by the Appellate Authority on careful examination of the rival contentions urged by the appellant's counsel before him.

5. For the reasons aforesaid, we do not find any grounds whatsoever to interfere with either the order of the learned Single Judge or the orders impugned in the writ petition. The appeal is devoid of merit. Accordingly, this appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

KGR-bpy6116.