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. 1745 of 2015 (P)

PETITIONER :

M/S.ADITYA INFOTECH LTD.,
CC 39/5374, HB-60, PANAMPILLY NAGAR,
COCHIN-682 036, REPRESENTED BY ITS ASSISTANT
MANAGER ACCOUNTS, SRI.MENON HARISH KUMAR.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):
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1. **INTELLIGENCE INSPECTOR,**
   COMMERCIAL TAXES, SQUAD NO.V,
   SALES TAX COMPLEX, THEVARA, COCHIN-682 015.

2. **ASSISTANT COMMISSIONER, COMMERCIAL TAXES,**
   SPECIAL CIRCLE-III, ERNAKULAM, SALES TAX COMPLEX,
   THEVARA, COCHIN-682 015.

R1 & R2 BY SR 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:

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WP(C).NO.1745/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE REGISTRATION CERTIFICATE DATED 01/11/2014 ISSUED TO THE PETITIONER UNDER THE KVAT AND CST ACTS BY THE 2ND RESPONDENT.

P2 COPY OF THE INVOICE NO.1111475706 DATED 11/11/2014 FOR RS.95,000/- RAISED BY NEW DELHI BRANCH FOR TRANSPORT OF ELECTRICAL GOODS TO THE PETITIONER, COCHIN BRANCH, AS INTERSTATE STOCK TRANSFER, AGAINST ISSUANCE OF 'F' FORM DECLARATION.

P3 COPY OF THE FORM NO.8F ONLINE DECLARATION NO.32070493214/2014-15/82 DATED 11/11/2014 GENERATED BY THE CONSIGNOR BRANCH AS PER EXT.P2 INVOICE, ON THE BELIEF THAT THE GOODS ARE TRANSPORTED THROUGH ROAD.

P4 COPY OF THE CONSIGNMENT NO.D19786937 DATED 11/11/2014 OF DTDC COURIER & CARGO LTD., WHEN GOODS AS PER EXT.P2 ALONG WITH EXT.P3 HANDED OVER FOR TRANSPORT OF GOODS TO COCHIN BRANCH.

P5 COPY OF THE NOTICE DATED 17/11/2014 U/S. 47(2) OF THE KVAT ACT ISSUED THROUGH THE TRANSPORTER TO THE PETITIONER, BY THE 1ST RESPONDENT, DEMANDING SECURITY DEPOSIT, ON THE VALUE ESTIMATED.

P6 COPY OF THE REPLY DATED 02/01/2015, SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT AGAINST EXT.P4 NOTICE, WHICH WAS ACKNOWLEDGED ON 12/01/2015.

P7 COPY OF THE CIRCULAR NO.20/06/CT DATED 08/05/2006 ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES U/S. 94 OF THE KVAT ACT, PRESCRIBING DOCUMENT THAT SHOULD ACCOMPANY FOR TRANSPORT OF GOODS INTO THE STATE.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.1745 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.P5 detention notice issued to him detaining a consignment of electronic goods that was being transported from New Delhi 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.Tomson T. Emmanuel, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned counsel 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.P5 notice it is seen that the sole objection of the respondent is that the goods under transport were not declared in Form 8FA as prescribed under Section 46(3)(e) of the KVAT Act. It is apparent therefore that the respondents suspected that the goods had been transported by rail and not by road as contended by the petitioner. It is the case of the petitioner that, apprehending that the transportation would be by road, he had already caused the necessary Form 8F declaration to be uploaded in the KVATIS software, and if the transporter had actually transported the goods by rail, he was not in a position to know that. On a consideration of the objection of the respondents, I find that this is not a case where the petitioner could be said to have been aware of the method of transportation adopted by the transporting agency, to which he had entrusted his goods. In fact, by way of abundant caution, and on the understanding that the goods were being transported by road, he had generated an 8F Form. In Ext.P5, although the respondents take the stand that it was the Form 8FA that was required, there is nothing to indicate that the goods were actually transported through rail.

(ii) In that view of the matter, and taking into consideration the fact that the petitioner is a registered dealer under the Act, I direct the 1st respondent to release the goods on the petitioner furnishing a simple bond without sureties, for the amounts demanded by way of security deposit in Ext.P5 notice, before the 1st respondent.

(iii) The 1st respondent 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

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