IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 4564 of 2015 (U)

PETITIONER(S):

MUHAMMED ANAS,
PROPRIETOR, GOLDER GRANITES AND MARBLES,
NEAR JUMA MASJID, PONDYBAZAR,
CHOKLI - 670 672.

BY ADV. SRI.C.K.SREEJITH

RESPONDENT(S):
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1. THE COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAX CHECK POST, KUNHIPPALLY,
   P.O.CHOMBALA, KOZHIKODE DISTRICT - 673 308.

2. THE COMMERCIAL TAX OFFICER,
   COMMERCIAL TAX CHECK POST, KUNHIPPALLY,
   P.O.CHOMBALA, KOZHIKODE DISTRICT - 673 308.

3. THE COMMISSIONER,
   COMMERCIAL TAXES DEPARTMENT,
   GOVERNMENT OF KERALA, ERNAKULAM - 682 031.

4. STATE OF KERALA, REPRESENTED BY SECRETARY TO
   GOVERNMENT, COMMERCIAL TAX DEPARTMENT,
   GOVERNMENT SECRETARIAT, TRIVANDRUM - 695 001.

5. THE COMMERCIAL TAX OFFICER,
   1ST CIRCLE, THALASSERY - 670 101.

6. THE INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAX CHECK POST, WALAYAR - 678 624.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 4564 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: THE TRUE COPY OF THE CERTIFICATE OF REGISTRATION NO.3212-842195C ISSUED BY THE 5TH RESPONDENT.

EXT.P2: THE TRUE COPY OF THE CERTIFICATE OF RENEWAL OF REGISTRATION.

EXT.P3: THE TRUE COPY OF THE INVOICE DTD.6.2.2015.

EXT.P4: THE TRUE COPY OF THE NOTICE OR NO.436/14-15 ISSUED BY THE 1ST RESPONDENT DTD.9.2.2015.

RESPONDENT(S)' EXHIBITS:
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NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.4564 of 2015

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Dated this the 13th day of February, 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 granite tiles that was being transported from Andhra Pradesh to Chockly in Tellicherry at the instance of the petitioner, at Kunhippally 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.C.K.Sreejith, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondent.

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 objection of the respondents is essentially that the consignment was shown as destined to Mahe, and by showing a TIN number pertaining to a dealer in Mahe, whereas the goods were actually intended for the petitioner in Kerala. Under those circumstances, it was suspected that the documents were prepared so as to avoid the liability to advance tax. Taking note of the objections in Ext.P4 detention notice, it cannot be said that the detention was unjustified.

(ii) I take note, however, of the fact that the petitioner is a registered dealer in the State, and accordingly, direct the 1st respondent to release the goods and the vehicle to the petitioner on the petitioner paying the advance tax due in respect of the consignment, as also 35% of the security deposit demanded in Ext.P4 notice, and further executing a simple bond without surety for the balance amount of security deposit demanded therein 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

mns/