IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WP(C).No. 26714 of 2015 (L)

PETITIONER(S):

SRI.P.S.LAWERENCE, MG.PARTNER,
M/S.S TOUGHEN GLASS, XL/990,
THIRD FLOOR CRYSTAL TOWER,
KALADY, ERNAKULAM - 683 574.

BY ADV. SRI.K.J.VINCENT (MUNDAMVELI)

RESPONDENT(S):
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1. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY
   TO GOVERNMENT, TAXES DEPARTMENT,
   SECRETARIAT, TRIVANDRUM - 695 001.

2. **THE COMMERCIAL TAX INSPECTOR,**
   COMMERCIAL TAX CHECK POST,
   WALAYAR - 678 635, PALAKKAD DISTRICT.

BY GOVERNMENT PLEADER SRI.LIJI V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 26714 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE REGISTRATION CERTIFICATE OF M/S S.TOUGHEN GLASS, MATTOR P.O., KALADY DTD.3.2.2015.

EXT.P2: TRUE COPY OF ANNEXURE TO THE REGISTRATION CERTIFICATE DTD.3.2.2015 SHOWING THE NAME OF COMMODITIES DEALT WITH THE PETITIONER.

EXT.P3: TRUE COPY OF PURCHASE BILL NO: CST 53 DTD.27.8.2015 OF M/S.AIM ELECTRICAL CONTROLS INDIA PRIVATE LIMITED, COIMBATORE.

EXT.P4: TRUE COPY OF THE NOTICE IN FORM 17 A BEARING NO.OR 479/4 DTD.29.8.2015 ISSUED BY THE SECOND RESPONDENT.

EXT.P5: REPRESENTATION DTD.1.9.2015 FILED BEFORE INSPECTING ASST. COMMISSIONER, WALAYAR BY THE PETITIONER.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 26714 of 2015

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Dated this the 4th day of September, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P4 notice issued to him detaining a consignment of transformers that was being transported at the instance of the petitioner, who is a consignee of the goods. 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. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader appearing for the respondent.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I dispose the writ petition with the following directions:

> (i) On a perusal of Ext.P4 notice, it is seen that the objection of the respondent is essentially with regard to the fact that the petitioner, as the consignee, was not authorised to purchase the goods in question by availing concessional rate of tax under the CST Act.

It is therefore that the respondents suspected an evasion of tax. The learned counsel for the petitioner would submit that it is a fact that the petitioner does not have registration in respect of the particular commodity. He however, points out that the petitioner is a registered dealer in the State. Taking note of the said submission, and finding that the transportation of the goods was otherwise in order, I direct the 2nd respondent to release the goods and the vehicle covered by the detention notice, to the petitioner, on the petition paying 30% of the security deposit amount demanded in Ext.P4 and furnishing a simple bond without surety for the balance amount demanded therein, before the 2nd respondent.

(ii) The 2nd 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.

(iii) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 2nd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das