IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 4121 of 2015 (M)

PETITIONER(S):

SOBHA CITY, PUZHAKKAL,
GURUVAYUR ROAD, THRISSUR - 680553.
REPRESENTED BY ITS AUTHORISED SIGNATORY
V.G.VENUGOPAL.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR
SRI.K.UMAMAHESWAR

RESPONDENT(S):
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1. COMMERCIAL TAX OFFICER, COMMERCIAL TAX CHECK-POST,
WALAYAR, PALAKKAD DISTRICT. 678 624.

2.COMMERCIAL TAX OFFICER (WORKS CONTRACT),
THRISSUR 678 001.

R BY GOVERNMENT PLEADER SMT.LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.4121/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF CERTIFICATE OF REGISTRATION.

EXT.P2: COPY OF INVOICE DATED 4.2.2015.

EXT.P3: COPY OF NOTICE DATED 5.2.2015 ISSUED BY THE 1ST RESPONDENT.

EXT.P4: COPY OF REPLY DATED 5.2.2015.

EXT.P5: COPY OF CORRECTED DECLARATION IN FORM 8F DATED 5.2.2015.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.4121 OF 2015 (M)

Dated this the 9th day of February, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the KVAT Act, is aggrieved by Ext.P3 notice issued to him, detaining a consignment comprising of GI Decking sheet that was being transported from Bangalore to Thrissur at the instance of the petitioner, at the 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. I have heard Sri.S.Anil Kumar, the learned counsel appearing for the petitioner and also Smt.Lilly.K.T., the learned Government Pleader appearing 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.P3 detention notice, it is seen that the objection of the respondents is that the Form 8F in respect of the consignment was initially filed by another dealer, namely, Sobha Developers, whereas the invoice showed the consignment as consigned to the petitioner. Counsel for the petitioner would state that both Sobha Developers and Sobha City, the petitioner herein, are managed by the same individual and the erroneous filing of Form 8F declaration was only an inadvertent mistake committed by the said individual. I note however that insofar as the Form 8F declaration that was filed at the time of transportation of the goods was in the wrong name, the detention on the ground of suspicion of evasion of tax, cannot be said to be unjustified.

(ii) Taking note of the fact, however, that the petitioner is a registered dealer within the State and that he has subsequently filed Ext.P5 declaration in Form 8F after cancelling the earlier declaration in Form 8F that was filed by him, I direct the 1st respondent to release the consignment of goods and the vehicle subject to the petitioner paying 25% of the security deposit amount demanded in Ext.P3 and furnishing a simple bond without sureties before the said respondent, for the balance amount demanded in Ext.P3 notice.

(iii) The petitioner shall also produce the original of the invoice mentioned in Ext.P3 before the said respondent.

(iv) 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.

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

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp