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. 14680 of 2015 (H)

PETITIONER:

PROFESSIONAL COPIER SERVICES INDIA PRIVATE LTD,
VALIYA VEETTIL, IV/53A, MAROTTICHUVADU-IV,
KALAMASSERY, ERNAKULAM DISTRICT, PIN 682024,
REPRESENTED BY ITS BRANCH MANAGER, SRI.C.K.VIJAYAN.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR
SRI.K.UMAMAHESWAR

RESPONDENTS:

---

1. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, WALAYAR,
PALAKKAD DISTRICT,
PIN 678624.

2. COMMERCIAL TAX OFFICER
1ST CIRCLE, KALAMASSERY, ERNAKULAM DISTRICT,
PIN 678624.

BY SENIOR GOVERNMENT 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:

PJ

WP(C).No. 14680 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1- COPY OF REGISTRATION CERTIFICATE.

EXHIBIT P2- COPY OF INVOICE DATED 9-05-2015.

EXHIBIT P3- COPY OF DELIVERY NOTE DATED 9-05-2015.

EXHIBIT P4- COPY OF DECLARATION DATED 9-05-2015 IN FORM 8F.

EXHIBIT P5- COPY OF NOTICE DATED 10-05-2015 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P6- COPY OF ORDER DATED 29-06-2006 ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES, KERALA UNDER SECTION 94 OF THE KVAT ACT.

EXHIBIT P6(A)- COPY OF ORDER DATED 2-09-2014 ISSUED BY THE AUTHORITY FOR CLARIFICATION AND ADVANCE RULING UNDER THE TAMIL NADU VAT ACT.

EXHIBIT P7- COPY OF REPLY DATED 12-05-2015.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.14680 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 old and used multi functional digital printers with copiers that was being transported from Coimbatore to Kalamassery 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 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 the misclassification of the item for the purposes of taxation under the KVAT Act. The respondents would contend that the item was one that attracted tax at 14.5% in the State whereas it was classified as a computer systems and peripherals that attracted only 5% tax within the State. It was therefore suspected that the dealer was misclassifying the items for the purposes of evasion of tax within the State.

(ii) I take note of the fact that the transportation, which was an interstate stock transfer, was accompanied by all the necessary documents that were prescribed under the KVAT Act and Rules. It is also not in dispute that the petitioner is a registered dealer within the State. Under such circumstances, I direct the 1st respondent to release the goods and the vehicle to the petitioner, on the petitioner executing 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/