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. 21697 of 2015 (J)

PETITIONER :

M/S.HCL INFO SYSTEMS LTD.,
MASJID, CHALIKKAVATTOM EAST, VENNALA.P.O.,
C/O.SRI BHAGAVATHY TRADERS PVT LTD., IKON,
DOOR NO.33/1303 G, OPP. JUMA KOCHI,
REPRESENTED BY ITS AUTHORIZED SIGNATORY
SRI.CYRIAC JOSEPH.

BY ADV. SRI.A.KUMAR

RESPONDENT :

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

BY GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

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

sts

WP(C).NO.21697/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE CERTIFICATE OF REGISTRATION

P2 COPY OF THE STOCK TRANSFER NOTE DATED 07/07/2015

P3 COPY OF THE FORM-8F DATED 07/07/2015

P4 COPY OF THE SAID NOTICE DATED 11/07/2015

P5 COPY OF THE SPECIMEN SALES BILL OF THE TAXABLE GOODS SOLD.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.21697 of 2015

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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.P4 detention notice issued to him detaining a consignment of mobile phones batteries that was being transported at the instance of the petitioner. In the writ petition the petitioner is aggrieved by the insistence of the respondent that the petitioner must pay the security deposit demanded in the detention notice as a condition for release of the goods and vehicle.

2. Heard the learned counsel for the petitioner and the learned Government Pleader for the respondent.

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.P4 detention notice, it is seen that the objection of the respondent is essentially with regard to the misclassification of the item that was being transported. While the petitioner had declared the goods as mobile phones/accessories, it is the case of the respondent that the goods are actually mobile phone batteries

which are taxable at 14.5 %. I note that, the petitioner is a registered dealer in the State and that in the 8F declaration as also the transaction slip that accompanied the goods, which are stated to be stock transferred, the goods are described as mobile phones/accessories. It is also submitted by counsel for the petitioner that the goods when sold within the State, subsequent to their stock transfer into the State, are sold by collecting tax at the higher rate of 14.5%. Taking note of the said submission, as also the fact that the petitioner is a registered dealer in the State, I direct the 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.P4.

(iii) The 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.

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

A.K.JAYASANKARAN NAMBIAR
JUDGE

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