IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WP(C).No. 38690 of 2015 (I)

PETITIONER(S):

M/S.SURESHLASYA DIAMONDS AND JEWELS (INDIA)PVT. LTD.,
DOOR NO.VII/227-229, LASYA TOWER,
NEAR PONJANAM TEMPLE, PONJANAM, KATTOOR P.O.,
THRISSR - 680 702, REPRESENTED BY ITS
MANAGING DIRECTOR, SRI.SURESH M.K.

BY ADV. SRI.TOMSON T. EMMANUEL

RESPONDENT(S):
----

1. INTELLIGENCE INSPECTOR,
SQUAD NO.I, COMMERCIAL TAXES,
THALASSERY - 670 101.

2. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, IRINJALAKKUDA - 680 121.

3. COMMISSIONER OF COMMERCIAL TAXES,
TAX TOWER, KARAMANA P.O.,
THIRUVANANTHAPURAM - 695 002.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 38690 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF PERMANENT ACCOUNT NO.AAVCS5494E ISSUED TO PETITIONER COMPANY BY INCOME TAX DEPARTMENT.

EXT.P2: TRUE COPY OF TEMPORARY REGISTRATION CERTIFICATE NO.MH43TBF962 DTD.28.8.2015 ISSUED TO A CAR OWNED BY PETITIONER COMPANY BY REGISTERING AUTHORITY AT NEW MUMBAI.

EXT.P2(a): TRUE COPY OF TAX TOKEN ISSUED BY KERALA MOTOR VEHICLES DEPARTMENT FOR CONVERTING EXT.P2 TO REGISTER IN KERALA.

EXT.P3: TRUE COPY OF REGISTRATION CERTIFICATE DTD.11.8.2015 ISSUED BY 2ND RESPONDENT TO THE PETITIONER, UNDER THE KVAT AND CST ACTS.

EXT.P4: TRUE COPY OF ONLINE DELIVERY NOTE NO.320809/DN/4733/2015 DTD.15.12.2015 RAISED FOR TRANSPORT OF GOLD ORNAMENTS VALUED RS.30,00,000/- FOR THE PURPOSE OF TRANSPORTING TO M S JEWELLERY (M S GOLD DIAMOND), IRITTY FOR OBTAINING ORDER.

EXT.P4(a): TRUE COPY OF DECLARATION DTD.15.12.2015, ACCOMPANIED WITH EXT.P4.

EXT.P5: TRUE COPY OF NOTICE NO.VCR/OR/236/2015-16 DTD.16.12.2015 U/S.47(2) TO THE KVAT ACT, ISSUED TO PETITIONER BY 1ST RESPONDENT, IN TAKING CUSTODY OF GOLD ORNAMENTS CARRIED IN THE VEHICLE, DEMANDING SECURITY DEPOSIT, ALLEGING THAT THE GOODS NOT DECLARED IN LOCAL ENROOT CHECK POST.

EXT.P6: TRUE COPY OF TAX IDENTIFICATION NUMBER SEARCH REPORT TO VAT REGISTRATION NO.32121066251 PERTAINING TO M.S.GOLD DIAMOND, WHO IS THE CONSIGNEE OF THE GOODS.

RESPONDENT(S)' EXHIBITS:
--

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. VINOD CHANDRAN, J.

W.P(C). No.38690 of 2015-I

Dated this the 21st day of December, 2015.

<u>JUDGMENT</u>

The petitioner is aggrieed with Ext.P5 detention under Section 47(2) of the KVAT Act, 2003. The goods were available in a vehicle bearing Registration No.MH 43/TBF/962, when it was intercepted by the Excise Inspector, Excise Checkpost, New Mahe at 11am on 16.12.2015. On physical verification, a bag containing gold and diamond ornaments were seen and the same was taken possession of by the Excise Inspector and handed over to the Commercial Tax Inspector at the Commercial Tax Checkpost (CTCP), New Mahe.

2. The Annexure attached to Ext.P5 indicates that the vehicle had crossed two Commercial Tax Checkposts namely CTCP Kunhippally and CTCP New Mahe, when the goods were not declared. When the driver was questioned, it was informed that the goods were being transported from Thrissur to Kannur to one M&S Jewellery, Iritty; which is alleged to be not in existence.

3. The learned counsel for the petitioner contends that Ext.P6 is the registration particulars of the dealer in Kannur, to whom the jewellery was taken, as per Ext.P4(a) list, for demonstration purpose and not for sale. It is also submitted that, a Delivery Note at Ext.P4 had been uploaded in the Website of the Commercial Taxes Department.

4. Immediately, it is to be noticed that Ext.P4 is a Delivery Note, indicating movement

of goods locally and the dealer, who is the recipient of the goods is shown as one M&S Jewellery, Iritty, Kannur. The registration particulars produced at Ext.P6 is of one MS Gold Diamonds. Hence, it cannot be said that the gold was to be transported to the registered dealer indicated at Ext.P6.

5. The learned counsel would also rely on Section 46(3)(b) to contend that a declaration should be made at the Checkpost, only when the vehicle or vessel enters or leaves the State and the petitioner had been transporting goods within the State itself. Here, it is to be specifically noticed that the goods were transported from Thrissur to Iritty, Kannur and it had to be transmitted through another State, ie. the State of Pondicherry, wherein, at the entry point and exit point, there are

Checkposts of the Kerala State. The goods were not declared at either of the entry or exit Checkposts, which was mandatory. The Delivery Note said to have been filed is one, which cannot be relied on, because as noticed in Ext.P5, there is no such dealer existing in Iritty, Kannur. It cannot be said that the suspicion of evasion of tax is wholly without reason.

For all the above reasons, the writ petition would stand dismissed *in limine,* but however, making it clear that the observations made herein need not govern the adjudicatory proceedings.

K. VINOD CHANDRAN,
JUDGE

sp/21/12/15