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. 119 of 2015 (L)

PETITIONER(S):

M/S. AUGUSTAN TEXTILES COLOURS PRIVATE LIMITED,
MALAMPUZHA ROAD, CHEDAYAN KALAI P.O.,
KANJIKODE WEST, PALAKKAD,
REPRESENTED BY ITS HUMAN RESOURCE MANAGER,
SRI.S. SOUNDARARAJ.

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

RESPONDENT(S):

COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECKING STATION,
MENONPARA-678 174.

BY SR. GOVT. 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:

rs.

WP(C).No. 119 of 2015 (L)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE REGISTRATION CERTIFICATE UNDER KVAT ACT DATED 26/04/2007.
EXT.P2	COPY OF THE REGISTRATION CERTIFICATE UNDER CST ACT DATED 26/03/2005.
EXT.P3	COPY OF THE INVOICE NO.M.002 DATED 31/03/2013.
EXT.P4	COPY OF THE INVOICE NO.ATCL/MIS/004 DATED 02/01/2015.
EXT.P5	COPY OF THE NOTICE NO.OR/194/2014-15 ISSUED BY THE RESPONDENT UNDER SECTION 47(2) OF THE KVAT ACT DATED 03/01/2015.
EXT.P6	COPY OF THE DELIVERY NOTE DATED 02/01/2015.
EXT.P7	COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE RESPONDENT DATED 03/01/2015.
EXT.P8	COPY OF THE LETTER FILED BY THE PETITIONER BEFORE THE RESPONDENT DATED 03/01/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C) No. 119 of 2015 (L)

...

Dated this the 5th day of January, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P5 notice of detention issued to him in connection with the transportation of a consignment, comprising of machinery, that was being transported from Kerala to Tamilnadu. In Ext.P.5 notice, it is pointed out that, while the tax that ought to have been collected is 14.5%, what was shown in the tax invoice as collected is only 5%. Further, the delivery note that accompanied the transportation of the goods indicated that the goods transported was machinery and parts not covered under the third schedule. It is for the said reason that the respondent doubted evasion of tax and a demand of security deposit of Rs.1,82,700/- was demanded from the petitioner. In the writ petition Ext.P5 notice is impugned.

2.I have heard the learned Government Pleader, who would point out that the tax invoice produced by the petitioner clearly indicated that, what was collected was only 5% whereas the tax that ought to have been collected is 14.5%. It is pointed out that, the discrepancy came to the notice of the respondent only when the entries in the delivery note were perused, which indicated that the machinery and parts that were being transported were not covered under the third schedule and therefore attracted tax at 14.5%.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that the discrepancy noticed by the respondent is only with regard to the rate of tax that ought to have been collected by the petitioner in respect of the consignment of goods that was sold to a buyer located outside the State of Kerala. While the rate of tax that should have been collected is 14.5%, Ext.P4 invoice, raised by the petitioner on the purchaser, indicates that the tax collected was only @ 5%. No doubt, the

delivery note issued by the petitioner clearly indicated that the item in question attracted 14.5% tax since it was not a machinery covered under the third schedule. The fact remains, however, that in the tax invoice it was a different rate of tax that was shown by the petitioner and therefore the respondents cannot be faulted for detaining the goods on the suspicion of the petitioner evading tax. I take note, however, of the fact that the petitioner is a registered dealer within the State of Kerala and accordingly direct the respondent to release the consignment, currently detained under Ext.P5 notice, on the petitioner paying 30% of the amount demanded in Ext.P5 notice towards the security deposit, and executing a simple bond without sureties for the balance amount, before the respondent. The detaining authority shall transmit the files to the adjudicating authority, who shall proceed to adjudicate the matter, after hearing the petitioner or his representative, and pass orders thereon within three months from the date of receipt of a copy of this judgment. To enable the adjudicating authority to do so, the petitioner shall produce a copy of the writ petition along with this judgment before the said authority.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/06/01/