IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

WP(C).No. 10341 of 2015 (P)

PETITIONER(S):

PRIME TECH GENERAL TRADING PVT. LTD.
HEAD OFFICE, DOOR NO.3/627 (OLD NO.3/5),
KULAM BAZAR, MUZHAPPILANGAD, KANNUR DISTRICT.
REPRESENTED BY ITS MANAGING DIRECTOR K.B.MUKTHAR

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT(S):

THE COMMERCIAL TAX INSPECTOR
COMMERCIAL TAX CHECK POST, NEW MAHE,
KANNUR 670 001.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.10341/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER UNDER THE KVAT ACT.

EXT.P2: COPY OF THE INVOICE NO.422 IN FORM NO.8B DATED 25.3.2015 ISSUED BY THE PETITIONER.

EXT.P3: COPY OF THE INVOICE NO.423 IN FORM NO.8B DATED 25.3.2015 ISSUED BY THE PETITIONER.

EXT.P4: COPY OF THE DETENTION NOTICE NO.OR.576/2014-15 DATED 25.3.2015 ISSUED BY THE RESPONDENT.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S.TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.10341 OF 2015 (P)

Dated this the 30th day of March, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the KVAT Act, is aggrieved by Ext.P4 notice issued to him, detaining a consignment of door skin, that was being transported from Muzhappilangad to Thrissur, at the instance of the petitioner. In the writ petition, the petitioner is aggrieved by the insistence of the respondent 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 the learned counsel appearing for the petitioner and also the learned Government Pleader appearing 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 respondent is essentially that there were 800 numbers of door skins that were being transported to an unregistered dealer under a cover of Form No.8B invoice. The respondent therefore suspected that the door skins were being transported to the consignee for resale purposes and thereby suspected a possible evasion of tax. Counsel for the petitioner would submit that when a local sale is effected to an unregistered dealer, the requirement under the KVAT Act is only to issue an invoice in Form 8B, and this having been done, and the invoice having accompanied the transportation of the goods, the requirement of Section 43(2) of the KVAT Act, had already been compiled with.

(ii) Taking note of the fact, however, that the branch of the petitioner is a registered dealer within the State, I direct the respondent to release the goods and the vehicle subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P4 notice, before the respondent.

(iii) The 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, untrammelled by the observations in this judgment.

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

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp