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. 114 OF 2015 (L)

PETITIONER(S):

THIRUMALAISAMY T,
2/192, MIDAPADI, PALANI T.K., DINDIGUL,
TAMILNADU

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT(S):

INTELLIGENCE INSPECTOR,
SQUAD NO.IV, COMMERCIAL TAXES,
PALAKKAD-678001

BY GOVERNMENT PLEADER SMT.SHOBA 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. 114 OF 2015 (L)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 28.09.2007

EXT.P2: TRUE COPY OF THE INSURANCE CERTIFICATE

EXT.P3: TRUE COPY OF THE LETTER OF THE EXECUTIVE ENGINEER DATED 04.11.2014

EXT.P4: TRUE COPY OF THE NOTICE NO.VC.IV/395/14-15 DATED 22.12.2014 UNDER SECTION 47(2) OF THE KVAT ACT ISSUED BY RESPONDENT

EXT.P5: TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.31325 OF 2012 DATED 28.12.2012

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).No.114 of 2015

Dated this the 5th day of January, 2015

JUDGMENT

The petitioner is the owner of a used JCB vehicle, which according to the petitioner, while being transported from the State of Tamil Nadu to the State of Kerala was detained by the respondent. Ext.P4 notice was thereafter issued to him demanding security deposit of Rs.1,45,000/- on the ground that there was no work order or work agreement accompanying the vehicle, and further, that the vehicle was not seen declared in any commercial taxes check post. The value of the vehicle was assessed at Rs.5 lakh and the security deposit demanded was on the basis of an assumption that there could be a possible tax evasion if there was a sale or a deemed sale of the vehicle within the State of Kerala. The learned counsel for the petitioner would contend that the vehicle in question is not for sale and even if there was a sale involved it could only be as a used motor vehicle as provided under the proviso to Section 6(1) of the Kerala Value Added Tax Act.

2. I have heard the learned Government Pleader who would vehemently contend that insofar as the vehicle in question was a JCB the chances were very high that it was going to be used in

connection with a works contract to be executed within the state of Kerala and therefore, the respondent were justified in assuming that there would be a taxable event in respect of the vehicle within the State of Kerala justifying the detention of the vehicle at the check post.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that at the time of detention, there was nothing on record to suggest that the vehicle in question was going to be the subject matter of a sale transaction within the State of Kerala. In that factual background, the insistence by the respondents, at the check post, that the vehicle was required to carry documents as prescribed under Section 46 (3) of the Kerala Value Added Tax Act seems to be wholly unjustified. Even assuming that the petitioner was transporting the vehicle across the check post for the purposes of effecting a sale thereof within the State of Kerala, the entitlement of the respondent would only be to the tax, in respect of the sale of that vehicle, as a “used motor vehicle”. Under the circumstances, therefore, I dispose the writ petition with a direction to the respondent to issue a fresh notice, within 24 hours of the receipt of a copy of this judgment, to the petitioner by recomputing the tax

liability in respect of the vehicle at 0.5% of the value of the vehicle as shown in Ext.P4 notice, and demanding the said amount as security deposit. On the petitioner satisfying the amounts demanded as security deposit therein, the vehicle shall be released forthwith and the proceedings shall be completed within a period of three months from the date of release of the vehicle.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/