IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(C).No. 17280 of 2015 (H)

PETITIONER :

M/S. GLAXO SMIHKLIME CONSUMER
HEALTHCARE LIMITED,
REPRESENTED BY ITS MANAGER FINANCE

BY ADV. SMT.S.K.DEVI

RESPONDENTS :
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1. THE INTELLIGENCE OFFICER,
SQUAD NO. II, COMMERCIAL TAXES,
KOLLAM AT KOTTARAKKARA - 691508.

2. THE ASSISTANT COMMISSIONER (ASSMT.)
SPECIAL CIRCLE III, DEPARTMENT OF
COMMERCIAL TAXES, ERNAKULAM - 682015.

3. THE STATE OF KERALA,
REPRESENTED BY ITS FINANCE SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM - 695001.

R1 TO R3 BY SENIOR GOVERNMENT PLEADER
SMT. SHOBA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 17280 of 2015 (H)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF NOTICE NO. 0R/63/2015-16 DT 14/5/2015.

P2: COPY OF INVOICE NO. NO. 15000509.

P2A: COPY OF INVOICE NO. NO. 15000460.

P3: COPY OF RELEVANT PAGE OF CIRCULAR NO. 39/2007.

P4: COPY OF REQUEST DT 19/5/2015.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.17280 of 2015

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Dated this the 10th day of June, 2015

JUDGMENT

The petitioner is a registered dealer under the KVAT Act, challenges Ext.P1 detention notice.

2. The reason for detention is that petitioner's goods was not accompanied by Form No.8. It is noted that the petitioner have only generated and issued a document namely 'Tax Invoice'. The vehicle, in which, the goods were transported, was intercepted at Ambalathumkavala, Ezhukone.

3. The petitioner's case is that 'Tax Invoice' is in the same format of Form No.8 as prescribed under the Kerala Value Added Tax Act, merely because the 'Tax Invoice' is not superscribed as Form No.8 would not indicate that goods are unaccompanied by Form No.8. According to the learned counsel, what matters is the substance of Form No.8 and not the particular format of Form No.8 for the purpose of the satisfaction of Form No.8.

4. The learned Government Pleader opposes the prayer of the petitioner. It is submitted that Form No.8 has to be prepared in quadruplicate and 'Original' for the buyer for the purpose of claiming

input Tax Credit, 'Duplicate' for the Transport Copy and 'Triplicate' for filing at the Check Post. Therefore, it is submitted that 'Tax Invoice' produced by the petitioner does not indicate whether it was 'Original' or 'Duplicate' or 'Triplicate'.

I am of the view, whether transportation was intended for evasion of tax cannot be decided in this proceedings. No doubt, 'Tax Invoice' generated would, prima facie, appears to be in conformity with Form No.8. Nevertheless, as rightly pointed out by the learned Government Pleader that it is not seen whether it has been raised in quadruplicate This has to be verified by the authority in appropriate adjudication process. If it is to be satisfied that 'Tax Invoice' has been generated in quadruplicate in the manner in which as contemplated in Form No.8, merely for the reason that it is not superscribed as Form No.8, no penalty can be imposed on the petitioner. Since, it is the matter of adjudication, I am of the view, for release of the goods, the petitioner shall deposit 30% of the demand and execute a simple bond without sureties for the remainder.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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