IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

SUNDAY, THE 5TH DAY OF JANUARY 2014/15TH POUSHA, 1935

WP(C).No. 35453 of 2014 (F)

PETITIONER(S):

DHANISH NISAMUDHEEN
S/O. K.T.HAMSA, KANAYANKODE HOUSE, KUNNAMANGALAM POST
CALICUT - 673 571.

BY ADVS.SRI.V.V.ASOKAN (SR.)
SRI.ARUN KUMAR.P

RESPONDENT(S):

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1. COMMERCIAL TAX INSPECTOR,
COMMERCKAL TACX CHECK POST, WALAYAR - 678 624.

2. INSPECTING ASSISTANT COMMISSIONER
DEPARTMENT OF COMMERCIAL TAXES, WALAYAR - 678 624.

BY GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-01-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 35453 of 2014 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - TRUE COPY OF THE PROFORMA INVOICE DT. 14.11.14.

P2 - TRUE COPY OF THE SALE INVOICE OF MITORA MACHINEX PVT LTD., AHMEDABAD DT. 08.12.14.

P2(A) - TRUE COPY OF FORM - 16 DT. 06.12.14.

P3 - TRUE COP OF THE DETENTION NOTICE GIVEN BY THE 1ST RESPONDENT UNDER SECTION 47(2)OF THE KVAT ACT DT. 15.12.14.

P4 - TRUE COPY OF THE REPLY GIVEN BY THE PETITIONER TO THE 1ST RESPONDENT DATED NIL.

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.35453 of 2014

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Dated this the 5th day of January, 2015

JUDGMENT

The petitioner had, with a view to establishing a pastry shop in Kunnamangalam, Calicut, purchased a Blast Freezer equipment from Ahmedabad. When the said equipment was being transported to Kozhikode, the consignment was stopped at Valayar Checkpost on 15.12.2014. Ext.P3 is the detention notice issued to the petitioner by the respondent. In Ext.P3, it is stated that the goods under transport were covered only by a photocopy of Form No.16 and further, that the item that was transported is a Blast Freezer which is used for commercial purposes and, therefore, cannot be for own use. The notice indicates that the respondents suspected an evasion of tax and therefore, a security deposit of Rs.69,830/- was demanded as a condition for release of the vehicle. In the writ petition, Ext.P3 notice is impugned inter alia on the ground that the purchase of the equipment in question was for the own use of the petitioner who was intending to use the machinery for the conduct of the bakery business.

2. I have heard the learned Government Pleader who would

point out that the petitioner is not registered under the provisions of the Kerala Value Added Tax Act. It is in particular pointed out that, as per Section 15 (2) (iv) of the Act, every dealer who in the course of his business obtains or brings goods from outside the State or effects export of goods out of the territory of India is required to take a registration under the Act irrespective of the quantum of its total turnover. It is also pointed out that insofar as the petitioner is proposing to use the machine for a commercial purpose namely running of a bakery business, the machine would not qualify for inclusion as own goods for the purposes of the Act.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that the stand of the respondent in Ext.P3 notice that the goods under transport cannot be treated as imported for own use is not legally tenable. While the goods under transport is a Blast Freezer which is brought from Ahmedabad, it is not in dispute that the equipment is required by the petitioner for the purposes of running a bakery business where the equipment is necessary as part of the capital goods required for business. The goods are required for the use of the petitioner and not for trading purposes, in which event alone it could be treated as for commercial purposes. The only other point

that is noted in Ext.P3 notice is that the declaration for own use in Form No.16 was not produced in original and only a photocopy of the same was produced before the authority. It is the case of the petitioner that the original of the Form No.16 was also later produced before the detaining authorityand a copy of it was sent by e-mail also. Taking note of the submissions of counsel for the petitioner, and also the fact that the equipment in question is an item of machinery that is required by the petitioner for use in the bakery business which he proposes to establish, I am of the view that the detention of the goods under Ext.P3 notice is wholly unwarranted. Accordingly, the respondents are directed to release the goods forthwith against simple bond, without surety, to be executed by the petitioner before the respondent. In addition, the petitioner shall give an undertaking to the respondent that he will not alienate the machinery in question and further that he will get himself registered in terms of the Kerala Value Added Tax Act within a period of one month from the date of receipt of copy of this judgment. The 1st respondent shall thereafter transfer the file to the adjudicating authority for an adjudication in the matter. The adjudicating authority shall proceed to pass orders in the matter within a period of two months from the date of receipt of copy of this judgment after notice to the petitioner. The petitioner shall produce a copy of the writ petition as also a copy of this judgment before the adjudicating officer.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/