IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 4939 of 2015 ()

PETITIONER(S):

SELIX T FELIX,
THYKKOTTATHIL HOUSE, IRUMPANAM P.O.,
THRIPUNITHURA - 682 309, ERNAKULAM DISTRICT.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):

1.COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAXES CHECK POST,
MUTHANGA - 673 592, WAYANAD DISTRICT.

2.COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES CHECK POST,
MUTHANGA - 673 592, WAYANAD DISTRICT.

R BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.4939/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF AADHAAR NO.244741430370 OF THE PETITIONER, ISSUED BY GOVERNMENT OF INDIA.

EXT.P1(A): COPY OF DRIVING LICENSE FOR TRANSPORT VEHICLE ISSUED TO THE PETITIONER BY ASSISTANT LICENSING AUTHORITY, REGIONAL TRANSPORT OFFICE, THRIPUNITHURA.

EXT.P2: COPY OF INVOICE NO.VAA1050129 DATED 11.08.2014 ISSUED TO THE PETITIONER BY T.V.SUNDHARM IYENGAR & SONS LTD., COCHIN - 682 017, AT the TIME OF PURCHASE OF PASSENGER CHASSIS NO.MB1PBEFC2EEWN5397, HAVING ENGINE NO.EWEZ412597, ALONG WITH DELIVERY NOTE AND OTHER DOCUMENTS OF THE MANUFACTURER.

EXT.P3: COPY OF MOTOR VEHICLE COVER NOTE POLICY NO.11026 DATED 15.09.2014 FOR THE CHASSIS, ISSUED BY NEW INDIA ASSURANCE CO. LTD. COCHIN.

EXT.P4: COPY OF SALES CERTIFICATE IN FORM NO.21 DATED 16.9.2014 ISSUED BY SUPPLIER OF CHASSIS IN KERALA.

EXT.P5: COPY OF TEMPORARY REGISTRATION NO.KL-07-BM-TEMP-3075 DATED 16.9.2014 ISSUED IN THE NAME OF THE PETITIONER BY THE REGISTERING AUTHORITY, WHICH WAS RENEWED UPTO 14.3.2015.

EXT.P6: COPY OF DECLARATION DATED 20.9.2014 PRODUCED BEFORE the 1ST RESPONDENT WHEN THE CHASSIS WAS TAKEN TO BANGALORE FOR BUS BODY BUILDING ON THE CHASSIS.

EXT.P7: COPY OF INVOICE NO.1226/2014-15 DATED 12.02.2015 ISSUED BY S.M.KANNAPPA AUTOMOBILES PVT. LTD., BANGALORE, FOR THE FABRICATION OF THE BUS BODY ON THE CHASSIS ISSUED TO THE PETITIONER.

EXT.P7(A): COPY OF INVOICE NO.1227/2014-15 DATED 12.02.2015 ISUSED BY S.M.KANNAPPA AUTOMOBILES PVT. LTD., BANGALORE, FOR THE CONTRACT CONSIDERATION FOR THE ADDITONAL WORKS CARRIED IN BUS BODY BUILDING ISSUED TO THE PETITIONER.

EXT.P8: COPY OF CERTIFICATES DATED 12.2.2015 ISSUED BY THE BODY BUILDING AS PER THE MOTOR VEHICLE RULES.

EXT.P9: COPY OF NOTICE OR NO.3240/14-15 DATED 13.2.2015 ISSUED TO THE PETITIONER BY 1ST RESPONDENT.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.4939 OF 2015 (N)

Dated this the 18th day of February, 2015

J U D G M E N T

The petitioner is aggrieved by Ext.P9 notice issued to him, detaining a consignment comprising of a 49 seater bus that was being transported from Bangalore to Ernakulam, at the instance of the petitioner. 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.Tomson T. Emmanuel, the learned counsel appearing for the petitioner and also Sri.Sudheesh Kumar, 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.P9 detention notice, it is seen that the objection of the respondents is essentially with regard to the value that was declared by the petitioner for the body building work that was done at Bangalore, on the chassis that was transported from Ernakulam to Bangalore by the petitioner. It is pointed out with reference to Exts.P7 and P7(a) invoices that the value declared for the works done in Bangalore was low compared to the actual value. Under those circumstances, the declared value was enhanced and a security deposit was demanded on the enhanced value. In the instant case, I find that the petitioner had transported the chassis to Bangalore for the purposes of constructing a bus body thereon. The consignment that was intercepted was the chassis with the bus body that was attached thereon. The demand of tax is in respect of the bus body that was fabricated by the job workers in Bangalore. In that view of the matter, the tax liability, if any, can only be on the bus body builders in Bangalore and not on the petitioner. Insofar as the detention is for the purposes of collecting differential tax on the bus body, I am of the view that the petitioner is entitled to a release of the bus on furnishing a simple bond without surety for the security deposit amount demanded in Ext.P9. Accordingly, the 1st respondent is directed to release the vehicle to the petitioner on his furnishing a simple bond without surety for the security deposit amount demanded in Ext.P9, before the 1st respondent.

(ii) The petitioner shall not alienate the vehicle during the pendency of the adjudication proceedings before the adjudicating authority.

(iii) The petitioner shall also produce the original of the invoice mentioned in Ext.P9 before the 1st respondent. 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

prp