IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WP(C).No. 6607 of 2015 (A)

PETITIONER(S):

THRISSUR MEDICAL COLLEGE ALUMNI ASSOCIATION,
REG.NO.108/2000, PO MEDICAL COLLEGE, THRISSUR-680 569
REP. BY ITS SECRETARY DR.SHIBU T.S.

BY ADVS.DR.K.P.PRADEEP
SRI.T.T.BIJU
SRI.K.P.KESAVAN NAIR
SMT.T.THASMI

RESPONDENT(S):

----

1. STATE OF KERALA,
REP. BY ITS SECRETARY, DEPT. OF TAX, SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. COMMISSIONER OF COMMERCIAL TAXES,
DEPT. OF COMMERCIAL TAXES, GOVT. OF KERALA, TAX TOWERS
KARAMANA, THIRUVANANTHAPURAM-695 002.

3. INTELLIGENCE INSPECTOR,
DEPT. OF COMMERCIAL TAXES, SQUAD NO.2
CAMP AT MANJESWAR, KASARGOD-671 314.

4. INTELLIGENCE OFFICER,
DEPT. OF COMMERCIAL TAXES, SQUAD NO.2
CAMP AT MANJESWAR, KASARGOD-671 314.

R BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 6607 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT P1 : TRUE COPY OF THE NOTICE NO. OR 1115/14-15 DATED 22-02-2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER UNDER SECTION 47(2) OF THE KERALA VALUE ADDED TAX ACT, 2003.

EXT P2 : TRUE COPY OF THE CIRCULAR NO.3/2015 DATED 14-01-2015 ISSUED BY THE 2ND RESPONDENT.

EXT P3 : TRUE COPY OF THE RULES AND REGULATIONS OF THE PETITIONER ASSOCIATION. (RELEVANT PORTION)

EXT P4 : TRUE COPY OF THE AGREEMENT DATED 21-10-2011 EXECUTED BETWEEN THE GOVERNMENT OF KERALA AND THE PETITIONER ASSOCIATION.

EXT P5 : TRUE COPY OF THE TAX INVOICE NO.PI/2014/15-74 DATED 19-02-2015 ISSUED BY M/S.SUNFLEX SPORTS SURFACES, NAVI MUMBAI.

EXT P6 : TRUE COPY OF THE E-GENERATED OWNERSHIP CERTIFICATE NO.3596898310/2014 DATED 22-02-2015 IN FORM NO.16.

EXT P7 : TRUE COPY OF THE REQUEST DATED 25-02-2015 SUBMITTED BY THE PETITIONER ASSOCIATION TO THE 4TH RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.6607 OF 2015 (A)

Dated this the 3rd day of March, 2015

J U D G M E N T

The petitioner, which is an Alumni Association of Thrissur Medical College, and had entered into an agreement with the Government of Kerala undertaking to construct an indoor stadium and examination hall at the Government Medical College Campus, Thrissur, and hand over the buildings to the Government, without any conditions, purchased material for the purposes of constructing an indoor stadium from a vendor at Mumbai. The consignment, comprising of material for wooden sports flooring, that was being transported from Mumbai to Thrissur, was detained by the respondents at Manjeswar check post in Kasaragod. Ext.P1 is the detention notice. 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.K.P.Pradeep, 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.P1 detention notice, it is seen that the objection of the respondents is essentially that the petitioner who was the consignee, is not a registered dealer under the KVAT Act, and further while the declaration under Form 8F showed the goods to be sports goods, the invoice indicated that the goods in question was material for the wooden sports flooring system for the purposes of the multi purpose sports hall and indoor stadium to be constructed by the petitioner. The respondents also opined that the goods need to be verified in the manner contemplated under Circular 3/2015 of the Commissioner of Commercial Taxes inasmuch as they were in the nature of construction material. I note from the documents produced along with the writ petition that the material that was being transported at the instance of the petitioner, and which was covered by a Form 16 issued by the petitioner, was material that was necessary for complying with the conditions of the agreement entered into by the petitioner and the Government. That apart, the material was admittedly for the purposes of construction of an indoor stadium and for

constructing a multi purpose sports floor. I also feel that prima facie the material that was transported does not come within the ambit of the Circular mentioned in the detention notice. In that view of the matter, I direct the 3rd respondent to release the goods and the vehicle on the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P1 detention notice, before the said respondent.

(iii) 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, untrammelled by the observations in the 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