IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 12046 of 2015 (E)

PETITIONER(S):

K.V. GEORGE, AGED 53 YEARS,
S/O.K.T.VARGHESE, PROPRIETOR,
QUALITY FOOD PRODUCTS INDUSTRIES,
KANNIKATTU NIDHIN VIHAR, AROOR.

BY ADV. SRI.C.K.SREEJITH

RESPONDENT(S):

1.COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
DEPARTMENT OF COMMERCIAL TAXES,
WALAYAR 678 624.

2.COMMERCIAL TAX OFFICER,
COMMERCIAL TAX CHECK POST,
DEPARTMENT OF COMMERCIAL TAXES,
WALAYAR 678 624.

3.INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAX CHECK POST,
WALAYAR 678 624.

4.STATE OF KERALA, REP. BY THE SECRETARY,
COMMERCIAL TAXES DEPARTMENT, VIKAS BHAVAN,
TRIVANDRUM 695 001.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.12046/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE TAX INVOICE ISSUED BY M/S.ARUN COMMERCIAL CORPORATION, BROKER BAZAAR, R AGRAHARAM, GUNTUR ANDRA PRADESH DT. 6.4.2015.

EXT.P2: COPY OF THE WAY BILL DT.6.4.2015 ISSUED BY THE DEALER.

EXT.P3: COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT U/S.47(2) OF KVATACT DT. 8.4.2015.

EXT.P4: COPY OF THE E-DECLARATION DT. 9.4.2015.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.12046 OF 2015 (E)

Dated this the 9th day of April, 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 of chilly powder, that was being transported 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 the learned counsel appearing for the petitioner and also 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 notice, it is seen that the objection of the respondents is essentially that the goods that was transported was actually chilly powder taxable at the rate of 5% within the State. It was found that the invoice that accompanied the transportation of the goods showed the product to be chilly powder and the tax paid as 2% against C Forms whereas the Form 8F declaration that was generated on the KVATIS software showed the goods as dried chilly that was taxable only at 1% within the State. The respondents therefore suspected a misclassification with an intention to evade tax.

(ii) I take note of the fact that the petitioner is a registered dealer within the State, and in the invoice that accompanied the transportation of the goods, the product was correctly described as chilly powder, and tax at the concessional rate of 2% was paid against the C Form issued by the petitioner. In that view of the matter, the declaration in the invoice was a valid one and the invoice being a valid document for the purposes of transportation, I direct the 1st 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.P3 notice, 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, 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 1st respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp