IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 19TH DAY OF MAY 2015/29TH VAISAKHA, 1937

WP(C).No.14659 of 2015 (F)

PETITIONER:

SANJAY KUMAR KRISHNA PRABHU,
PROPRIETOR,M/S.VESTAL IMPEX,40/9506,
SEEMAS BUILDING,JEW STREET,PADMA JUNCTION,
ERNAKULAM,PIN-682 035.

BY ADV.SRI.MOHAMMED RAFIQ

RESPONDENT'S:

---

1. THE INTELLIGENCE INSPECTOR,
SQUAD NO.3,MATTANCHERRY AT ALUVA,
MINI CIVIL STATION,ALUVA,ERNAKULAM,PIN-683 101.

2. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TAXES,
GOVERNMENT SECRETARIAT,
TRIVANDRUM,PIN-695001.

BY SENIOR GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

WP(C).No.14659 of 2015 (F)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 - THE TRUE COPY OF THE BILL OF ENTRY NO.9220724 DATED 13.05.2015 ISSUED ON 15.05.2015 BYTHE CUSTOMS HOUSE, COCHIN TO THE PETITIONER.

EXT.P2 - THE TRUE COPY OF THE FORM NO.8FA DECLARATION NO.320716/8FA/1275/2015 DATED 15.05.2015 SUBMITTED ONLINE BY THE CLEARING AGENT OF THE PETITIONER.

EXT.P3 - THE TRUE COPY OF THE TAX INVOICE NO.3 DATED 15.05.2015 IN FORM NO.8, ISSUED BY THE PETITIONER.

EXT.P4 - THE TRUE CPOPY OF THE FORM NO.15 DELIVERY NOTE NO.320716/DN/1016/2015 DOWNLOADED ONLINE BY THE PETITIONER.

EXT.P5 - THE TRUE COPY OF THE FORM NO.17A NOTICE NO.O.R.NO.75/2015-16 DATED 16.05.2015 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 47(2) OF THE KERALA VALUE ADDED TAX ACT, 2003 TO THE PETITIONER.

EXT.P6 - THE TRUE COPY OF THE REPLY DATED 17.05.2015 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

RESPONDENTS EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.14659 of 2015

....

Dated this the 19th day of May, 2015

JUDGMENT

The Petitioner, who is a registered dealer under the Kerala Value Added Tax Act is aggrieved by Ext.P5 notice issued to him detaining a consignment of 'Unplasticised Poly Vinyl Chloride' (UPVC) Profile that was being transported at the instance of the petitioner after its import. 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 for the petitioner and also the learned Government Pleader 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.P5 detention notice, it is seen that the objection of the respondents is essentially with regard to an alleged misclassification of the items in the documents that accompanied the transportation of the goods. The respondent would contend that the commodity that was imported was UPVC profiles but in the sale invoice of the consignor the commodity was mentioned as PVC profile. The respondents therefore suspected a misclassification to the intention to evade tax within the State.

(ii) I take note of the fact that the petitioner is a registered dealer within the State, and that the transportation of the goods was duly accompanied by all the necessary documents that were contemplated under the KVAT Act. Under such circumstances, I direct the 1st respondent to release the goods and the vehicle to the petitioner, on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in Ext.P5 before the 1st 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.

(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

mns/