IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 1564 of 2015 (U)

PETITIONER(S):

M/S.IRIS ASSOCIATES (P) LTD.,
(TRADE NAME AAKAR TURNKEY), AZAD BUILDING, ROOM NO.4,
BLDG.NO.37/4017, AZAD ROAD, KALOOR, KOCHI-17,
REPRESENTED BY GURDEEP SINGH, DIRECTOR.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT(S):
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1. ASST.COMMISSIONER
(WORKS CONTRACT & LUXURY TAX),
DEPARTMENT OF COMMERCIAL TAXES, OLD RAILWAY STATION ROAD,
ERNAKULAM, KOCHI-18.

2. INTELIGENCE INSPECTOR, SQUAD NO.2,
OFFICE OF INSPECTING ASST.COMMISSIONER (INTELIGENCE),
DEPARTMENT OF COMMERCIAL TAXES, KOZHIKODE-673001.

3. COMMERCIAL TAX OFFICER,
COMMERCIAL TAX CHECK POST, WALAYAR,
PALAKKAD DISTRICT-678624.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 1564 of 2015 (U)

APPENDIX

PETITIONERS' EXHIBITS

P1: COPY OF REGISTRATION CERTIFICATE ISSUED BY THE R1

P2: COPY OF RETURN FILED BY THE PETITIONER

P3: COPY OF CERTIFICATE ISSUED BY THE ASST.DEVELOPMENT COMMISSIONER INFOPARK SPECIAL ECONOMIC ZONE, KOCHI-37

P4: COPY OF CIRCULAR NO.50/2006 ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

P4(A): COPY OF CIRCULAR NO.10/11 ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

P5: COPY OF PURCHASE ORDER OF THE COGNIZANT TECHNOLOGY SOLUTION INDIA PVT.LTD.

P6: COPY OF INVOICE NO.3639 OF VV SAFETY GLASSES INDUSTRIES

P6(A): COPY OF INVOICE NO.3640 OF VV SAFETY GLASS INDUSTRIES

P6(B): COPY OF INVOICE NO.3640 OF NOBLE GLASS & ALUMINIUM

P7: COPY OF DECLARATION OF THE PETITIONER

P8: COPY OF NOTICE ISSUED BY THE R2

P9: COPY OF OBJECTION FILED BY THE PETITIONER

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.1564 OF 2015

Dated this the 16th day of January, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the KVAT Act, is aggrieved by Ext.P8 notice issued to him detaining a consignment of safety glass (toughened glass) that was being transported from Hyderabad to Cochin at his instance. In the writ petition the petitioner is aggrieved by the insistence of the respondents that the petitioner must pay the security deposit demanded in the detention notice as a condition for release of the goods and vehicle.

2. Heard Sri.Harisankar V.Menon, 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) A perusal of Ext.P8 notice would indicate that the essential objection raised by the respondents was that while the invoices and other documents of sale of the goods that were being transported showed the destination of the goods to be the premises of Cognisant Technologies, it was the petitioner who was shown as the consignee. It is also stated that the item under transport was safety glass and item that attracted advance tax whereas the item declared in the 8F declaration was glass and glasswares including mirror which is not an item that is covered by the circular dealing with advance tax. On a consideration of the objection I find that the notice proceeds on an erroneous understanding of the nature of the relationship between the petitioner and the said Cognisant Technologies. This is a case where the petitioner has undertaking a work on behalf of Cognisant Technology, at whose premises the goods were to be unloaded. The invoices and other documents were addressed in the name of the petitioner since it was the petitioner who was purchasing the goods and who had to issue the necessary 'C' Form to the vendor. The goods that were transported were also required to pay advance tax but in this case the advance tax was not actually paid in view of an exemption that was available to the petitioner.

(ii) That apart, it is not in dispute that the petitioner is a registered dealer in the State and the transportation of the goods was accompanied by all the necessary documents that were required in terms of the KVAT Act. In that view of the matter, I direct the 2nd respondent to release the goods and the vehicle on the petitioner executing a simple bond without sureties for the security deposit amount demanded in Ext.P8 notice.

(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