IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).No. 3475 of 2015 (H)

PETITIONERS :
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1. KAUSHALENDRA JHA, AGED 43 YEARS,
   S/O.PARAMESWAR JHA, PROPRIETOR,
   TIRUMALA PLYWOODS,OLD NO.21, NEW NO.57,
   ARIMUTHU MAISTRY STREET, CHOOLAI, CHENNAI-12, TAMILNADU.

2. V.G.SHIBU,AGED 42 YEARS, S/O.GOPALAN,
   MANAGING PARTNER, AMMA ASSOCIATES, K.P.VII/438,G,
   KIZHAKKAMBALAM, KUMMANODU, PATTIMATTAM-683 562,
   ERNAKULAM DISTRICT, KERALA.

BY ADV. SRI.S.MURALI

RESPONDENT(S):
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1. THE STATE OF KERALA,
   REPRESENTED BY SECRETARY, TAXES,
   THIRUVAANTHAPURAM-695 001

2. INTELLIGENCE INSPECTOR, SQUAD NO.III,
   DEPARTMENT OF COMMERCIAL TAXES,
   MALAPPURAM AT KOTTAKKAL,PIN-676 505

3. COMMERCIAL TAX OFFICER, 2ND CIRCLE,
   PERUMBAVOOR, ERNAKULAM DISTRICT-683 542

4. ASST. COMMISSIONER (CT) CHOOLAI ASSESSMENT CIRCLE,
   CHENNAI-600 412

5. UNION OF INDIA,
   REPRESENTED BY ADDITIONAL DIRECTOR GENERAL OF
   FOREIGN TRADE, 4TH FLOOR, SHASTHRI BHAVAN ANNEXE,
   CHENNAI-600 006

R1 TO R4 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN
R5 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).NO.3475/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1	COPY OF THE CASH/CREDIT INVOICE NO.1140 DATED 29/01/2015 FOR RS.3,25,222/- ISSUED BY THE 1ST PETITIONER IN FAVOUR OF THE 2ND PETITIONER.
P2	COPY OF THE E-CONSIGNMENT DECLARATION IN FAVOUR OF THE 2ND PETITIONER DATED 31/01/2015 FOR LORRY NO.TN-30J-9095.
P3	COPY OF THE NOTICE UNDER SECTION 47(2) OF THE KVAT ACT DATED 30/01/2015
P4	COPY OF THE EXPLANATION/REPLY SUBMITTED BY THE 2ND PETITIONER TO 2ND RESPONDENT DATED 31/01/2015
P5	COPY OF THE CERTIFICATE OF IMPORTER-EXPORTER CODE (IEC) ISSUED BY 5TH RESPONDENT.
P6	COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY 4TH RESPONDENT.
P7	COPY OF THE COMMERCIAL INVOICE NO.PN15 DATED 2014/12/25 ISSUED BY LINYI UNITED INTERNATIONAL TRADING CO., LTD, CHINA.
P8	COPY OF THE PACKING LIST NO.PN15 DATED 2014/12/25 ISSUED BY LINYI UNITED INTERNATIONAL TRADING CO., LTD CHINA
P9	COPY OF THE BILL OF ENTRY FOR HOME CONSUMPTION DATED 28/12/2014
P10	COPY OF THE BILL OF ENTRY FOR HOME CONSUMPTION DATED 28/12/2014
P11	COPY OF THE FORM KK NO.3856 ISSUED BY CLEARING AND FORWARDING AGENT OF 1ST PETITIONER DATED 28/01/2015
P12	COPY OF THE FORM KK NO.3857 ISSUED BY CLEARING AND FORWARDING AGENT OF 1ST PETITIONER DATED 28/01/2015 ISSUED TO 2ND PETITIONER.
P13	COPY OF THE FORM KK NO.3858 ISSUED BY CLEARING AND FORWARDING AGENT OF 1ST PETITIONER DATED 28/01/2015
P14	COPY OF THE FORM KK NO.3859 ISSUED BY CLEARING AND FORWARDING AGENT OF 1ST PETITIONER DATED 28/01/2015.
P15	COPY OF THE KVAT CERTIFICATE OF REGISTRATION OF 2ND PETITIONER HAVING TIN NO.32151303224 DATED 26/12/2014 ISSUED BY THE 3RD RESPONDENT.

RESPONDENT'S EXHIBITS: **NIL**

/TRUE COPY/

sts **P.A.TO.JUDGE**

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.3475 OF 2015

Dated this the 4th day of February, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P3 notice issued to him detaining a consignment of engineered face veneer, that was being transported from Chennai to Kizhakkambalam at his instance, at Walayar check post. 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.S.Murali, the learned counsel for the petitioner, Sri.N.Nagaresh, the learned Standing counsel for the 5th respondent and Smt.Sobha Annamma Eappen, the learned Government Pleader for respondents 1 to 4.

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.P3 notice, it is seen that the objection of the respondents is essentially with regard to the value of the goods declared in the Form 8F declaration. While the Form 8F declaration showed a lesser value, in the Form KK that accompanied the goods, a higher value was shown for the goods. It is the case of the petitioner that the value shown in Form KK was the value of the entire consignment that was imported and not the value in respect of the particular consignment that was being transported. This contention is sought to be fortified by a reference to the term "Part Consignment" that is seen written on the top of the Form KK that accompanied the transportation of the goods.

(ii) Considering the fact that the petitioner is a registered dealer in the State, and that in respect of the quantity of goods that was being transported, there was a valid declaration in Form 8F with reference to an invoice number and date, I direct the 2nd respondent to release the goods and the vehicle to the petitioner on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in Ext.P3.

(iii) The 2nd 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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