IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 70 of 2015 (G)

PETITIONER(S):

PANKAJ BOLIYA, AGED 36,
S/O.PRAKASH BOLIYA, PROPRIETOR, VENUS PLY AGENCY
17/1, ANAND BUILDING, FANSWADI
24, SITARAM, PODAR MARG
MUMBAI-400002.

BY ADV. SRI.S.MURALI

RESPONDENT(S):
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1. **THE STATE OF KERALA**
   REPRESENTED BY SECRETARY, TAXES, GOVERNMENT OF KERALA
   THIRUVANANTHAPURAM-695001.

2. **COMMERCIAL TAX INSPECTOR,**
   COMMERCIAL TAX CHECK POST, BANGARA, B.MANJESHWAR
   KERALA STATE-671121.

3. **THANGAM TRADERS,**
   10/227, PATTANCHERU GRAMA PANCHAYAT, KANNIMARI-678534
   CHITTUR TALUK, PALAKKAD DISTRICT, KERALA.

4. **DEPUTY COMMISSIONER,**
   DEPARTMENT OF COMMERCIAL TAXES, PALAKKAD
   KERALA STATE-678534.

5. **SALES TAX OFFICER (MUM-VAT-C-105),**
   REGISTRATION BRANCH, MUMBAI-400002.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 70 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1(1): COPY OF REGISTRATION CERTIFICATE ISSUED UNDER MVAT ACT DATED 30/12/2014 WITH EFFECTIVE DATE OF CERTIFICATE AS 26/8/2014.
EXT.P1(2): COPY OF REGISTRATION CERTIFICATE ISSUED UNDER CST RULES DATED 30/12/2014 WITH EFFECTIVE DATE OF CERTIFICATE AS 26/8/2014.
EXT.P2: COPY OF THE TAX INVOICE CASH/CREDIT DATED 17/12/2014 ISSUED BY THE 3RD RESPONDENT.
EXT.P3: COPY OF DELIVERY NOTE UNDER KERALA VALUE ADDED TAX RULES 2005 DATED 17/12/2014 WITH SERIAL NO.320909/DN/6299/2014.
EXT.P4: COPY OF ADVANCE TAX UTILIZATION RECEIPT FOR VEHICLE NO.KA 28A 5506.
EXT.P5: COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT UNDER SECTION 47(4) OF THE KERALA VALUE ADDED TAX ACT 2003 DATED 20/12/2014 WITH REFERENCE NO.1834/2014-15.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.70 OF 2015 (G)

Dated this the 8th day of January, 2015

J U D G M E N T

The petitioner, who purchased a consignment of plywood sheets is aggrieved by Ext.P5 detention notice, issued under Section 47 (4) of the Kerala Value Added Tax Act, 2003, hereinafter referred to as the 'KVAT Act'. In the said notice, the respondents refer to an alert that was posted, with regard to a default committed by the seller of the goods in respect of payment of tax under the KVAT Act. In terms of Section 47(4) of the Act, if an officer has reason to believe that the tax exigible on the sale or purchase of goods under transport is not paid, or the dealer whose goods are transported is in default of payment of any tax or other amounts due, he may allow the goods to be transported only after realising the tax in respect of the goods transported. In Ext.P5 notice, the stand of the respondents is that the seller, of the goods under transportation, was in default of dues under the KVAT Act and it was for this reason that the goods purchased by the petitioner, and transported at his instance, was being detained. Ext.P5 is impugned in the writ petitioner by the petitioner.

2. I have heard Sri.S.Murali, the learned counsel appearing on behalf of the petitioner as also Smt.Sobha Annamma Eappen, the learned Government Pleader appearing on behalf of the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that insofar as the petitioner in the instant case is the purchaser of the goods, that were detained by the respondents, and there is no dispute that the entire tax, in respect of the consignment sold to the petitioner, has already been paid by the seller, and further that the transportation of the goods was covered by valid documents prescribed under the KVAT Act and the CST Act, there is no basis for the detention of the goods, save for the limited extent prescribed in Section 47(4) of the KVAT Act. No doubt, the learned Government Pleader would point out that the selling dealer in the instant case had committed a default in payment of purchase tax on procurement of goods by him, and it was under these circumstances that the goods that were sold to the petitioner, and were being transported, were sought to be detained so as to recover the tax amounts due from the seller. In my view, the sale of

the goods under transportation having already taken place in favour of the petitioner, it is not open to the respondents to realise the tax dues of the selling dealer through an attachment and sale of the goods under transportation. For realising the tax dues from the selling dealer, the respondents have necessarily to pursue the remedies under the KVAT Act against the said dealer. As far as the transportation in the instant case is covered by valid documents, and there is no dispute regarding the payment of tax on the said consignment, I am inclined to allow the writ petition by directing the respondents to release the consignment, currently detained by Ext.P5 notice, forthwith. I make it clear that it will be open to the respondents to proceed against the selling dealer for recovery of any dues from the said dealer under the KVAT Act.

The writ petition is allowed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp