IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 19966 of 2015 (U)

PETITIONER(S):

M/S. INTERFIELD LABORATERIES, 13/1208-A,
INTERPRINT HOUSE, KARUVELIPADY,
COCHIN-682 005
REPRESENTED BY ITS MANAGING PARTNER MR.JOSEPH PAUL.

BY ADV. SMT.K.LATHA

RESPONDENT(S):
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1. THE STATE OF KERALA REPRESENTED BY CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE COMMERCIAL TAX INSPECTOR, COMMERCIAL TAX CHECKPOST, MUTHANGA.

BY ADV.LIJU V.STEPHEN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-09-2015, ALONG WITH WPC. 21557/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 19966 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF ISO CERTIFICATION VALID UNITL 20.10.2015 IN THE NAME OF THE PETITIONER.

EXHIBIT P2: COPY OF LICENSE ISSUED FROM COCHIN CORPORATION WITH LICENSE NO.C 6/02/2014-2015 ALONG WITH REGISTRATION CERTIFICATE ISSUED BY ASSISTANT LABOUR OFFICER, COCHIN.

EXHIBIT P3: COPY OF FORM NO.16 CERTIFICATE OF OWNERSHIP DATED 9.6.2015 ISSUED BY THE PETITIONER.

EXHIBIT P4: COPY OF THE DETENTION NOTICE OR NO.483/2015-16 DT. 11.6.2015 ISSUED BY THE SECOND RESPONDENT U/S 47(2) OF THE KVAT ACT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C)Nos. 19966 and 21557 of 2015

Dated this the 16th day of September, 2015

JUDGMENT

The petitioner in these writ petitions is not a registered dealer under the Kerala Value Added Tax Act (hereinafter referred to as the 'KVAT Act'). The petitioner is running a drug and food testing laboratory at Karuvelipady, Kochi, in the name and style 'Interfield Laboratories', which has been assessed and accredited ISO certification in the discipline of Chemical Testing by the National Accreditation Board for Testing and Calibration Laboratories, vide Ext.P1 certificate of accreditation produced along with these writ petitions, which is valid till 20.10.2015. For running a commercial laboratory, the petitioner has obtained licence from the Corporation of Cochin, vide Ext.P2 licence produced along with these writ petitions, which was valid till 31.03.2015. The petitioner has also obtained registration under the Kerala Shops and Commercial Establishments Act, 1960, vide Ext.P2(2) certificate of registration produced along with these writ petitions, which is valid till 31.12.2015.

W.P.(C)No.19966 of 2015:-

2.1 Going by the averments in the writ petition, the petitioner purchased some chemicals and process pumps (lab chemicals) from M/s.Sigma Aldrich Chemicals Pvt. Ltd., Bangalore and the goods were transported to Kochi on the strength of Ext.P3 certificate of ownership in Form No.16 under the KVAT Rules, on a declaration that the goods are for own use. In Ext.P3 certificate of ownership dated 9.06.2015, the value of the goods is estimated at ₹18,342/-. On 11.06.2015, at 19.50 hrs. the goods in question were intercepted by the 2nd respondent at the Commercial Tax Check Post, Muthanga and the petitioner was issued with Ext.P4 notice under Section 47(2) of the KVAT Act, to show cause, if any, against the proposed detention of goods together with supporting evidence, in original, or to remit the security deposit of ₹2,210/-.

2.2. The reason stated for detention of goods is that, the consignee is not a registered dealer under the KVAT Act. So evasion of tax is suspected and hence security deposit demanded. It is aggrieved by Ext.P4 notice under Section 47(2) of the KVAT Act, the petitioner is before this Court seeking a writ of certiorari to quash Ext.P4 notice and seeking a writ of mandamus commanding the respondents including all check post authorities not to detain the goods of the petitioner for want of registration under the KVAT Act, as the petitioner is only a drug and food testing laboratory, which purchases goods from other States on the strength of online Form No.16, which itself proves that the goods are purchased by the petitioner for own use. The petitioner has also sought for a writ of mandamus commanding the 2nd respondent to release the goods detained as per Ext.P4 unconditionally.

2.3. By order dated 02.07.2015, this Court granted an interim direction to release the goods detained on executing a simple bond.

W.P.(C)No.21557 of 2015:-

3.1. Going by the averments in the writ petition, the petitioner purchased some chemicals (lab chemicals) from M/s.LGC Promochem, Bangalore, vide Ext.P3A invoice dated

30.06.2015 and the goods were transported to Kochi on the strength of Ext.P3B certificate of ownership in Form No.16 under the KVAT Rules, on a declaration that the goods are for own use. In Ext.P3B certificate of ownership dated 06.07.2015, the value of the goods is estimated at ₹33,814/-. On 11.07.2015, at 11.15 hrs. the goods in question were intercepted by the 2nd respondent at the Commercial Tax Check Post, Muthanga and the petitioner was issued with Ext.P4 notice under Section 47(2) of the KVAT Act, to show cause, if any, against the proposed detention of goods together with supporting evidence, in original, or to remit the security deposit of ₹10,150/-.

3.2. The reason stated for detention of goods is that, the item chemicals and process pumps are not considered for own use purpose under the KVAT Act. Hence security deposit demanded. It is aggrieved by Ext.P4 notice under Section 47(2) of the KVAT Act, the petitioner is before this Court seeking a writ of certiorari to quash Ext.P4 notice and seeking a writ of mandamus commanding the respondents including all check post authorities not to detain the goods of the petitioner for want of registration under the KVAT Act, as the petitioner is only a drug and food testing laboratory, which purchases goods from other States on the strength of online Form No.16, which itself proves that the goods are purchased by the petitioner for own use. The petitioner has also sought for a writ of mandamus commanding the 2nd respondent to release the goods detained as per Ext.P4 unconditionally.

3.3. On 16.07.2015, this Court granted an interim order directing release of the goods detained on executing a simple bond.

4. I heard arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

5. The learned counsel for the petitioner mainly contended that, as the petitioner is only a drug and food testing laboratory, which purchases goods from other States on the strength of online Form No.16, which itself proves that the goods are purchased for own use, the respondents and all check post authorities in the State may be restrained from detaining the

goods for want of registration under the KVAT Act.

6. Section 46 of the KVAT Act deals with establishment of check posts and documents to be carried with the goods and clause (a) of sub-section (3) of Section 46 mandates that, subject to the provisions of sub-section (4) no person shall transport within the State across or beyond the notified area any consignment of goods exceeding such quantity or value, as may be prescribed, by any vehicle or vessel, unless he is in possession of either a tax invoice or delivery note or certificate of ownership containing such particulars, as may be prescribed. As per sub-rule (18) of Rule 58 of the KVAT Rules, every person, other than a registered dealer, who consigns goods by any vehicle or vessel, where the transport is not in pursuance of a sale, shall issue a certificate of ownership in Form No.16.

7. Section 47 of the KVAT Act deals with procedure for inspection of goods in transit. Sub-section (1) of Section 47 mandates that, the driver or other person in charge of a vehicle shall stop the vehicle at any place within a notified area when so required by the officer in charge of that notified area, or at any

other place when so required by any officer empowered by the Government in that behalf, for the purpose of enabling such officer to verify the documents required by sub-section (3) of section 46 to be in the possession of the person transporting the goods and to satisfy himself that there is no evasion of tax. Going by sub-section (2) of Section 47, if such officer has reason to suspect that the goods under transport are not covered by proper and genuine documents, in cases where such documents are necessary, or that any person transporting the goods is attempting to evade payment of the tax due under the KVAT Act, he may, for reasons to be recorded in writing, detain the goods and shall allow the same to be transported only on the owner of the goods or his representative or the driver or other person in charge of the vehicle or vessel on behalf of the owner of the goods, furnishing security for double the amount of tax likely to be evaded, as may be estimated by such officer.

8. However, going by the first proviso to sub-section (2) of Section 47, such officer may, if he deems fit, having regard to the nature of the carrier or the goods and other relevant matters,

allow such goods to be transported on the owner of the goods or his representative or the driver or other person in charge of the vehicle or vessel executing a bond with or without sureties for securing the amount due as security. The second proviso to sub-section (2) of Section 47 provides further that, where the documents produced in support of the transport of goods evidence defects of a minor or technical nature only and the goods are owned by a dealer registered under the KVAT Act, such officer may allow the goods to be transported after realizing the tax on the turnover of the goods under transport.

9. Sub-section (5) of Section 47 provides that, the officer detaining the goods shall record the statements, if any, given by the owner of the goods or his representative or the driver or other person in charge of the vehicle and shall submit the proceedings along with the connected records to such officer not below the rank of Commercial Tax Officer as may be authorized in that behalf by the Government, for conducting necessary inquiry in the manner prescribed. However, going by the proviso to sub-section (5), where tax is collected under the second

proviso to sub-section (2) or under sub-section (4), no enquiry under sub-section (5) shall be necessary and the officer detaining the goods shall submit the proceedings along with the connected records to the concerned assessing authority. Sub-section (6) of Section 47 provides further that, the officer authorized under sub-section (5) shall, before conducting the inquiry, serve notice on the owner of the goods and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to evade the tax due under the Act, he shall, by order, impose on the owner of the goods a penalty not exceeding twice the amount of tax attempted to be evaded, as may be estimated by such officer.

10. The provisions under Section 47 of the KVAT Act, which deals with procedure for inspection of goods in transit, are intended to prevent evasion of tax payable under the Act. The inspection conducted under sub-section (1) of Section 47 of the Act, by the officer in charge of the notified area or by any officer empowered by the Government in that behalf, is for the purpose of enabling such officer to verify the documents required by sub-

section (3) of section 46 to be in the possession of the person transporting the goods and to satisfy himself that there is no evasion of tax. On such inspection, if such officer has reason to suspect that the goods under transport are not covered by proper and genuine documents, in cases where such documents are necessary, or that any person transporting the goods is attempting to evade payment of the tax due under the KVAT Act, he may for reasons to be recorded in writing, detain the goods in exercise of his powers under sub-section (2) of Section 47 of the Act and shall allow the same to be transported only on the owner of the goods or his representative or the driver or other person in charge of the vehicle on behalf of the owner of the goods, furnishing security for double the amount of tax likely to be evaded, as may be estimated by him.

11. Therefore, the officer in charge of the notified area or the empowered officer can invoke the provisions under sub-section (2) of Section 47 of the KVAT Act, if he has reason to suspect that the goods under transport are not covered by proper and genuine documents or that any person transporting the

goods is attempting to evade payment of the tax due under the said Act. If that be so, the officer in charge of the notified area or the empowered officer can detain the goods in transit covered by a certificate of ownership in Form No.16, if he has reason to suspect that the goods are transported into the State by persons other than registered dealers on the pretext of 'own use'.

12. Further, there is a cardinal difference between the provisions contained in sub-section (2) of Section 47 of the KVAT Act which empowers the officer concerned to intercept the goods in transit and demand security and the provisions contained in sub-section (6) of Section 47 of the said Act which empowers the officer authorised under sub-section (5) of Section 47 of the Act to impose penalty on the owner of the goods. The authorised officer is empowered to impose penalty under sub-section (5) of Section 47 of the Act on the owner of the goods only if such officer, after conducting an enquiry after serving notice to the owner of the goods and giving him an opportunity of being heard, finds that there has been an attempt to evade the tax due under the Act. On the other hand, the power under sub-section (2) of

Section 47 of the Act to intercept the goods in transit and demand security can be invoked if the officer concerned has reason to suspect that the goods under transport are not covered by proper and genuine documents or that the person transporting the goods is attempting to evade payment of the tax due under the said Act. Therefore, a finding as to whether there was an attempt to evade payment of tax due under the Act is not a prerequisite for the officer concerned to intercept the goods in transit and demand security, invoking his powers under sub-section (2) of Section 47 of the Act.

13. The learned counsel for the petitioner, relying on the judgment of a Division Bench of this Court in **K.G.Thommen** v. **State of Kerala (1994 KLJ (Tax Cases) 477)** would contend that, security deposit can be collected only in cases where there are clear attempts for evasion of tax. In K.G.Thommen's case (supra), the Division Bench was considering the legality of an order passed under sub-section (4) of Section 29A of the Kerala General Sales Tax Act, imposing penalty and it was held that, in order to levy penalty under sub-section (4) of Section 29A of the

said Act, the Officer should positively find that there has been an attempt to evade tax due under the said Act. In that context, the Division Bench held that, the mere fact that the transportation of the goods was not accompanied by proper documents by itself will not be sufficient to attract levy of penalty under sub-section (4) of Section 29A of the said Act and it is essential that the Officer should find that there has been an attempt to evade tax due under the said Act and that should be based on proper material. Therefore, the judgment of this Court in K.G.Thommen's case (supra) will not any manner support the case of the petitioner.

14. Going by the averments in W.P.(C)No.19966 of 2015, the petitioner had purchased some chemicals and process pumps (lab chemicals) from Bangalore and the said goods transported on the strength of Ext.P3 declaration made in Form No.16 were illegally detained and security deposit demanded by the 2nd respondent vide Ext.P4 notice on the ground that the petitioner is not a registered dealer under the KVAT Act and hence evasion of tax is suspected. The invoice relating to purchase of the goods

detained in Ext.P4 notice is not on record. Similarly, the averments in W.P.(C)No.21557 of 2015 are to the effect that, the petitioner had purchased some chemicals (lab chemicals) from Bangalore vide Ext.P3A invoice and the said goods transported on the strength of Ext.P3B declaration made in Form No.16 were illegally detained and security deposit demanded by the 2nd respondent vide Ext.P4 notice on the ground that, the items chemicals and process pumps are not considered for own use under the KVAT Act. The petitioner would also contend that, while making Ext.P3A online declaration in Form No.16, the description of the goods are given as 'chemical and process pumps lab chemicals' since there was no option to declare it as 'lab chemicals' alone. The pleadings and materials on record do not indicate that, the exercise of power by the 2nd respondent in these writ petitions, while issuing Ext.P4 dentition notices under sub-section (2) of Section 47 of the Act, is vitiated in any manner. As I have already held, the officer in charge of the notified area or the empowered officer can detain the goods under transit covered by a certificate of ownership in Form No.16, if he has reason to suspect that the goods are transported into the State by persons other than registered dealers on the pretext of 'own use'. When the 2nd respondent in these writ petitions has ample power by virtue of sub-section (2) of Section 47 of the KVAT Act to intercept the goods in transit and demand security, if he has reason to suspect that the petitioner is attempting to evade payment of the tax due under the said Act, the issuance of Ext.P4 detention notices cannot, in any way, be termed as an act done without any authority of law, warranting an interference of this Court under Article 226 of the Constitution of India. Merely for the reason that the goods are transported into the State on the strength of declarations made in Form No.16, the petitioner is not legally entitled for an order restraining the respondents and all check post authorities in the State from detaining such goods for want of registration under the KVAT Act. Therefore, the petitioner is not entitled for the reliefs prayed for in these writ petitions.

15. By order dated 02.07.2015 in W.P.(C)No.19966 of 2015, this Court granted an interim direction to release the goods

detained vide Ext.P4 detention notice in that case, on the petitioner executing a simple bond. Similarly, by order dated 16.07.2015 in W.P.(C)No.21557 of 2015, this Court granted an interim order directing release of the goods detained vide Ext.P4 detention notice in that case, on the petitioner executing a simple bond. Since the entire goods detained vide Ext.P4 detention notices in both writ petitions had already been released on the petitioner executing simple bond, the question whether the petitioner is entitled for release of the goods detained vide Ext.P4 detention notices unconditionally, no more survives.

16. In the result, the challenge made against Ext.P4 detention notices in these writ petitions stands rejected. Within two weeks from the date of receipt of a certified copy of this judgment, the 2nd respondent in these writ petitions shall submit the proceedings in Ext.P4 detention notices along with connected records, including the objections, if any, submitted by the petitioner, to the authorised officer in terms of sub-section (5) of Section 47 of the KVAT Act, and the said authority shall conduct an enquiry with notice to the petitioner and pass final orders in

accordance with law, as expeditiously as possible, at any rate within a period of three months from the date of receipt of connected records. If the petitioner is yet to file its objections to Ext.P4 detention notices, the petitioner shall submit the same before the 2nd respondent in these writ petitions, within a period of one week from the date of receipt of a certified copy of this judgment.

W.P.(C)Nos.19966 of 2015 and 21557 of 2015 are disposed of accordingly. No order as to costs.

Sd/-
ANIL K. NARENDRAN,
JUDGE

JV