IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

W.A.No. 1646 of 2012 () IN WP(C).12815/2012

AGAINST THE JUDGMENT IN WP(C) 12815/2012 of HIGH COURT OF KERALA DATED 09-07-2012

APPELLANT(S)/PETITIONER IN THE W.P.(C):

M/S.EXCEL TIMBERS PVT LTD.,
PETTA: FEROKE: CALICUT:
BY: MANAGING DIRECTOR V.MAMMU.

BY ADV. SRI.PREMJIT NAGENDRAN

RESPONDENT(S)/RESPONDENTS IN THE W.P.(C):
----

1. THE INTELLIGENCE OFFICER,
   SQUAD NO.II, COMMERCIAL TAXES,
   MUNICIPAL SHOPPING COMPLEX, NEW BUS STAND,
   THALASSERY-670 101.

2. INTELLIGENCE OFFICER,
   SQAUD NO.II,
   OFFICE OF THE INSPECTING ASSISTANT COMMISSIONER (INTELLIGENCE),
   COMMERCIAL TAXES, NIRMAL ARCADE, ERANHIPALAM,
   KOZHIKODE-673 006.

BY SR. GOVERNMENT PLEADER, SRI. LIJU STEPHEN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08-06-2015, THE COURT ON 11-06-2015 DELIVERED THE FOLLOWING:

P.T.O.

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

W.A. No.1646 of 2012

Dated this the 11th day of June, 2015

JUDGMENT

Shaji P. Chaly, J.

This writ appeal is filed by the petitioner in W.P.(C) No.12815 of 2012, challenging the judgment of the learned Single Judge dated 09.07.2012, dismissing the writ petition. Brief facts are as follows:

2. Appellant imported timber at the Mangalore Port and the same was transported in a lorry bearing Reg.No.KL-11AA 5527 to the destination at Feroke, Kozhikode. The truck entered Kerala and advance tax was remitted at Manjeshwar Check Post on 27.01.2011. According to the appellant, in the course of transit, before timber reached the destination, it was sold to one M/s. Quality Timbers, Thalassery, and accordingly, while the goods were being taken to be supplied to the concerned purchaser on the strength of Ext.P3 invoice dated 27.01.2011, the vehicle was intercepted by the authorities under the K.V.A.T Act and issued notice under Sec.47(2) of the

Act, suspecting attempted evasion of tax and demanding security to the extent as specified therein.

3. The goods were subsequently released pursuant to the interim order dated 04.12.2011 passed by this Court in W.P.(C) No.3341 of 2011 and thereafter the said writ petition was disposed of directing the concerned authorities to finalize the adjudication proceedings. Thereafter, the competent authority had passed Ext.P6 impugned order dated 30.01.2011, whereby it was found that there was 'attempt to evade tax' since the goods were not accompanied by proper 'delivery note' and thereupon imposed penalty to the extent of Rs.84,140/-, as provided under Sec.47(6) of the K.V.A.T Act, which order was the subject matter of challenge in the writ petition.

4. Heard the learned counsel appearing for the appellant Sri.Premjit Nagendran and the learned Senior Government Pleader, Sri. Liju Stephen appearing for the Respondents.

5. The learned counsel for the appellant submits that even though technically speaking, 'delivery note' was not accompanying the goods after the sale was effected, advance tax was paid while the vehicle entered Manjeswar Check Post in Kerala on 27.01.2011 and Ext.P3 invoice was raised on the same

day on selling the goods on transit. Apart from the same, Form-15 delivery note was raised by the appellant for Inter-State transport of the goods from Mangalore Port to Petta, Feroke in Calicut District. All these documents would prove the ownership of the goods and there was no occasion for the officer concerned to suspect evasion of tax.

6. However, taking note of the fact that no delivery note was raised for the transport of notified goods within the State, the learned Single Judge took it as a circumstance suspecting attempted evasion of tax. While holding so, the learned Single Judge has also taken note of the contention of the appellant that the reason for absence of seal of the en route check post is mainly because of the fact that the goods were subjected to sale in the course of transit and that the goods did not reach the destination Feroke, cannot be a circumstance to avoid Form No.15 delivery note, the goods being notified under the K.V.A.T Act and Rules. It was on this basis, the reliefs sought for in the writ petition were declined to the appellant.

7. We have appreciated the contentions raised by the learned counsel for the appellant and the learned Government Pleader and also perused the documents. It is true that since the

goods transported were timber logs, a notified commodity under the K.V.A.T Act, it is to be accompanied by Form No.15 Delivery Note for Inter-State transport as well as within the State under the circumstances mentioned in Sec.46(3) r/w Rule 58(16) of K.V.A.T Act and Rules. Here in this case, the appellant has paid advance tax as per Ext.P2 Chalan at Commercial Check Post Manjeshwar on 27.01.2011, a forest pass was obtained and the consignment was sold on the same day by raising Ext.P3 invoice. Apart from the same, the goods were also accompanied by Form No.15 delivery note raised by the appellant for inter-State transport, which contained the seal of the entry check post at Manjeshwar, the details of goods transported with its value and photocopies of import documents and therefore, there were sufficient documents to prove the transport of goods, payment of advance tax, transit sale within the State of Kerala, etc. etc.

8. In our view, Form No.15 Delivery Note for Inter-State transport, payment of advance tax as per Ext.P2 and sale of notified goods as per Ext.P3 invoice, the forest pass obtained and import documents are sufficient circumstances to prove that there was no attempt to evade tax by the appellant during transport of goods and transit sale within the State. Therefore,

according to us, there are no circumstances involved in this case, warranting imposition of penalty as provided under Sec.47(6) of the K.V.A.T Act. Therefore, we do not think that the judgment of the learned Single Judge can be sustained, which was rendered upholding the penalty proceedings solely on the ground of absence of Form 15 delivery note.

9. In the light of the findings rendered above, we allow the appeal, setting aside the judgment of the learned Single Judge and delete the penalty imposed by the Inspecting Assistant Commissioner (Intelligence), Commercial Taxes, Kozhikode as per Ext.P6 order dated 30.01.2012.

In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

ANTONY DOMINIC
JUDGE

Sd/-

SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-