IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

WP(C).NO. 12786 OF 2015 (W)

PETITIONER(S):
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1. M/S. CAUVERY BUILDTECH PVT. LTD.,
   32/761D, ADAMBAYIL BUILDING,
   NEAR KALAMASSERY POLICE STATION,
   SOUTH KALAMASSERY, KOCHI-33,
   REPRESENTED BY V.SIVAJI, REGIONAL MANAGER.

2. SUNDAR SINGH, 8TH STREET,
   KANNAPPA SAMY NAGAR, PUZHAL, CHENNAI.

BY ADVS.SRI.HARISANKAR V. MENON,
SMT.MEERA V.MENON.

RESPONDENT(S):
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1. ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, SPECIAL CIRCLE-1,
   ERNAKULAM, KOCHI-15.

2. COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAXES CHECK POST,
   AMARAVILA-695 122.

BY GOVT. PLEADER (TAXES) SRI.S. SUDHISH KUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).NO. 12786 OF 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1: COPY OF REGISTRATION CERTIFICATE ISSUED BY THE 1ST RESPONDENT TO THE 1ST PETITIONER DATED 07/07/2007.

EXT.P2: COPY OF INVOICE NO.C-PSI-CNW-1415-0007 ISSUED BY ARMSTRONG WORLD INDUSTRIES (INDIA)PVT. LTD., CHENNAI DATED 31/03/2015.

EXT.P3: COPY OF REGISTRATION CERTIFICATE ISSUED TO THE 2ND PETITIONER DATED 15/02/2013.

EXT.P4: COPY OF DECLARATION IN FORM NO.8F GENERATED BY THE 1ST PETITIONER DATED 31/03/2015.

EXT.P5: COPY OF NOTICE IN FORM NO.17A ISSUED BY THE 2ND RESPONDENT DATED 02/04/2015.

EXT.P6: COPY OF NOTICE UNDER SECTION 69(1) ISSUED BY THE 2ND RESPONDENT DATED 02/04/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ANIL K.NARENDRAN, J.

W.P.(C).No.12786 of 2015

Dated this the 24th day of April, 2015

JUDGMENT

The petitioners have approached this Court in this Writ Petition seeking a writ of certiorari to quash Exts.P5 and P6 notices issued by the second respondent under 47(2) of the KVAT Act.

2. Going by the averments in the Writ Petition the first petitioner is a private limited company engaged in the trading of Asbestos, Modular Kitchen etc. and is an assessee to sales tax on the rolls of the 1st respondent under the provisions of the KVAT Act, 2003. According to the first petitioner, he had entrusted the second respondent, who is the registered owner of lorry bearing No.TN-18/P-6477 for transportation of the commodity covered by Ext.P2 invoice and he has also generated an online declaration in Form No.8F on 31.3.2015, evidenced by Ext.P4. When the goods were being transported from Chennai to Kochi in the lorry owned and driven by the second petitioner, the same was intercepted by the second respondent, who has issued Ext.P5 demanding a sum of ₹1,74,000/- as security for releasing the consignment.

Simultaneously with the issuance of Ext.P5, the second respondent has issued Ext.P6 notice under Section 69(1) of the Act against the second petitioner levying penalty of ₹1,74,000/- for transporting goods without supporting documents. Challenging Exts.P5 and P6 the petitioners are before this Court in this Writ Petition.

3. I heard the arguments of the learned counsel for the petitioners and the learned Government Pleader appearing for the respondents.

4. As evidenced from Exts.P5 and P6, proceedings are initiated against the petitioners alleging evasion of tax. Legality or otherwise of the demand made in Exts.P5 and P6 cannot be adjudicated at this stage in Writ Petition filed under Article 226 of the Constitution of India. It is for the petitioners to file objections to Exts.P5 and P6 and contest the matter before the second respondent.

5. In the above circumstances, the Writ Petition is disposed of with the following directions:-

> The petitioners shall file their objections, if any, to Exts.P5 and P6 within a period of two weeks from today. On such

objections being filed, the second respondent shall pass final orders on Exts.P5 and P6 within a period of two months from the date of receipt of such objections. In the meantime the vehicle and goods under detention shall be released to the petitioners, on the first petitioner remitting 10% of the amount demanded in Exts.P5 and P6 as security before the second respondent and furnishing bank guarantee for the balance amount.

ANIL K.NARENDRAN, JUDGE

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