IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No.1553 of 2015 (T)

PETITIONER:

NEERAJ BALAN,PROPRIETOR,
M/S.ANB TOOLERS,XI/231A, PADIYAM P.O.,
ANTHIKAD-680641,THRISSUR DISTRICT.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENTS:
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1. INTELLIGENCE INSPECTOR,
COMMERCIAL TAXES,SQUADNO.V,
SALES TAX COMPLEX,THEVARA,COCHIN-682015.

2. COMMERCIAL TAX OFFICER,COMMERCIAL TAXES,
ALUVA-683101.

3. STATE OF KERALA,REPRESENTED BY
SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT,SECRETARIAT,
THIRUVANANTHAPURAM-695001.

BY SENIOR GOVT. PLEADER SMT.SHOBA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

W.P(C) NO.1553/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF REGISTRATION CERTIFICATE DATED 21.6.2007 ISSUED TO THE PETITIONER UNDER THE KVAT AND CST ACTS BY THE 2ND RESPONDENT.

EXT.P2:TRUE COPY OF INVOICE NO.M-1337/14-15 DATED 21.11.2014 RAISED BY M/S.NEXTHERMAL,BANGALORE,ON THE PETITIONER, AGAINST 'C' FORM DECLARATION.

EXT.P3:TRUE COPY OF ONLINE DECLARATION HAVING TRANSACTION ID 321507/PA01/1857/2014 DATED 22.11.2014 GENERATED AS PER E-CONSIGNMENT MANUAL IN KVATIS,ACCOMPANIED WITH EXT.P2 AND P2 (a) INVOICES.

EXT.P4:TRUE COPY OF NOTICE U/S.47(2) OF THE KVAT ACT ISSUED THROUGH THE TRANSPORTER TO THE PETITIONER,BY THE 1ST RESPONDENT, DEMANDING SECURITY DEPOSIT.

EXT.P5:TRUE COPY OF REPLY DATED 27.11.2014, SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT AGAINST EXT.P4 NOTICE, WHICH WAS ACKNOWLEDGED ON 2.12.2014.

EXT.P6:TRUE COPY OF E-CONSIGNMENT MANUAL PUBLISHED BY THE DEPARTMENT OF COMMERCIAL TAXES, KERALA STATE INTRODUCING TRANSACTION SLIP WITH TRANSACTION ID FOR THE GOODS BOOKED THROUGH PARCEL/COURIER,BY REGISTERED DEALERS.

EXT.P7:TRUE COPY OF NOTICE ISSUED BY COMMERCIAL TAXES DEPARTMENT IN DETAINING GOODS AS PER NOTICE NOOR 563/14-15 DATED 17.10.2014 AND RELEASE OF GOODS, WHICH IS SIMILAR SITUATION TO ISSUANCE OF EXT.P4 NOTICE.

EXT.P8:TRUE COPY OF JUDGMENT DATED 31.10.2014 IN WP(C) NO.28580 OF 2014 IN DIRECTING TO RELEASE THE DETAINED GOODS, WHICH IS ON SIMILAR SET OF FACT OF THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 1553 of 2015 ()

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Dated this the 15th day of January, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P4 detention notice issued to him detaining a consignment of electric heaters, that was being transported for the petitioner from Karnataka to Kerala. In the writ petition, the petitioner is aggrieved by the insistence of the respondents that the petitioner must pay the security deposit demanded in Ext.P4 detention notice as a condition for release of the consignment.

2. Heard Sri.Tomson T.Emmanuel, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

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) On a perusal of Ext.P4 notice, it is seen that the sole objection raised by the respondents is that, the goods under transport were not accompanied by the 8FA declaration, as prescribed under Section 46 (3)(e) of the Kerala Value Added Tax Act, 2003. Inasmuch as, this declaration is a mandatory document prescribed under the Act and Rules, the detention by the respondents cannot be said to be unjustified. I take note, however, of the fact that the petitioner is a registered dealer in the State and that it is his contention that the transportation of the goods was covered by Ext.P3 transaction slip, which indicated the nature of the transaction and the goods that were carried in the vehicle. I therefore direct the first respondent to release consignment on the petitioner paying 25% of the amount demanded in Ext.P4 notice and executing a simple bond without sureties for the balance amount therein before the first respondent.

(ii) 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.

(iii) The Adjudicating authority shall issue notice to the transporting agency, as also the consignor of the goods, prior to completing the adjudication.

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

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/15/01/

/TRUE COPY/

P.A.TO JUDGE