IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).NO. 100 OF 2015 (J)

PETITIONER(S):

PHILIPS GRANO PRODUCTS,
NOORAMMAVU P.O., MALLAPPALLY,
PATHANAMTHITTA REP. BY ITS POWER OF ATTORNEY HOLDER,
MR.MATHIN PASHA

BY ADV. SRI.SABU S.KALLARAMOOLA

RESPONDENT(S):

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1. STATE OF KERALA, DEPARTMENT OF TAX, SECRETARIAT, THIRUVANANTHAPURAM REP. BY ITS SECRETARY-695001

2. INTELLIGENCE INSPECTOR, INTELLIGENCE SQUAD NO.VIII COMMERCIAL TAXES, H.Q MANNARKKAD, PALAKKAD P.O.- 678001

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 100 OF 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE INVOICE DATED 29.10.2007

EXT.P2: TRUE COPY OF THE DECLARATION DATED 24.12.2014 OF THE PETITIONER

EXT.P3: TRUE COPY OF THE LETTER DATED 15.12.2014 OF BSN HYDRAULIC SERVICE, MUMBAI

EXT.P4: TRUE COPY OF SHOW CAUSE NOTICE DATED 27.12.2014

EXT.P5: TRUE COPY OF REPLY DATED 30.12.2014 OF THE PETITIONER

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.100 of 2015

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Dated this the 5th day of January, 2015

JUDGMENT

The vehicle, carrying goods belonging to the petitioner, was intercepted by the respondents at Mookada near Palakkad and detained on the ground that the consignment that was transported was not accompanied by the documents stipulated under the Kerala Value Added Tax Act and Rules. It is the case of the petitioner that the goods in question namely, a Hitachi machine, was actually purchased by him in 2007 and was being transported back to Mumbai via Tamilnadu for the purposes of effecting repairs to the said machine. By Ext.P4 notice that was issued by the respondents, pursuant to a detention of the vehicle, the petitioner has been asked to remit a security deposit of Rs.5,80,000/- for release of the consignment for onward transportation. Ext.P4 is impugned in the writ petition inter alia on the ground that the detention of the vehicle and the goods was not justified insofar as there was no transaction of sale that resulted in the transportation of the goods, and further, that there was no attempt at evasion of tax.

2. I have heard the learned Government Pleader who would

points out that, despite the fact that the vehicle had crossed the check post, the driver of the vehicle had not stopped at the check post and had not declared the consignment at the said check post. It is also pointed out that it is not in dispute that the consignment was not accompanied by the necessary delivery note or the declaration in Form 8F. Thus the detention of the vehicle could not be said to be illegal.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that the petitioner is a registered dealer. Exts.P1 and P2 documents produced by the petitioner would indicate that he had purchased the machine in question in 2007 and he was transporting the same to Bombay for effecting repairs to the said machine. Prima facie therefore it appears that there was no taxable event involved in the transaction. At any rate, this is a matter that has to be adjudicated by the respondents. For the purposes of release of the consignment which is presently detained, I feel that the ends of justice would be met if the petitioner is directed to pay an amount of Rs.1,75,000/- before the 2nd respondent, and furnish a simple bond without surety for the balance amount, as a condition for obtaining release of the consignment and the vehicle. The 2nd respondent shall release the goods and the vehicle on the petitioner

complying with the above condition and thereafter, transmit the files to the adjudicating authority who shall proceed to complete the adjudication after hearing the petitioner within a period of three months from the date of receipt of a copy of the judgment. The petitioner shall produce a copy of the writ petition along with this judgment before the said authority.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/