

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WP(C).No. 870 of 2015 (G)

PETITIONERS :

- 1. A.MOIDEENKUTTY HAJI, AGED 73 YEARS,
PARTNER, FRESH DAY SUPER MARKET,
CITY JUNCTION, TIRUR - 676101.**
- 2. ABOOBACKER SIDHIQUE, PARTNER,
FRESH DAY SUPER MARKET,
CITY JUNCTION, TIRUR - 676101.**

**BY ADVS.SRI.K.N SREEKUMARAN
SRI.P.D.UNNIKANNAN NAIR**

RESPONDENTS :

- 1. INTELLIGENCE INSPECTOR,
SQUAD NI.II, COMMERCIAL TAXES,
MINI CIVIL STATION, TIRUR - 676101.**
- 2. STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.**

BY SENIOR PUBLIC PROSECUTOR SRI.SHOBA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

WP(C).No. 870 of 2015 (G)

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE PERMIT DT 4/8/2011 ISSUED BY THE SECRETARY, TIRUR MUNICIPALITY.**
- P2: COPY OF THE PURCHASE ORDER DT 16/12/2014 PLACED BY THE PETITIONERS WITH M/S. BLUESTAR LIMITED U.T. OF DADRA & NAGAR HAVELI**
- P3: COPY OF INVOICE BEARING NO. 0000007651 DT 23/12/2014 ISSUED BY M/S. BLUESTAR LTD. UT OF DADRA & NAGAR HAVELI TO PETITIONER.**
- P4: COPY OF THE DRAFT FORM 16 ATTESTED BY THE PETITIONER DT 29/12/2014.**
- P5: COPY OF THE NOTICE IN FORM 17 A BEARING NO. VCII/14-15 DT 6/1/2015 ISSUED BY THE R1.**

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.870 OF 2015

Dated this the 9th day of January, 2015

J U D G M E N T

The petitioners, who are the partners of a firm - "Fresh Day Super Market", placed an order with M/s.Bluestar Limited, Demni Road, U.T. of Dadra and Nagar Haveli for the supply of AC equipments, with a view to using the same in a super market business that they proposed to pursue. Insofar as the air conditioning equipment was required for their 'own use' , they had ensured that the transportation of the goods was under cover of a valid Form No.16 in the name of the firm. The transportation was also covered by a valid invoice and other documents as contemplated under the Kerala Value Added Tax Act. The goods were detained by the Intelligence Squad, at the time of unloading of the goods at the business premises of the petitioners. Ext.P5 is the detention notice under Section 47(2) of the Kerala Value Added Tax Act . In the writ petition the petitioner is aggrieved by the insistence of the respondents that the petitioners must pay the security deposit demanded in the detention notice as a condition for release of the goods.

2. Heard Smt.K.N.Sreekumaran, the learned counsel for the petitioners and Smt.Sobha Annamma Eappen, the learned

Government Pleader for the respondent.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I dispose the writ petition with the following directions:

(i) It is seen from a perusal of Ext.P5 that the only objection raised by the respondents is that while the documents accompanying the goods showed the goods to be consigned to Fresh Day SuperMarket, the building permit in respect of the building, where the super market was to function, was in the name of the petitioners in their individual capacity.

(ii) In my view, this cannot be the basis of a valid detention under the Kerala Value Added Tax Act, more so when there is no dispute that a valid Form 16 was in existence to cover the transportation of the goods, and to show the proposed use of the goods for the petitioners' business. I therefore, direct the 1st respondent to release the consignment of goods forthwith to the petitioners against a simple bond without sureties to be executed before the 1st respondent for the amount shown in Ext.P5.

(iii) The respondents shall thereafter transmit the files to the adjudicating authority who shall adjudicate the matter and pass

orders, after hearing the petitioner, within two months from the date of receipt of a copy of this judgment.

(iv) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the respondents.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/

