IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WA.No. 2288 of 2015 () IN WP(C).31560/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 31560/2015 of HIGH COURT OF KERALA DATED 16-10-2015

APPELLANT(S):/WRIT PETITIONER

M/S. MUTHOOT MOTORS (COCHIN),
MUTHOOT TOWERS, M.G.ROAD,
COCHIN, REPRESENTED BY K.C.GEORGE,
SENIOR GENERAL DMANAGER (FINANCE)

BY ADVS.SRI.P.S.SOMAN
SMT.T.RADHAMANY

RESPONDENT(S):/RESPONDENTS
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1. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, WALAYAR.

2. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
TAXES DEPARTMENT, GOVT.SECRETARIATE,
THIRUVANANTHAPURAM, PIN - 695 001.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
GOVERNMENT OF KERALA, TAX TOWER,
KARAMANA P.O., THIRUVANANTHAPURAM,
PIN - 695 002.

BY SMT.SOBHA ANNAMMA EAPEN, SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

....

W.A.No.2288 of 2015

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Dated this the 20th day of October, 2015.

JUDGMENT

Thottathil B.Radhakrishnan, J.

1. Heard the learned counsel for the appellant and the learned Senior Government Pleader for the Department of Commercial Taxes.

2. The appellant, a partnership firm, challenges a decision of the learned single Judge refusing to interfere with a detention order issued by the Commercial Tax Inspector at Walayar Checkpost.

   The materials on record show that the appellant-petitioner was transporting three vehicles registered in the State of Maharashtra under the provisions of the Motor Vehicles Act, 1988, "MV Act", for short, in the name of M/s.Jaguar Land Rover India Limited or M/s.Tata Motors Limited. Those vehicles were being transported in a trailer. On interception, the appellant-petitioner filed objections before the Commercial Tax Inspector stating that the vehicles are registered vehicles and are not meant for sale in Kerala as goods with a dealer for sale and that the vehicles are being brought only for the purpose of exhibition and demonstration and for return to its real owner M/s.Jaguar Land Rover India Limited, after the period of exhibition. Demand was made for an amount equivalent to two times of the tax assessable on the total value of the three vehicles amounting to ₹5,40,00,000/-. One thing is certain; the vehicles registered in the name of M/s.Jaguar Land Rover India Limited or M/s.Tata Motors Limited would not be sold as if it is a sale by a dealer in Kerala through an Agent in the showroom. It will always be a second sale. More importantly, the fundamental objection noted by the Commercial Tax Inspector is that there is no certification obtained from the assessing authority for the proposed exhibition or display. Sub-section (13)(i) of Section 16 of the Kerala Value

Added Tax Act, 2003, "KVAT ACT", for short, provides that "any dealer conducting exhibitions, exchange melas or any prize schemes for sales promotion, shall obtain a written permission from the assessing authority, with whom he is registered as a dealer on payment of a fee of five hundred rupees. The assessing authority may issue such permission in such form and subject to such conditions as may be prescribed. The dealer to whom the permission is issued shall exhibit the same at a conspicuous place where the exhibition or exchange mela or prize scheme is conducted." This provision in the KVAT Act requires only that a dealer conducting exhibitions, exchange melas or any prize schemes for sales promotion has to obtain a written permission from the assessing authority with whom that dealer is registered, and the dealer is required to exhibit that permission at a conspicuous place where the exhibition or exchange mela or prize scheme is conducted. It, therefore, enjoins the requirement to be complied with at the point of time when the exhibition, exchange mela or prize scheme for sales promotion is conducted. It will be far fetched to interpret that provision to hold that if any vehicle is being brought into the State for the purpose of conducting exhibition, exchange mela or any prize scheme for sales promotion, such certification or permission has to be obtained from the assessing authority to which the dealer is subject, even before the vehicle is brought in for the purpose of the exhibition or exchange mela, as the case may be. Therefore, a certification under Section 16(13)(i) of the KVAT Act cannot be insisted upon at the time of entry of goods into the State, more particularly when the credibility of the goods under transit can be traced to a registered owner because the vehicle is already registered under the MV Act. Under such circumstances, we order that the goods detained as per Ext.P9 shall be released on the appellant furnishing simple bond without sureties for the amount demanded thereby and the Commercial Tax Inspector will conclude the proceedings before the competent authority within a period of one month, giving an opportunity to the appellant-petitioner to show evidence of the goods having been re-transmitted to its registered owner M/s.Jaguar Land Rover India Limited. This writ appeal is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)

jg-20/10