IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WP(C).No. 37660 of 2015 (F)

PETITIONER:

M/S. RAJASREE MOTORS (P) LTD.
2/293 ©, NH-47,
KUNDANNOOR JN, MARADU P.O,
COCHIN, REPRESENTED BY ITS
ASSISTANT GENERAL MANAGER -ACOUNTS,
SRI V.N.ANANTHA KRISHNAN

BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD

RESPONDENT:

THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR – 678 624.

BY GOVERNMENT PLEADER SRI R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.37660/2015

PETITIONER'S EXTS:

EXT.P1: COPY OF INVOICES BEARING NO.121 DT.18.11.15.

EXT.P2: COPY OF INVOICE BEARING NO.122 DT.18.11.15.

EXT.P3: COPY OF TRANSACTION SLIP COVERING INVOICE 121 DT.20.11.15.

EXT.P4: COPY OF TRANSACTION SLIP COVERING INVOICE 122 DT.20.11.15.

EXT.P5: COPY OF FORM 16 DT.20.11.15.

EXT.P6: COPY OF NOTICE DT.1.12.15.

EXT.P7: COPY OF REPLY DT.7.12.15.

EXT.P8: COPY OF REVISED NOTICE DT.8.12.15.

EXT.P9: COPY OF REGISTRATION CERTIFICATE DT.6.12.14.

RESPONDENT'S EXTS: NIL

TRUE COPY

PS.TOJUDGE

dsn

ANIL K.NARENDRAN, J

W.P.(C.)No.37660 Of 2015

DATED THIS THE 11th DAY OF DECEMBER, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act has approached this Court in this Writ Petition seeking a writ of certiorari to quash Exts.P6 and P7 notices issued under Section 47(2) of the KVAT Act, by which the petitioner has been asked to furnish security in lieu of detention of the goods.

2. The pleadings and materials on record would show that the petitioner transported a consignment consisting of garments like men's shirt, women shirt, neck tie, neck scarf and leather belts for men and women covered by Exts.P1 and P2 invoices. The vehicle transporting the goods covered by Exts.P1 and P2 was intercepted at the Commercial Check Post at Walayar, which resulted in Ext.P6 notice issued under Section 47(2) of the KVAT Act requiring the petitioner to furnish security deposit of ₹69,570/- in lieu of detention. Based on the objection raised by the petitioner in Ext.P7, the respondent issued Ext.P8 revised notice under Section 47(2) of the Act demanding a sum of ₹1.12,020/-in lieu of detention

of goods. The reasons stated in Ext.P8 notice for detaining the goods reads thus:

> "A notice U/s.47(2) of the KVAT Act 2003, was issued in Form No.17(A) to the consignee (Notice No.OR 3441/9/15-16 dt.01.12.2015) demanding security deposit of ₹ 69570/- as the consignee had not presented bill No.121 dt.18.11.15 was not presented for verification on 01.12.15. In the absence of the said bill, amount and no. of readymade garments, leather belts declared in Form 16 dt.20.11.15 was not matching.
>
> Now on 8.12.15, M/s Rajasree Motors Pvt.Ltd. Cochin has filed a reply dt.7.12.15 to the previous notice dt.1.12.15 in which they have stated that the amount as well as no. of readymade garments and leather belt are perfectly matching and have filed a copy of bill No.121 dt.18.11.15.
>
> However, since CST @ higher rate is not seen suffered in the invoice Nos.121 & 122, dt.18.11.2015, and in these circumstances, Notice No.3441/9/15-16 dt.1.12.2015 is now revised as under:

Sl.No.	***Items***	***Quantity***	***Value estimated***	***SD due***
1	Readymade garments	461 Nos.	₹551758	55180 (@ 10%)
2	Leather Belt	245 Nos	₹196000	₹56840/-
Total	S.D.due (55180+56840)=1,12,020/-			

3. I heard arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for

the respondent.

4. The learned counsel for the petitioner would contend that the entire exercise is a sheer abuse to make out some permise or the other for harassment by a detention and such an approach is unbecoming of a statutory authority. It is also contended that in the first place the rates of CST applied are not the concern of the respondent. The invoice is inclusive of tax and need not necessarily mention the rate applied and is of no relevance insofar as the movement of goods is concerned. The seller is a registered dealer with CST registration. It is also contended that the rates are not separately given and the petitioner is not engaged in resale and it is not the concern of the respondent to enquire all these things which are not material for a detention under Section 47(2) of the Act as the documents relevant for a transport under Section 46(3) of the Act is available.

5. After hearing both sides and considering the materials on record, I am unable to accept the argument advanced by the learned counsel for the petitioner that the proceedings initiated

against the petitioner under Section 47(2) of the Act is absolutely without any legal basis. However, considering the fact that the petitioner is a registered dealer under the KVAT Act, I deem it appropriate to order release of the goods in question, on the petitioner furnishing a simple bond for ₹1,12,020/- without sureties.

6. Thereafter, the respondent shall forward the file to the concerned adjudicating authority, who shall finalise the proceedings without further delay, with notice to the petitioner.

The Writ Petition is disposed of as above.

Sd/-
ANIL K.NARENDRAN,
JUDGE

dsn

True copy

P.S.to Judge