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**OFFICE OF THE PR. SECRETARY-CUM-COMMISSIONER
TRANSPORT DEPARTMENT
5/9 UNDER HILL ROAD, DELHI**

MS Kishorji
08/01/16

No.F.01/HQ/SMV/2015/CC/ 6544-49

Dated: 05/02/16

ORDER

This order shall dispose of an appeal dated 16.07.2015 filed by M/s Himgiri Automobiles Pvt. Ltd., A-74, Main Road, Kanti Nagar, Delhi-110051 (hereinafter as "appellant") filed under Rule 45 of Central Motor Vehicles Rules, 1989 against the orders dated 14.10.2014 and 27.12.2014 of the Registering Authority / MLO (Surajmal Vihar).

2. The brief facts of the case, as brought on record, are as under: -

- i. The appellant, an authorised dealer of M/s Hero Motors Ltd., manufacturer of two wheelers was granted Trade Certificates under rule 35(1) of the Central Motor Vehicles Rules, 1989 thereby exempting the vehicles in its possession from the necessity of registration. Subsequently, the appellant was also appointed as a Registering Authority under rule 30(2) of the Delhi Motor Vehicles (Amendment) Rules, 1996 for the purpose of registration of non-transport vehicles on first sale, subject to the terms & conditions to be specified from time to time. As part of these Terms & Conditions laid down by the Transport Department, the dealers empowered as a Registering Authority are required to collect and deposit, on weekly basis, the prescribed registration fees and other statutory levies with the Transport Department in respect of vehicles registered by them in accordance with the provisions of Motor Vehicles Act and Rules made therein.
- ii. As per Central Motor Vehicle Rules 1989, an application for registration of a vehicle is required to be made in Form-20 to the Registering Authority within a period of seven days from the date of taking delivery of such vehicle, excluding the period of journey. The "date of delivery" is reckoned from the date mentioned in the Sale Certificate issued in Form-21 by the dealer. Further, in order to ensure timely registration and any misuse of vehicles without registration, the Transport Department had specified a late penalty @ Rs.2,000/- in case of vehicles registered beyond 7 days and up to 90 days or of date of purchase of vehicle and @ Rs.5,000/- per vehicle in case of delay of more than 90 days vide instructions bearing no.19 (Policy-I)/2003/Tpt/Ops/1814-1833 dated 04.07.2003 issued by the Dy. Commissioner (Operations).

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- iii. In the year 2010, the then MLO (Surajmal Vihar), found that vehicles were being registered by the appellant beyond seven days after delivery, without depositing the due penalty specified by the Transport Department, GNCTD, tampering in the dates of invoices and insurance cover notes to avoid penalty for the delays, and not following the mass emission standards as applicable in the NCT of Delhi.
- iv. This was also brought to the notice of the appellant. However, the appellant dealer, instead of furnishing the correct statement and depositing the amount due, to Transport Department, on account of late registration, pleaded that it had deposited excess road tax. The said prayer had no relevance to the various offences committed under Motor Vehicles Act and rules made thereunder. Therefore, a Memorandum No. PA/DC/(Ops)/ 2011/Tpt/16309 dated 19.11.2012 was served upon the appellant by the then Dy. Commissioner (Operation Branch) inter-alia citing irregularities regarding non-payment of penalty towards cases of delayed registration of vehicles and other irregularities. The said memorandum also noted the liability of appellant to pay penalty amounting to Rs. 5,96,000/- in respect of vehicles registered by the appellant between the period from 27.01.2010 to 31.01.2010 wherein 298 cases of registration were delayed more than 7 days but less than 90 days.
- v. Further, MLO (Surajmal Vihar) issued a show cause notice bearing no. F./SMV/MLO/TPT/ 2014/Misc./2110-2111 dated 13.08.2014 to the appellant, for violation of the Motor Vehicles Act & rules/regulations made thereunder and inter-alia specific violations of provisions relating to registration of vehicles within prescribed time period after the sale of vehicles, and not depositing the composition fee, with the direction to explain the reasons thereof, within seven days, failing which the Department of Transport will take further action as per extant provisions of the Law. As the appellant failed to reply within the stipulated period, another opportunity was provided to the appellant vide Notice dated 26.08.2014. The reply furnished by the appellant on 03.09.2014 was considered and was not found satisfactory by the MLO (Surajmal Vihar) and contrary to the facts on record.
- vi. The appellant had acted in violation of sections 39 & 41 of the Motor Vehicles Act read with rule 47 of the Central Motor Vehicles Rules, rule 30(2) of the Delhi Motor Vehicles Rules and Terms & Conditions framed by the Transport Department for empowerment of appellant as a

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Registering Authority, as a result of which it has caused revenue loss. Accordingly, MLO (Surajmal Vihar Zonal Office) being Registering Authority, suspended the Trade Certificates granted to the appellant under rule 44 of the Central Motor Vehicles Rules, 1989 with immediate effect vide his order dated 14.10.2014 . Meanwhile, a further scrutiny of 3373 cases pertaining to registration of vehicles of the appellant between 01.01.2010 and 31.03.2010 revealed that in 3119 additional cases, vehicles were found registered beyond the period of seven days, for which the appellant was liable to pay the penalty. Accordingly, it was directed by the Registering Authority vide order dated 27.12.2014 to deposit an amount of Rs.64,24,250/- towards the penalty and interest thereon. This was of course, without prejudice to further scrutiny of remaining files by the Transport Department and outcome thereof.

vii. Aggrieved with these orders, the appellant approached the Hon'ble High Court of Delhi and was granted a stay on the implementation of impugned orders dated 14.10.14 and 27.12.14 of MLO (SMV). Later, Hon'ble High Court vide its order dated 02.07.2015 disposed of the petition stating *that the present writ petition and pending application are disposed of with a direction to the appellate authority to decide the appeal as expeditiously as possible preferably within a period of eight weeks. Defects, if any, in the appeal are directed to be cured within a period of two weeks. Till the disposal of the appeal, the interim orders dated 13th January, 2015 shall continue to operate.*

3. Accordingly, the dealer preferred the present appeal before the department on 16.07.2015, which was initially heard by the Secretary-cum-Commissioner (Transport) on 10.09.2015. However, due to transfer of the Secretary-cum-Commissioner vide Govt. of NCT of Delhi order dated 12.09.2015, another opportunity of being heard was provided to the appellant by this authority before disposal of his appeal. The appellant represented by Sh. Anil Goel and Sh. Rajesh Goel were heard at length by the undersigned on 26.11.2015. Both of them reiterated the pleadings as mentioned in their appeal dated 16.07.2015 before the designated appellant authority.

The gist of the pleadings and issues raised in the appeal is as under:

- (i) Instructions issued vide No. 19(Policy-1)/2003/Tpt/Ops/1814-1833 dated 04.07.2003 vide which penalty of Rs.2,000/- for late registration was imposed are misconceived by the department.
- (ii) A note was approved for collecting Rs.100/- as late fees in 2008.

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- (iii) Details of vehicles registered late were not provided to them.
- (iv) The appellant is constrained to fill the Form-21 for the purpose of registration, even though no actual physical delivery was ever made. Registering Authority could have stopped the alleged irregularity prior to issuance of registration certificate.

5. The appellant has prayed for the following relief:

- (a) to quash the order dated 14.10.2014 of Registering authority/ MLO (Surajmal Vihar) suspending the Trade Certificates of the appellant dealer;
- (b) to quash the order dated 27.12.2014 directing them to deposit a sum of Rs.64,24,250/-;
- (c) to entertain their application for renewal of Trade Certificate; and
- (d) to pass any other order which may deem fit and proper in the facts and circumstances of the case.

6. The appellant was represented by its Director, Sh. Anil Goel and General Manager, Sh. Rajesh Goel. The Registering Authority/ MLO (Surajmal Vihar) was also present. A patient hearing was given to both the representatives of appellant, who reiterated their averments and pleadings as raised through their appeal petition. The submissions of Sh. Rakesh Kumar, Registering Authority / MLO (Surajmal Vihar) were also heard.

7. After carefully examining and considering the averments and pleadings of the representatives of the appellant as well as submissions of Registering Authority / MLO (Surajmal Vihar), the entire issue can be discussed as below:-

- (i.) The Appellant, an authorized dealer for selling and registering two-wheelers of M/s Hero Honda Motors, had been granted Trade Certificates by the Transport Department and appointed as a Registering Authority under the extant provisions. As per the Terms and Conditions, laid down by Transport Deptt. for such authorised dealers, it was bound to collect registration fee, road tax and any other fee as per the provisions of the Motor Vehicles Act 1988, Central Motor Vehicles Rules, 1989, Delhi Motor Vehicles Rules, 1993 and rules/regulations made thereunder in respect of vehicles sold, registered and delivered by the appellant. Therefore, the appellant, being an authorized Registering Authority was also responsible for collecting the penalties, from the applicants for registering the vehicles after seven days of

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selling/delivering the vehicles under the provisions of Rule 47 (1) of Central Motor Vehicles Rules 1989, @ Rs.2,000/- for vehicles registered beyond seven days and up to 90 days of taking delivery of vehicle and thereafter @ Rs.5,000/- per vehicle in accordance with the Instructions No.19(Policy-1)/2003/Tpt/Ops/1814-1833 dated 04.07.2003 of Transport Department. As regards legal sanctity of these instructions, the same were issued in conformity with the provisions of the section 39 and 192 of Motor Vehicles Act, 1988.

All Dealers appointed as registering authorities are bound to collect and deposit penalties in case of late registration of vehicle(s) in accordance with the said instructions. The impugned instructions were issued by the Department in the year 2003 and since then, penalties on account of late registration of vehicles are being paid by all concerned in compliance of these instructions. These instructions are still in force and have not been challenged, as confirmed by the Registering Authority / MLO (Surajmal Vihar). As regards, the allegation of the appellant about approval of charging of penalty of Rs. 100/-, no such orders for late fee of Rs.100/- in place of Rs. 2000/- was issued by the Transport department. Further, Section 177 of Motor vehicles Act, under which a penalty of Rs.100/- has been prescribed is a general provision for the punishment of contravention of the provisions of the Motor vehicles Act or of any rule/ regulation of notification made there under in respect of which penalties have not been provided. The offence committed by the dealer is a specific one and as such needs to be dealt under section 192 (1) of Motor Vehicles Act only.

- (ii) As regards not providing the details of vehicles registered late, as per records, no such request for providing list / copies of documents was received as per MLO (Surajmal Vihar). Moreover, it is also evident that being a self-registering authority, the appellant himself registered all the vehicles and had all the relevant records with him . Further, this issue is in the knowledge of the Appellant dealer, but as per record available, he never bothered to inspect the records or seek the details of such vehicles.
- (iii) As regards the averments of the appellant regarding actual date of delivery of vehicle, it is clear that the date of delivery of a vehicle is reckoned from the "date of delivery" mentioned in the Sale Certificate issued in Form- 21 by the dealer as prescribed in Central Motor Vehicles Rules, 1989 and the vehicle has to be registered within seven days of its delivery as per provisions of the Rule 47(1) of Central Motor Vehicles rules, 1989 reproduced below:

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47. Application for registration of motor vehicles.—(1) An application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of seven days from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by—

- (a) sale certificate in Form 21;
- (b) valid insurance certificate;

In all these cases, relating to delay in registration beyond the prescribed period of seven days, it is on record that the issuance of Sale Letters in Form -21, mentioning the date of delivery and registration of the vehicles, has been undertaken by the appellant dealer itself. This fact has not been disputed by the appellant in his appeal. Thus, it is abundantly clear that the appellant dealer itself was solely responsible for collecting the penalty for registration beyond seven days of delivery of a vehicle.

8. Thus, the appellant, who had been also empowered as a registering authority in the larger public interest by the Transport Department, was bound to collect and deposit tax on vehicles registration and penalties as prescribed in the Motor Vehicles Act and rules framed thereunder as well as under the instructions issued from time to time by the Transport Department / Govt. of NCT of Delhi. It did not confer on him a right to avoid/neglect the collection of statutory penalties, which causes a loss to the State exchequer, and is a serious offence and therefore attracts strict penal action against the appellant including cancellation of trade certificates issued to it so as to recover the arrears of revenue.

9. It is on also record that after initial assessment of the irregularities committed by the appellant, a memorandum was issued to the appellant for violation of terms and conditions relating to appointment of dealers registering authorities under Rule 30(2) of Delhi Motor Vehicles Rules, but no resolution was made by the appellant. Although, Trade Certificates granted to appellant were not revoked as scrutiny of the documents and files of vehicles registered by the appellant was under process; the penalties for delay in registration of vehicles were never waived off and after due process, an order dated 27.12.14 was issued to the appellant to deposit the late fee for delay in registration of vehicles beyond seven days of its delivery (along with penal interest) in respect of records pertaining to vehicles registered by the appellant between 01.01.2010 and 31.03.2010, of the limited number of cases scrutinized by the Transport Department .


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11. The policy formulated vide Instructions No. 19 (Policy-1)/2003/Tpt/Ops/ 1814 -1833 dated 04.07.2003 issued by the Dy. Commissioner (Operations) appears to be just and proper and a necessary deterrent measure to check the tax evasion and is within the legal framework to control such serious irregularities by the vehicle dealers, causing loss of revenue to the Government. The allegation against the appellant is that he did not deposit the penalties with the Department and there is no dispute on this issue. Therefore, an appropriate legal action has been taken against the appellant.

12. The Memorandums dated 19.11.2012 and 13.8.2014 issued to the appellant dealer are self-explanatory. The reply furnished by the appellant to the Show Cause Notice dated 13/08/2014 was not satisfactory and contrary to the facts on record. Consequently, the order dated 14/10/2014 were issued, which are self-explanatory and further orders were issued on 27/12/2014 to deposit the late fee for delay in registration of vehicles beyond seven days of their delivery, which was earlier conveyed to the appellant vide No. PA/DC/(Ops)/2011/Tpt/16309 dated 19.11.2010 for 298 vehicles, along with penal interest and late fee penalty for 3119 vehicles registered after delivery of seven days are within legal framework. These penalties were computed in accordance with the existing rules and regulations and guidelines of the Transport Department. The Registering Authority (Surajmal Vihar), after careful scrutiny, had taken into consideration, only those vehicles which were registered after seven days of their delivery, for the period of three months from 01.01.2010 to 31.03.2010 and scrutiny of the entire records in respect of vehicles registered by the appellant has not concluded yet.

13. It was compulsory on the part of appellant to fill the Form-21 at the time of delivery of the vehicle and as the appellant himself is responsible for registering the vehicles sold and delivered by him, he is also responsible for collecting the taxes, penalties and other levies before registering any vehicle. The appellant violated provisions of the section 39 and 41 of Motor Vehicles Act, 1988 thus committed the offence under Rule 42 of Central Motor Vehicles Rules, 1989 leading to suspension of its Trade Certificates as per the provisions of Rule 44 of Central Motor Vehicles Rules, 1989 after providing it ample opportunity to deposit the late fee penalties. The irregularities committed by the appellant and its repeated failure to comply with the orders relating to deposit of penalties show its misplaced and callous approach towards the Government Revenue which indicates that his action were deliberate and was therefore liable for penal action, as taken by the Department.


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14. Thus, after carefully considering the aforesaid facts and circumstances of the case, the present appeal is liable to be rejected and therefore, order dated 14.10.2014 of the Registering Authority / MLO (Surajmal Vihar) for suspension of Trade Certificates of the appellant dealer and order dated 27.12.2014 directing it to deposit penalty amounting to Rs. 64,24,250/- are upheld.

15. The Registering Authority / MLO (Surajmal Vihar) shall take all necessary actions for implementation of these orders in accordance with the Motor Vehicles Act, 1988 and rules framed thereunder. Further, as mentioned at para 12 above, the orders dated 27.12.2014 of the Registering Authority have taken into account only the vehicles registered between 01.01.2010 to 31.03.2010. The Registering Authority/MLO (Surajmal Vihar) is, therefore, directed to complete the scrutiny of entire records in respect of vehicles registered by the appellant, since the date of its appointment as a registering authority as early as possible, but not later than three months from the date of issuance of this order. Dy. Commissioner (Operations) of the Transport department should monitor the implementation of these directions for ensuring timely completion and should extend all necessary assistance/support, as may be necessary.

Further, Dy. Commissioner (Operations) shall also move a proposal for putting into place a mechanism for periodic inspection and audit of records of vehicles registered by all dealers empowered as registering authorities by the Transport department, GNCTD so that appropriate and timely action could be taken, in case, any irregularity is detected.

JAM 03.2.16

(Parimal Rai)

Pr. Secy.-cum-Commissioner (Transport)
Govt. of NCT of Delhi

**M/s Himgiri Automobiles Pvt. Ltd.,
A-74, Main Road, Kanti Nagar, Delhi-51**

NoF.01/HQ/SMV/2015/

Dated: February __, 2016

Copy forwarded for information & necessary action to:-

1. Jt. Commissioner(Operations), Transport Department, Delhi.
2. MLO (Surajmal Vihar), Transport Department, Delhi.
3. Dy. Controller of Accounts, Transport Department, Delhi
4. Sr. System Analyst, Transport Department, Delhi.
5. MLO (Operations), Transport Department, Delhi.
6. Guard file.

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(YOGESH PRATAP)
DY. COMMISSIONER (OPERATIONS)