IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).No. 34854 of 2015 (F)

PETITIONER(S):

K.V.SHAMSUDEEN,
PROPRIETOR, M/S.SABEENA STORES, VI/403/5
CHANDRIKA SHOPPING COMPLEX, S.N.ROAD
KOORKENCHERY P.O., THRISSUR 680 007.

BY ADVS.SRI.E.P.GOVINDAN
SMT.G.DEEPA

RESPONDENT(S):
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1. **THE INTELLIGENCE INSPECTOR**
   SQUAD NO.VI, COMMERCIAL TAXES, COMMERCIAL TAX COMPLEX
   PALAKKAD 678 001.

2. **THE COMMERCIAL TAX OFFICER**
   FOURTH CIRCLE, COMMERCIAL TAX COMPLEX, POOTHOLE
   THRISSUR 680 004

3. **THE STATE OF KERALA**
   REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT
   GOVERNMENT SECRETARIAT, TRIVANDRUM, PIN: 695 001.

R BY GOVERNMENT PLEADER SMT.LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 34854 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE NOTICE DT. 29/10/2015 ISSUED BY THE FIRST RESPONDENT.

EXT.P2: TRUE COPY OF THE BILL NO.2275 DT. 26/10/2015 ISSUED BY THE CONSIGNO DHANA VILAS MADRAS SNUFF COMPANY.

EXT.P3: TRUE COPY OF THE CIRCULAR NO.20/2006 DT. 8/5/2006 ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES, TRIVANDRUM.

EXT.P4: TRUE COPY OF THE LETTER DT. 13/11/2015 FILED BEFORE THE FIRST RESPONDENT.

EXT.P5: TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED UNDER THE KVATACT.

RESPONDENT(S)' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.34854 OF 2015 (F)

Dated this the 18th day of November, 2015

J U D G M E N T

A consignment of snuff that was being transported, at the instance of the petitioner, was detained by the respondents at the premises of the transporter. Ext.P1 is the detention notice issued to 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.

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.P1 notice, it is seen that the objection of the respondents is essentially that the goods that were declared to be 10 bags of 5 kg. each was found, on physical verification, to be 10 bags of 20 kg. each. It was therefore found that there was an excess quantity of 150 kg., and therefore, the respondents suspected a possible evasion of tax. Counsel for the petitioner would submit that the petitioner is a registered dealer within the State, and there is a dispute with regard to the weighing that was supposedly done by the respondents. It is the case of the petitioner that no such weighing was done. Taking note of the said submission of counsel for the petitioner, and finding that he is a registered dealer and besides, the transportation of the goods was duly accompanied by valid invoice and other documents contemplated under the KVAT Act, I direct the 1st respondent to release the goods to the petitioner subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P1 notice, before the 1st respondent.

(ii) The 1st respondent shall, before releasing the goods to the petitioner, cause a physical measurement of the quantity of goods to be done by the Intelligence Officer having jurisdiction over the parcel office where the goods are currently detained, in the presence of a representative of the petitioner, and draw up a measurement report and get the same counter signed by the representative of the petitioner.

(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/18/11/15