IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 21658 of 2015 (F)

PETITIONER(S):

A.PAVITHRA PANICKER,
PROPRIETOR, PANICKERS TRADING COMPANY,
NILAVELIL SHOP BO.885, VADAKKUMTHALA,
P.O.-KUTTYAVATTOM, KARUNAGAPPALLY,
KOLLAM (DT).

BY ADVS.SRI.K.N.SREEKUMARAN
SRI.P.D.UNNIKKANNAN NAIR
SMT.V.P.SEENA DEVI

RESPONDENT(S):

1.COMMERCIAL TAX INSPECTOR
COMMERCIAL TAX CHECK POST, WALAYAR. 678 624.

2.INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAX CHECK POST, WALAYAR. 678 624.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.21658/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PURCHASE ORDER DATED 20.2.2015 WITH M/S.VIJAYAGIRI PUBLIC SCHOOL, THRISSUR.

EXT.P2: COPY OF INVOICE OF M/S.ECOTREAT 202, COLINA VISTA, BANER-PASHAN LINK ROAD, PUNE, 411 021 AS PER INVOICE NO.EC, 2015-16/1 DATED 8.06.2015.

EXT.P3: COPY OF THE NOTICE BEARING NO.319/4/15016 DATED 13.7.2015 ISSUED BY THE 1ST RESPONDENT.

EXT.P4: COPY OF THE REPLY DATED 14.7.2015 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.21658 OF 2015 (F)

Dated this the 17th day of July, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P3 notice issued to him, detaining a consignment of electrical goods, that was being transported 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 appearing for the petitioner and also the learned Government Pleader appearing 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.P3 notice, it is seen that the objection of the respondents is essentially that the invoice that accompanied the goods showed that the goods were destined for Thrissur and not Karunagappally, and, therefore, the goods were moving pursuant to a subsequent local sale within the State, which transportation was not accompanied by a local invoice raised by the petitioner. It was therefore suspected that there could be an evasion of tax by the petitioner in respect of the local sales that was proposed. Counsel for the petitioner would submit that the goods were detained at Walayar, and the onward transportation to Thrissur had not yet commenced. It is the case of the petitioner that, as per the agreement between the petitioner and the ultimate consignee, the sale invoice in respect of the goods could be raised only after erection of the machinery at the site of the customer. On a consideration of the submissions on either side, I find that the goods have been detained at the check post. The objection of the respondents that the transportation being done without an accompanying invoice in connection with the local sales, can be raised only when the goods are in the course of onward movement from the check post to the destination of the buyer in Kerala. Inasmuch as the transportation has not reached that stage, the further detention of the goods, on the ground of suspected evasion of tax, cannot be justified.

(ii) I also take note of the fact that the petitioner is a registered dealer within the State, I direct the 1st respondent to release the goods and the vehicle subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P3 notice, before the 1st respondent.

(iii) The 1st respondent 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, untrammelled by the observations in this judgment.

(iv) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 1st respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp