NEUTRAL CITATION
2026:GUJHC:49675-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.7688 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

==

Approved for Reporting	Yes	No
	✓	

==

GORDHANBHAI VIRJIBHAI ROY
Versus
STATE OF GUJARAT & ORS.

==

Appearance:
MR. DK NAKRANI(500) for the Petitioner(s) No. 1
MS. KAUSHAL D NAKRANI(5121) for the Petitioner(s) No. 1
MR. RAJ TANNA, AGP for the Respondent(s) No. 1,2,3

==

CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 28/07/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present writ petition, the petitioner – Gordhanbhai Virjibhai Roy, through his power of attorney, who is the owner

of the passenger Bus bearing No.DD-02-9061 registered with the respondent no.3 – Regional Transport Office, Diu, has challenged the order dated 22.01.2025 passed by the respondent no.1 and consequential order dated 28.03.2025 passed by the respondent no.2 imposing levy of vehicle tax.

BRIEF FACTS :

2. It is the case of the petitioner that he paid the motor vehicle tax to the Government of Gujarat for the period from 25.07.2023 to 01.08.2023, i.e. sum of Rs.20,376/-, for which the Department of Transport, Government of Gujarat has issued the check-post tax e-receipt at the time of entering into Gujarat State, on 25.07.2023. It appears that, thereafter, the respondent no.1 detained the passenger bus of the petitioner, on 06.09.2023 alleging that he has committed the offence under Sections 177, 180 and 181 of the Motor Vehicle Act, 1988 (for short 'MV Act'), penalty of total Rs.11,500/- was imposed. The petitioner thereafter requested the respondent no.1 to release the vehicle and, since the same was not done, he filed an application on 06.06.2024 under Section 207(2) of the MV Act before the respondent no.1 requesting to release the vehicle of the petitioner subject to payment of all the fine and composite tax of Gujarat Government from 01.08.2023 to 06.09.2023, as mentioned in the Detention Memo dated 06.09.2023.

2.1. Since the vehicle was not released, the petitioner approached this Court by filing the writ petition being Special Civil Application No.14345 of 2024.

2.2. It appears that, in view of the order dated 22.01.2025 passed by the respondent no.1, levying arrears of tax from 01.01.2013 to 31.09.2023 amounting to Rs.53,20,000/-, during the pendency of the writ petition, the petitioner thereafter withdrew the said petition, with a view to file appropriate proceedings.

2.3. Subsequently, the petitioner filed an Appeal before the Appellate Authority, i.e. the Transport Commissioner under Section 14 of the Gujarat (Bombay) Motor Vehicles Tax Act, 1958 (for short 'the GMV Tax Act') read with Rule 29 of the Gujarat (Bombay) Motor Vehicles Tax Rules, 1959 (for short 'the GMV Tax Rules, 1959'), on 10.02.2025 and the same is still at the filing stage, as the petitioner has not deposited the pre-deposit, as required under Rule-20 of the Gujarat Motor Vehicles Tax Rules, 1989 (for short 'the GMV Tax Rules, 1989').

2.4. Thereafter, the petitioner has filed the present writ petition, which was ordered to be heard with Special Civil Application No. 6893 of 2025. The said writ petition was filed by the son of the petitioner; however, it was withdrawn on 27.07.2026, with a view to pursue the Appeal before the Appellate Authority.

2.5. Since the petitioner has insisted the order on merits, we are passing the present order, by dealing with the submissions advanced by learned advocate Mr.D.K. Nakrani.

SUBMISSIONS ON BEHALF OF THE PETITIONER :

3. At the outset, learned advocate Mr.D.K. Nakrani has submitted that, the levy of tax from 01.01.2013 to 31.09.2023 of Rs.53,20,000/- is illegal, since it is premised on presumption. It is contended that the respondent no.1 has presumed, that the petitioner had plied the vehicle in the State of Gujarat. It is submitted that, though all the documents were produced by the petitioner and were lying with the respondent authorities, without appreciating the same ,the demand of tax to the tune of Rs.53,20,000/- which is further enhanced to Rs.1,30,54,235/- by issuing the notice dated 28.03.2025 is illegal. Learned advocate Mr.Nakrani, has further referred to the check-post e-receipts dated 25.07.2023, wherein, he has paid an amount of Rs.20,376/- for the period from 25.07.2023 to 01.08.2023. He has admitted that the petitioner had overstayed for one and a half month in Gujarat and is ready and willing to pay the amount of tax for the overstayed period, and hence the respondents may be directed to recalculate the amount and confine it to the initial amount mentioned in the detention order to the extent of Rs.11,500/- along with the period for which the petitioner has overstayed.

3.1. While referring to the provision of Section 101 of the Indian Evidence Act, 1872 (now Section 104 of Bharatiya Sakshya Adhiniyam, 2023), it is contended that the burden lies on the respondents to prove that the bus was actually used within the territory of Gujarat from 01.01.2013 to 31.09.2023.

3.2. It is submitted that since the RTO Office - respondent No. 3 of Diu, which is a Union Territory, has not filed any reply asserting that the vehicle was in fact not in Diu, the impugned demand of tax is required to be quashed and set aside. Thus, it is submitted that the respondent nos.1 and 2 have passed the orders, which are absolutely illegal and without jurisdiction, and hence the same are required to be set aside. No further submissions are advanced.

SUBMISSIONS ON BEHALF OF THE REVENUE :

4. Opposing the aforesaid submissions and the present writ petition, learned Assistant Government Pleader Mr.Raj Tanna has apprised this Court about the various provisions of the MV Act, GMV Tax Act as well as GMV Tax Rules, 1989 which would have direct bearing on the outcome of the writ petition.

4.1. At the outset, learned AGP has referred to the fitness certificate of the vehicle which expired on 12.01.2013, and in this regard, he has referred to Form - Certificate of Fitness Application (for short 'CFA') under Rule 50(2) of the Gujarat

Motor Vehicles Rules, 1989 and is contended that the said Certificate is only issued, after the vehicle owner produces the proof of current tax, passenger tax, certificate of fitness, insurance certificate, permits, etc. It submitted that analogous provisions also exists in Goa, Daman and Diu Motor Vehicle Tax Rules, 1974.

4.2. It is submitted that, in the instant case, the vehicle in question was detained by the Respondent no.1 officer at Surat on 06.09.2023 and accordingly, a challan was issued for non-production of documentary evidence of the vehicle by the Driver.

4.3. At this stage, he has referred to the provision of Section 66 read with Section 88(2) of the MV Act, which requires the owner of the vehicle to have the special permit, and has submitted that the petitioner did not produce any certificate permitting the plying of the vehicle within the territory of the State of Gujarat. He has also referred to Section 56 of the MV Act, which mandates the obtaining of the fitness certificate, read with Rule 62 of the Central Motor Vehicles Rules, 1989 (for short 'Central MV Rules, 1989') and has submitted that the petitioner's fitness certificate expired in the year 2013, whereas, the Rule 62 of the Central MV Rules, 1989, mandates the obtaining a fitness certificate every 2 years upto 8 years, and after 8 years, fitness is to be again examined. It is submitted that, the registration of the petitioner's vehicle was of 27.09.2005 and when it was verified from the Director of Transport, Diu, the fitness was lastly renewed on 12.01.2013.

4.4. Learned AGP has submitted that, on physical inspection of the vehicle, it was found that 38 sleeper berths were fitted in the bus, whereas, the actual registration of the vehicle was a seating capacity of 40 + 1 person, which is evident from the certificate of registration. Thus, it is submitted that the petitioner had altered a bus, having a seating capacity of 40 + 1 to that of sleeper having 38 sleeper berths. It is submitted that, such alteration is impermissible, without taking prior approval from the registering authority under Section 52 of the MV Act.

4.5. With regard to the levy of tax, he has referred to Section 3(1) of the GMV Tax Act which mentions about the levy of tax collected on all motor vehicles used or kept for use in the State and the tax rates are fixed by the State Government by the Notification in the Official Gazette. He has submitted that as per the provision of the First Schedule under Section 3 of the GMV Tax Act, more particularly, Item 4-AA(b) of First Schedule of GMV Tax Act, the tax fixed is Rs.30,000/- per passenger (maximum) of sleeper designated omnibuses licensed to carry more than 20 passengers. It is submitted that, the State Government had issued three Notifications dated 30.03.2007, 31.07.2014 and 31.03.2017, fixing the levy of tax on various vehicles including the sleeper buses. He has referred to Item-V(ii) of the Notification dated 30.04.2007, wherein, the State Government has fixed the amount of Rs.12,000/- per passenger of omnibuses licensed to carry more than 20 passengers, which has been subsequently enhanced to Rs.13,200/- by the Notification dated 31.03.2017. It is contended that as per the calculation, the amount per month would come to Rs.1,100/- per passenger (approximately).

4.6. Learned AGP has accordingly referred to the detailed calculation of the vehicle in question by adjusting the amount which the petitioner has already paid.

4.7. He has also referred to the provision of Sections 12, 12A and 12B of the GMV Tax Act, which mandates of recovering of the tax through arrears of land revenue and Section 14 of GMV Tax Act, which provides for filing an Appeal before the Appellate Authority by payment of a pre-deposit of 25% of the amount of tax.

4.8. While referring to Rule 5(1) of the GMV Tax Rules, 1959 read with Form-NT, it is submitted that the petitioner was supposed to obtain the form of declaration of non-use in respect of the vehicle in question, if the same was lying idle and not plied, either in Diu or in the Gujarat State. It is submitted that, no such Form was produced by the petitioner, pointing out that the vehicle was in a non-use condition. Further, he has referred to Rule 21 of the GMV Tax Rules, 1959 and submitted that the petitioner was supposed to submit a declaration before bringing the bus into the State of Gujarat and to use in the State by filling a Form-NT, which is a form of declaration for a motor vehicle brought into the State.

4.9. Finally, responding to the calculation of the tax from the year 2013 till 2023, he has referred to the provision of Section 3(2) of the GMV Tax Act and has submitted that the aforesaid provision enables the taxing authority to assume the deemed use of the vehicle, in absence of any certificate issued by the State authority. It is submitted that pari materia provision exists Goa, Daman and Diu Motor Vehicle Tax Act, 1974.

4.10. Learned AGP in support of his submissions, has placed reliance on the judgment of the Supreme Court in the case of State of Gujarat & Ors. vs. Akhil Gujarat Pravasi V.S. Mahamandal & Ors., 2004 (5) SCC 155. It is submitted that, the Supreme Court has held that, it would be impossible for the State to keep monitoring all the vehicles and prove that each and every registered vehicle is in fit condition, and hence, it is contended by learned AGP that since the petitioner did not have the relevant document, at the time of detention, and nor they have produced it in the writ petition, and by invoking the deeming fiction, it has to be presumed that the petitioner had plied the bus within the State of Gujarat for the aforementioned years, and accordingly, the calculation of the tax was done as per the statutory provision. He has further placed reliance on a Kerala High Court judgment (Division Bench) in the case of Kanappan vs. RTO Ernakulam, 1988 SCC OnLine Ker 484, and also the High Court of Andhra Pradesh judgment in the case of Raj Kumar Khatri s/o. Motilal vs. The Deputy Commissioner of Transport, Anantpur & Anr., 2011 SCC OnLine AP 14.

4.11. Finally, learned AGP has submitted that the petitioner has not challenged the statutory provisions, from which the authorities have derived the power to levy the tax and only the quantum has been challenged, which can be agitated by the Appellate Authority.

4.12. Thus, it is urged that the writ petition may not be entertained.

ANALYSIS AND OPINION :

5. We have heard the learned advocates appearing for the respective parties at length.

6. As previously mentioned by us, and admitted by the petitioner, that he has already filed an Appeal before the

Appellate Authority, however, since no pre-deposit has been made by the petitioner, the same has remained at filing stage only.

7. The present petition was ordered to be heard with SCA No.6893 of 2025, which was filed by the son of the petitioner, however, the same has been withdrawn, on 27.07.2026, for pursuing the Appeal filed before the Appellate Authority. Since the petitioner has desired to obtain the order on merits, we are constrained to do so.

8. The following facts are established from the record:

A) The petitioner is the owner of the vehicle/bus bearing registration No.DD-02-9061, registered at Diu, a union territory. As per the registration certificate dated 27.09.2005, which is produced on record in the writ petition, it is evident that the certificate has been issued for a 40 + 1 seating capacity. Thus, the registration certificate has been issued for the bus having seating capacity of 41 persons by Diu authorities. The same was driven in the State of Gujarat, and on 06.09.2023, it was intercepted and detained by the respondent no.1 office at Surat and accordingly a challan was issued for non-production of any documentary evidence of the vehicle by the Driver.

B) As the registration suggested the bus was registered in Diu-

RTO, while it was being used in the territory of State, it was detained and on inspection it was found that, the same was converted to 38 sleeper berth. Thus, the nature of the bus, which was a 41 seater has been totally altered to 38 sleeper bus. Other grave irregularities about the alteration of the bus were found, when it was inspected by a Motor Vehicle Inspector, RTO, Surat on 21.01.2025. Upon physical verification, it was found that the chassis number of the vehicle was found manually punched on the chassis. Vehicle chassis was found of Ashok Leyland, while as per the vehicle registration record, the vehicle manufacturer is Eicher. The RTO, Surat further inquired with respect to the correctness of chassis number and engine number of the vehicle with the authorized dealer of Ashok Leyland and the said authorized dealer responded that the said chassis No.30NF30500464 looks like as if it has been embossed and is not the company mark, so also the engine is embossed with Ashok Leyland symbol. On inquiry by the department, the chassis number was not shown in the company records and in the data system of Ashok Leyland. This vehicle inspection report dated 21.01.2025 is produced on record.

C) The vehicle fitness certificate of the bus is of 12.01.2012 valid upto 12.01.2013. No fitness certificate is obtained thereafter.

D) The petitioner had lastly paid tax at Diu on 11.03.2013 for the period from 01.04.2013 to 31.04.2014.

9. At this stage we may refer to the provision of Section 52 of the MV Act. Section 52 prescribes about the alteration in motor vehicle, which is as under:

> **"52: Alteration in motor vehicle.**
>
> *(1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are at variance with those originally specified by the manufacturer:*
>
> *Provided that where the owner of a motor vehicle makes modification of the engine, or any part thereof, of a vehicle for facilitating its operation by different type of fuel or source of energy including battery, compressed natural gas, solar power, liquid petroleum gas or any other fuel or source of energy, by fitment of a conversion kit, such modification shall be carried out subject to such conditions as may be prescribed:*
>
> *Provided further that the Central Government may prescribe specifications, conditions for approval, retro fitment and other related matters for the alteration of motor vehicles and in such cases, the warranty granted by the manufacturer shall not be considered as void for the purposes of such alteration or retrofitment.*
>
> *Provided also that the Central Government may grant exemption for alteration of vehicles in a manner other than specified above, for any specific purpose.*
>
> *(1A) A manufacturer of a motor vehicle shall on the direction issued by the Central Government, alter or retrofit safety equipment, or any other equipment in accordance with such standards and specifications as may be specified by the Central Government.";*
>
> *(2) Notwithstanding anything contained in sub-section (1), any person may, with the subsequent approval of the registering*

authority, alter or cause to be altered any vehicle owned by him to be converted into an adapted vehicle: Provided that such alteration complies with such conditions as may be prescribed by the Central Government.

(3) Where any alteration has been made in motor vehicle without the approval of registering authority [****], the owner of the vehicle shall, within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of registration may be entered therein.

(4) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

(5) Subject to the provisions made under sub-sections (1), (2), (3) and (4), no person holding a vehicle under a hire-purchase agreement shall make any alteration to the vehicle except with the written consent of the registered owner.

Explanation.-For the purposes of this section, "alteration" means a change in the structure of a vehicle which results in a change in its basic feature.”

10. Thus, the statute mandates that, no owner of a motor vehicle shall alter the motor vehicle at variance with the originally specified by the manufacturer and as contained in the certificate of registration, and if such modification is needed, the same is to be permitted only after the approval of the registering authority, provided that such alteration complies with the prescribed conditions, as may be set by the Central Government. The conditions are prescribed under Rule 112 of Central MV Rules, 1989. The same reads as under:

*"**Rule- 112. Alterations to motor vehicle.***

(1) Any alteration or retrofitment to a motor vehicle under sub-section (1) of section 52 of the Act including but not limited to change in fuel, conversion of propulsion system, replacement of engine, replacement of chassis or modification in body structure, shall be in compliance with the conditions, standards and specifications notified by the Central Government, and shall be carried out by either,

(i) original equipment manufacturer; or

(ii) dealer of the vehicle manufacturer; or

(iii) workshop authorised by the State Government; or

(iv) service station authorised by the State Government:

Provided that for alterations to chassis, any alteration involving replacement of chassis may be permitted provided the new chassis is supplied by the same manufacturer, is of the same type and the conversion of chassis meant for one type of motor vehicle shall not be permitted for another type of motor vehicle.

(2) Any alteration or retrofitment of safety equipment or any other equipment pursuant to any direction issued by the Central Government under sub-section (1A) of section 52 of the Act shall be in compliance with the standards and specifications notified by the Central Government under the appropriate rule, and shall be carried out by either,

(i) original equipment manufacturer; or

(ii) dealer of the vehicle manufacturer; or

(iii) workshop authorised by the State Government; or

(iv) service station authorised by the State Government.

(3) The compliance of any alteration or retrofitment to a motor vehicle made under sub-rule (1), shall be tested and validated by testing agencies notified under Rule 126 or self-certified by either the original equipment manufacturer or dealer of the vehicle manufacturer or workshop authorised by the State Government or service station authorised by the State Government, making the alteration under sub-rule (1), which shall issue a certificate of compliance in Form 22F, either electronically on the Portal or in physical form to the owner.

(4) The compliance of any alteration or retrofitment of safety equipment or other any other equipment made under sub-rule (2), shall be type approved by testing agencies notified under rule 126 in accordance with the relevant rule and the compliance of such alteration or retrofitment shall be self-certified by either the original equipment manufacturer or dealer of the vehicle manufacturer or workshop authorised by the State Government or service station authorised by the State Government, making the alteration under sub-rule (1), which shall issue a certificate of compliance in Form 22F, either electronically on the Portal or in physical form to the owner.]

[(5) On and after six months from the date of commencement of the Central Motor Vehicles (Eighteenth Amendment) Rules, 2021, Special Purpose Vehicles, viz, Mobile Canteen, as described in AIS 163, shall comply with the requirements stated in AIS-163:2020, as amended from time to time.

(6) On and after six months from the date of commencement of Central Motor Vehicles (Eighteenth Amendment) Rules, 2021, Two Wheeled First Responder Fire, shall comply with the requirements stated in AIS 167:2020, as amended from time to time.

(7) On and after one year from the date of commencement of Central Motor Vehicles (Eighteenth Amendment) Rules, 2021, Insulated vehicles, shall comply with the requirements stated in AIS-164:2021, as amended from time to time.

(8) On and after six months from the date of commencement of Central Motor Vehicles (Eighteenth Amendment) Rules, 2021, Motor Caravans, shall comply with the requirements stated in AIS-124:2014, as amended from time to time.]

[(9) On and after six months from the date of commencement of the Central Motor Vehicles (Third Amendment) Rules, 2022, Special Purpose Vehicle, viz. Cash Vans shall comply with the requirements stated in AIS-163:2020, as amended from time to time, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 2016(11 of 2016).]"

11. Indubitably, in the present matter, the petitioner does not possess any documentary evidence from any authority, either of

Goa or Gujarat state pointing out that the alteration from a seating capacity bus to a bus of having the sleeper capacity, has been converted by obtaining necessary permission from the statutory authorities, as required under the statute.

12. Section 56 of MV Act read with Rule 62 of the Central MV Rules, 1989 mandates obtaining of the 'certificate of fitness of transport vehicles', periodically, the same is as under:

> ***"56 : Certificate of fitness of transport vehicles***
>
> *(1) Subject to the provisions of sections 59 and 60 , a transport vehicle shall not be deemed to be validly registered for the purposes of section 39 , unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder : 73 Provided that where the prescribed authority or the "authorized testing station" refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.*
>
> *Provided further that no certificate of fitness shall be granted to a vehicle, after such date as may be notified by the Central Government, unless such vehicle has been tested at an automated testing station.;*
>
> *2) The "authorised testing station" referred to in sub-section (1) means any facility, including automated testing facilities, authorised by the State Government, where fitness testing may be conducted in accordance with the rules made by the Central Government for recognition, regulation and control of such stations.";*
>
> *(3) Subject to the provisions of sub-section (4), certifificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.*

(4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained:

Provided that no such cancellation shall be made by the prescribed authority unless,

(a) such prescribed authority holds such technical qualification as may be prescribed by the Central Government and where the prescribed authority does not hold the technical qualification, such cancellation is made on the basis of the report of an officer having such qualification; and

(b) the reasons recorded in writing cancelling a certificate of fitness are confirmed by an authorised testing station chosen by the owner of the vehicle whose certificate of fitness is sought to be cancelled:

Provided further that if the cancellation is concerned by the authorised testing station, the cost of undertaking the test shall be borne by the owner of the vehicle being tested and in the alternative by the prescribed authority.;

(5) A certificate of fitness issued under this Act shall, while it remains effective be valid throughout India.

(6) All transport vehicles with a valid certificate of fitness issued under this section shall carry, on their bodies, in a clear and visible manner such distinguishing mark as may be prescribed by the Central Government.

(7) Subject to such conditions as the Central Government may prescribe, the provisions of this section may be extended to non-transport vehicles.".

13. Rule-62 of the Central MV Rules, 1989, which provides for validity period for transport vehicles reads thus:

"RULE 62 : Validity of certificate of fitness.

(1) A certificate of fitness in respect of a transport vehicle granted under section 56 shall be in Form 38 and such certificate when granted or renewed shall be valid for the period as indicated below:

(a) new transport vehicle-two years	
(b) renewal of certificate of fitness in respect of transport vehicles	*Two years for vehicles upto eight years old and one year for vehicles older than eight years: Provided that the fitness of the vehicle of the category heavy goods vehicle, heavy passenger motor vehicle, medium goods vehicle, medium passenger motor vehicle and light motor vehicle shall be done mandatorily only through an automated testing station registered under rule 175 with effect from 1st October, 2024: Provided further that where the automated testing station registered under rule 175 is operational in the jurisdiction of a registered authority, the fitness of the vehicle shall be done only through such automated testing station with effect from the commencement of the Central Motor Vehicles (fifth Amendment) Rules, 2023.]*
xxxxxx	*Three years*

[Provided that the renewal of a fitness certificate shall be made only after an Inspecting Officer or authorised testing stations as referred to in sub-section (1) of section 56 of the Act] has carried the tests specified in the Table given below, namely:

Table

xxxx

Provided also that if the tests specified in the Table under the first proviso are conducted by an Inspecting Officer or *authorised testing station in a State/Union Territory other than the State/Union Territory where the vehicle is registered, the Inspecting Officer who conducted the tests shall, on the same day or on the following working day, upload his inspection report in Form 38A at the portal* **parivahan.gov.in/vahan** *and also send the inspection report signed under his hand and seal to the registering authority by speed post for issue of certificate of report, if the vehicle is found by the Inspecting Officer to be in compliance with the fitness by the registering authority within fifteen days from the date of the inspection provisions of the Act and rules and a copy shall be given to the driver of the vehicle:*

xxxxxx

Provided also that the next fitness certificate is obtained from the inspecting officer or an authorised testing station in the State/Union Territory of the registering authority where the vehicle is registered. Explanation. "Inspecting Officer" means an Officer [appointed by a State Government under Section 213 of the Act.

[Provided further that no fitness certification shall be required at the time of registration for new transport vehicle sold as fully built vehicle and such vehicle shall be deemed to be having certificate of fitness for a period of two years from the date of registration.]

(2) The fee for the grant or renewal of a certificate of fitness shall be specified in rule 81.

(3) The fee for testing of a vehicle when tested by an Inspecting Officer or authorised testing station, other than the Inspecting Officer in the office of the registering authority, shall be as specified in rule 81.]

[(4) The application for renewal of certificate of fitness may be made not more than sixty days before the date of expiry of the certificate of fitness.

(5) Where the renewal of certificate of fitness is granted on a date after the expiry of the certificate of fitness, the renewal

shall be effective from the date of grant of the certificate of fitness:

Provided that where the renewal of certificate of fitness is granted on a date before the expiry of a certificate of fitness, the renewal shall be effective from the date of expiry of certificate of fitness.]"

14. Rule-62 of the Central MV Rules, 1989 provides various parameters which are to satisfied before the issuance of fitness certificate. The validity of certificate of fitness in respect of a transport vehicle under Section 56 of the MV Act, 1988 read with Rule 62 of the Central MV Rules, 1989 is for two years for vehicles upto eight years old and one year for vehicles older than eight years.

15. At this stage we may refer that the petitioner's last fitness certificate being No.012687 issued by the Transport Department, Diman & Diu, is of on 13.01.2012 valid up to 12.01.2013. The petitioner has not produced any documentary evidence on record, pointing out that the aforesaid certificate has been further renewed. Thus, the fitness certificate cannot be issued unless the vehicle fulfills all the norms mandated by the statute. One of the quintessential requirements is payment of regular vehicle tax, which the petitioner has violated. In the present case, it appears that since the petitioner has tinkered with the Vehicle chassis to Ashok Leyland, from vehicle manufacturer is Eicher, which did not exist in the company record, he did not seek for fresh fitness

certificate deliberately.

16. We may now examine the validity of the demand of tax for the period from 2013 to 2023. The petitioner in order to justify his stand that the bus was not used in Gujarat, and when it entered in state of Gujarat for a temporary period and as and when it entered Gujarat, the tax was paid. In this regard, not a single receipt for the period from July, 2013 to August, 2023 has been produced on record. The only single receipt is of Rs.20,376/- for the period from 25.07.2023 to 01.08.2023, which curiously also mentions about the sleeper capacity of 38, instead of seating capacity. The petitioner has admitted that from 25.07.2023, the bus had overstayed in Gujarat for one and a half month. When the bus was detained, the competent officer had found that it lacked requisite documents, and accordingly, a penalty of Rs.11,500/- was imposed as it was found that an offence under Section 177, 180 and 181 of the MV Act was found to be committed. The challan dated 06.09.2023 issued by the officer in the remarks mentioned that as per the *VAHAN* record, the motor vehicle has 42 seating capacity, while actually it is a sleeper bus with 38 berths and the bus has been fitted sleeper berth physically.

17. In wake of the aforesaid undisputed facts, we may examine the power of levy which stems-out of the provisions of Section 3

and 4 of the GMV Tax Act, 1958 read as under:

> ***"3. Levy of Taxes. (1) Subject to the other provisions of this Act, on and from the 1st day of April 1958, there shall be levied and collected on all motor vehicles used or kept for use in the State, a tax at the rates fixed by the State Government, by notification in the Official Gazette, 1[but not exceeding the maximum rates specified in the 2[First, 3[Second and Third Schedules]]*** *:*
>
> *[Provided that in the case of any motor vehicle (irrespective of whether they are specified in the First Schedule or the Second Schedule or Third schedule kept by a dealer in, or manufacturer of, such vehicles, for the purpose of trade, there shall be levied and collected annually such amount of tax 8[not exceeding Rs. 5000] as the State Government may, by notification in the Official Gazette specify on those motor vehicles only which are permitted to be used on the roads in the manner prescribed by rules made under the Motor Vehicles Act, 1988]:*
>
> *Provided further that, if the State Government, because of disparity in the rates of tax prevailing in certain areas of the State immediately before the commencement of this Act or for any other reason, is of opinion that the levy and collection of tax on motor vehicles immediately at a uniform rate throughout the State, is likely to cause undue hardship to owners or persons having possession or control of such vehicles in those areas, or to affect adversely trade and commerce or the development of motor transport and other industries in such areas, the State Government may levy and collect the tax on motor vehicles, or any class thereof at different rates in those areas, so however that by increase or decrease of the rate, of tax annually in those areas, within a period of three years, a uniform rate of tax is levied throughout the State.*
>
> *[(1A) Notwithstanding anything contained in sub-section (1), a tax*
>
> *in lump sum, in respect of a motor vehicle for which lump sum tax has been paid and ownership of such motor vehicle is transferred on sale, shall be payable at such rates as may be specified by the State Government by notification in the Official Gazette, but not exceeding twenty-five per cent of the lump sum tax paid.*
>
> ***(2) Except during any period for which the Taxation Authority has, in the prescribed manner, certified that a motor vehicle was not***

used or kept for use in the State, the registered owner, or any person having possession of control of a motor vehicle of which the certificate of registration is current, shall, for the purposes of this Act, be deemed to use or keep such vehicle for use in the State."

"4.Payment of Tax levied under Section 3.

(1) [The tax leviable under section 3 in respect of a motor vehicle specified in the First Schedule shall be paid in advance by every registered owner, or any person having possession or control, [of such motor vehicles to which sub-section (1AA) does no apply],

Sr. No.	*Description of Vehicles*	*Manner of Payment*
[(i)(a)	*Vehicles used for hire or reward other than designated omnibus registered before the 1st April, 2017.*	*Annually or quarterly, at the rates fixed by the State Government under section 3, or lump sum tax specified in the Third Schedule.*
(b)	*Private Service Vehicle registered before the 1st April, 2017.*	*Annually or quarterly, at the rates fixed by the State Government under section 3, or lump sum tax specified in the Third Schedule.*
(c)	*Tractor used for other than agriculture purpose and Construction Equipment Vehicle having unladen weight of which exceeds 2000 KG but not more than 7500 KG.*	*Annually or quarterly, at the rates fixed by the State Government under section 3,*

		or lump sum tax specified in the Third Schedule.
(d)	*Vehicles other than those mentioned above.*	*Annual or quarterly.]*

(ii) for one or more quarters, on payment for each such quarter at one-fourth of the annual rate referred to in clause (i) plus ten per centum thereof (hereinafter referred to as the "quarterly rate"), or

(iii) for any period less than a quarter expiring on the last day of the quarter at the quarterly rate aforesaid less one-twelfth of the annual rate of the tax for every complete calendar month which has expired during such quarter.

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

(a) the tax in respect of [a transport vehicle not being the designated omnibus] brought for use in the State for a temporary period shall be leviable for the whole of the period for which it is to be used or kept for use in the State;

(b) where such vehicle is to be used or kept for use in the State for a period less than a month, the tax shall be leviable at the rate of 4 per cent. of the annual rate for each week or part thereof, subject to a maximum amount equal to the amount of tax leviable for a period of one month under clause (c);

(c) where such vehicle is to be used or kept for use in the State for a period equal to a month or more than a month the tax shall be leviable at the rate specified in clause (i), (ii) or (iii) of sub-section (1) of section 4, according as such period is equal to the period specified in the said clause (i), (ii) or (iii) as the case may be, irrespective of whether such period expires at the end of a quarter or not;

(d) the tax leviable under this sub-section shall be paid within such period and in such manner as may be prescribed.]

[(1AA) Notwithstanding anything contained in sub-section (1), the tax leviable under section 3 shall be paid in advance by every registered owner or any person having possession or control, of the following categories of vehicles, in the manner specified below, namely:-

Sr. No.	*Description of Vehicles*	*Manner of Payment*
(a)	*The motor vehicles specified in Clause-III of the First Schedule and registered before the 1st April, 2017.*	*Annually or in the case of half yearly, at the rate equal to the one-half of the annual rate plus 10 per cent. thereof or lump sum specified in the Third Schedule.*
(b)	*In case of designated omnibuses licensed to carry not more than the twelve passengers, registered before the 1st April, 2017.*	*Annually or the lump sum tax specified in the Third Schedule.]*

(1AAA) Notwithstanding anything contained in entry (b), in the table below sub-section (1AA)

(a) the amount of tax leviable on designated omnibus brought for use in the State for a temporary period not exceeding seven days shall be four per cent. of the annual rate of tax per passenger which the designated omnibus is licensed to carry;

(b) where such designated omnibus is to be used or kept for use in the State for a period exceeding seven days, the tax shall be leviable on such vehicle at the rate of one-twelfth of the annual rate of tax for each month or part thereof.]

[Explanation.- For the purposes of this section, [sub-section (6) of section 9, sub-section (IAA) of section 18] and clause IV in Part-I of the First Schedule, the expression "designated omnibus" means an omnibus which is used or kept for use in the State exclusively as contract carriage and includes a sleeper designated omnibus.]

[(1AB) (a) The tax leviable under section 3 in respect of a motor vehicle specified in the [Second Schedule, s [**]] shall be paid in advance in lump sum by every registered owner, or any person having possession or control, of such motor vehicle.

(b) Any motor vehicle which has ceased to be liable to tax under sub section (2) of section 3B existing before the commencement of the Bombay Vehicles (Gujarat Amendment) Act, 1987 shall continue to be ceased.]

[(c) The owner or a person in possession or control of a motor

vehicle which falls under the First Schedule and is liable to pay tax under section 3 and has become liable to pay tax under the Second Schedule after the commencement of the Bombay Motor Vehicles Tax (Gujarat Amendment) Act, 2010, shall be liable to pay tax in lump sum at such rate as may be notified by the State Government by notification in the Official Gazette, but not exceeding the maximum rates specified in the Second Schedule.]

(1ABB) Notwithstanding anything contained in this section,-

(i) where any motor vehicle is registered on or after the 1" April, 2007, the registered owner or the person having possession or control of such vehicle shall pay the tax at the rate of one-twelfth of the annual rate of tax per month for the entire period starting from the first day of the month in which the motor vehicle is registered till the end of that year;

[Provided that when the owner or a person in possession or control of a Motor Vehicle falling under the First Schedule brings his vehicle for the registration after fifteenth day of the month, he shall be liable to pay tax of an amount equal to one day tax of the one-twelfth of the annual rate of tax for each day of the remaining period of the month and the above clause shall be applicable from the succeeding month of that month in which the vehicle is brought in for the registration.]

(ii) where any motor vehicle is registered prior to the 1ª April, 2007, the registered owner or the person having possession or control of such vehicle shall pay the tax at the rate of one-twelfth of the annual rate of tax per month for the entire period starting from the period from the next day upto which tax has already been paid till the end of the 31 March, 2008.]

[(2) In calculating the amount of tax due under this section, the fraction of a rupee not exceeding fifty paise shall be ignored and the fraction of a rupee exceeding fifty paise shall be taken as a rupee.]"

18. Section 3 of the GMV Tax Act uses the expression about levy of tax and collected on *'all motor vehicle used or kept for use'* in the State, as per the rates fixed by the State Government by the Notification in the official gazette. Sub-section 2 of

Section 3 of the GMV Tax Act imposes a deeming fiction of use of vehicles in the State, except during any period for which the taxation authority has in the prescribed manner certified that a motor vehicle was not used or kept for use in the State. We may mention that Section 3 of Goa, Daman and Diu Motor Vehicle Tax Act, 1974 is practically *pari materia* to Section 3 of GMV Tax Act, and has similar expression "used or kept for use".

19. In order to examine the true implication of the expression "used or kept for use", we may refer to the decision of the Supreme Court in the case of Akhil Gujarat Pravasi V.S.Mahamandal (supra). The Apex Court upheld the vires of the provisions of Section 3A of GMV Tax Act, which was declared *ultra vires* by the Division Bench of this Court: The Apex Court while setting aside the Division bench judgment of this Court has held thus:

> *"**17** This view has been reiterated in several decisions of this Court. In State of Kerala V/s. Arvind Ramakant Modawdakar, the Court ruled that it is a settled position in law that the actual user of the road by the vehicles which are covered by the requisite permits is not always a relevant factor since the taxable event under section 3(1) of Kerala Motor Vehicles Taxation Act occurs when the vehicles is used or is kept for use in the State and once the vehicle becomes liable for payment of tax, the extent and quantity of use by the vehicle is not a decisive factor for the purpose of levy of tax. In Mahakoshal Tourist V/s. State of M.P. the allenge made with regard to the absence of a machinery for assessment of tax for the vehicles plying in the State of Madhya Pradesh on the basis of All India Tourist permit and denying them refund of tax for the period they were not used or kept for use in the said State was considered. In view of the language used in section 3 of the relevant Act which provided for levy of tax on every*

motor vehicle "used or kept for use in the State" at the rate specified in the schedule, it was held that the expression "used" or "kept for use" means, either the actual use of the vehicle on the roads of the State Madhya Pradesh or keeping the vehicle which is in condition and capable of being used) available for use in the State if so desired. It was further held that while plying outside the State in connections with the contract, a vehicle will, nonetheless be within the import of "kept for use in the State" and it is immaterial for the purpose of section 3 whether a vehicle is actually being used or is kept for use in the State.

***18** The language used in section 3A -all omnibuses which are used or kept for use in the State exclusively as contract carriages - is in conformity with Entry 57 of List II. The consistent view taken by this Court is that if a vehicle is "used" or is kept for use" in the State, it becomes liable for payment of tax and the actual use or quantum of use is not material. The fact that the statute provides for refund of the tax, if the authority is satisfied that the vehicle has not been used, does not mean that the legislature can only make a provision for levy of tax which is limited for the period of actual use or that no tax can be levied during the period the vehicle is not put to use in the State. The provision for the refund has been made only for the advantage of the operator so that he may be relieved of the burden of tax when he is not getting any income from the vehicle on account of its non-use but it has no relevance to the competence or authority of the State to enact a law providing for imposition of a tax on vehicles which are used or are kept for use in the State.”*

The Supreme Court has held the provisions of Section 3A of GMV Tax Act, as *intra vires*. Section 3A of the GMV Tax Act was subsequently deleted by Gujarat amendment of 9 of 2002. The provision of Section 3A of the GMV Tax Act, contained the similar expression “used or kept for use in the State”. The Supreme Court has explicated the expressions by holding that “while plying outside the State in connections with the contract, a vehicle will, nonetheless be within the import of "kept for use in the State" and it is immaterial for the purpose of Section 3 of the GMV Tax Act whether a vehicle is actually being used or is kept for use in the State. It is further held that "if a vehicle is "used" or is kept for use" in the State, it becomes liable for payment of tax and the actual use or quantum of use is not material. The fact that the statute provides for refund of the tax, if the authority is satisfied that the vehicle has not been used, does not mean that the legislature can only make a provision for levy of tax which is limited for the period of actual use or that no tax can be levied during the period the vehicle is not put to use in the State. Thus, the statute supplies a deeming fiction of usage of vehicle if it is used of kept for use in the State, unless a "non-use certificate is obtained from the competent authority".

20. The non-use of a vehicle in the Gujarat State is governed by the provision of Rule 5(1) of the GMV Tax Rules 1959 and Rule 18 of Goa, Daman and Diu Motor Vehicle Tax Rules, 1974, stipulate declaration of Non-use in the prescribed Forms. Thus, a vehicle owner has to fill up a Forms certified by the competent authority declaring the non-use in respect of a motor vehicle, specifying the time for which it is not used in the State which mentions that he shall keep the said motor vehicle during the aforesaid period at the place which is to be filled up in the Form. Unquestionably, the petitioner has not produced any Form of either Diu or of Gujarat State pointing out that the vehicle

was not used either in the State of Gujarat or in the union territory of Diu. The true make and chasis number of the bus itself is doubtful, since the petitioner has altered them. The petitioner has not asserted before any authority and also before us that the bus was actually of Ashok Leyland and not Eicher, and he has not altered the chassis number and engine number of the vehicle. The statute does not permit the alteration of chasis and engine number, and the name of manufacturer. When the true identity of the vehicle is suppressed and altered illegally by the petitioner, he has to face the consequences of the grave violations.

21. Thus, in absence of certificate certifying that the petitioner vehicle/bus was not used or kept for use in Gujarat, the deeming fiction of Section 3(2) of the GMV Tax Act gets triggered, and it has to be presumed that the bus was used from 2013 onwards to 2023 in Gujarat State. There is no documentary evidence produced that the petitioner has for all this period has paid the tax anywhere either in Diu or in the State of Gujarat. The petitioner attempted to pay tax of Rs.2,23,287/- from the year 2013 to 2023, at Diu RTO on 17.07.2024. However, the amount has been refunded online by the Diu RTO, since, it was blacklisted for the passenger bus. This attempt appears to be an afterthought, as the petitioner was facing the proceedings, after the vehicle was detained on 06.09.2023.

22. The petitioner has not doubted/challenged the computation of the tax, but he has assailed the levy of tax for the aforesaid period. Under Section 4 of the GMV Tax Act, the tax is computed under the First Schedule. The Item 4-AA(b)) of the First Schedule of the GMV Tax Act, fixes the amount of the tax as Rs.13,000/- per passenger for sleeper designated omnibuses licensed to carry more than 20 passengers. However, since Section 3(1) of the GMV Tax Act, also empowers the State Government to prescribe the tax rates by issuing a Notification in official gazette, the State Government has accordingly issued the Notifications dated 30.03.2007, 31.07.2014 and 31.03.2017. Accordingly, the tax rate has been computed after adjusting the amount which has been paid by the petitioner, while he was plying the bus in the State.

23. The petitioner while referring to the provision of Section 104 of the Bharatiya Sakshya Adhiniyam, 2023 (Section 101 of Indian Evidence Act, 1872) has contended that the burden lies on the respondent authorities to prove that petitioner has plied the aforesaid bus in the State of Gujarat for the aforementioned period, for which the tax is demanded. We do not agree to the said submissions, since in the first place, the petitioner has to prove that he has the requisite permission and the documentary evidence pointing out that, (i) he had altered the bus extensively after obtaining requisite permissions and (ii) after alteration of

such bus, he had obtained vehicle fitness certificate after paying the vehicle tax. The petitioner has tinkered with the chasis number, engine number and name of manufacturer of the bus. Hence, it is not open for the petitioner to demand that the authorities should first discharge their burden of proof, unless the petitioner has first demonstrated *bona fides* by producing the required statutory documents. The production of these records is a prerequisite to shifting the evidentiary burden, and the petitioner cannot shield himself behind procedural arguments regarding the department's onus without first complying with basic statutory provisions, more particularly when he has committed grave illegality.

24. Thus, on overall analysis of the facts presented before us and the statutory provisions, we are not inclined to enter the present petition and hence the same is hereby ***rejected***.

Sd/-

(A. S. SUPEHIA, J)

Sd/-

(VAIBHAVI D. NANAVATI,J)

Pradhyuman/sb-1//